# Impact Analysis Statement

| | |
|---|---|
| **Lead department** | Department of Transport and Main Roads |
| **Name of the proposal** | Amend the Heavy Vehicle National Law (HVNL) to reflect policy reforms agreed by the Infrastructure and Transport Ministers' Meeting through the HVNL Review process. |
| **Submission type** | Summary IAS |
| **Title of related legislative or regulatory instrument** | Heavy Vehicle National Law Amendment Bill 2025 |
| **Date of issue** | 16 April 2025 |

## What is the nature, size and scope of the problem? What are the objectives of government action?

In 2018, ITMM directed the National Transport Commission (NTC) to review the Heavy Vehicle National Law (HVNL) and its supporting regulations, as there was recognition that the HVNL may not be as effective as it could be.

In January 2019, the HVNL Review commenced with the aim of delivering a modern, outcome-focussed law that will improve safety for all road users, support increased economic activity and innovation and simplify the administration and enforcement of the HVNL.

As part of the HVNL Review, the Infrastructure and Transport Ministers' Meeting (ITMM) progressively agreed to a suite of legislative and non-legislative reforms to the HVNL. The Heavy Vehicle National Law Amendment Bill 2025 (Amendment Bill) will amend the HVNL to implement recommendations made by the NTC and endorsed by ITMM through the May 2023 *High Level Regulatory Framework Decision Regulation Impact Statement* (2023 D-RIS) at **Attachment 1** and the July 2024 *Reforms to Heavy Vehicle National Law Decision Regulation Impact Statement* (2024 D-RIS) at **Attachment 2**.

As host jurisdiction, Queensland must first pass HVNL amendments before they can be applied by other participating jurisdictions.

The National Heavy Vehicle Regulator (NHVR) will work cooperatively with all participating jurisdictions to ensure that administrative, compliance, and procedural changes are in place before amendments commence.

*Problems with the current Heavy Vehicle National Law*

The HVNL is a long and prescriptive law with obligations for regulated parties currently detailed in the primary legislation. This has led to a generally 'one-size-fits-all' general approach to regulation that also includes complex arrangements that attempt to recognise the diverse purposes of heavy vehicle transport, and manage the risks associated with different geographical areas and types of operations that is not always successful.

The current HVNL is a mixture of performance-based and prescriptive legislative requirements. Almost two-thirds of HVNL provisions are prescriptive. Analysis undertaken as part of the regulation impact statement (RIS) process indicated that the HVNL has 10 prescriptive rules for each performance-based requirement, while the Rail Safety National Law and model Work Health and Safety Act are more evenly balanced between prescriptive and performance-based requirements.

The Amendment Bill is aligned with an ITMM directive to make the HVNL simpler and more flexible by moving a range of prescriptive detail into regulations, and to have a strong focus on safety through improved accreditations and regulatory accountability. The amendments aim to improve safety and productivity, reduce regulatory red tape, improve regulatory functions, and simplify administration and enforcement of the law by solving problems identified during the RIS process:

*2023 Decision Regulation Impact Statement (2023 D-RIS)*

The 2023 D-RIS identified and developed solutions to resolve the following identified problems:

- a better balance between prescriptive and more flexible obligations in the HVNL is required to support a highly diverse heavy vehicle industry that seeks both flexibility and certainty in complying with both the intent and word of the law
- the HVNL is unresponsive to changes in the operating environment, such as innovations, new safety risks and other changes in heavy vehicle operations
- alternative compliance options available under the HVNL are too heavily constrained by legislation
- in some instances, regulatory tools and powers in the HVNL are outdated, inflexible, or unnecessarily constrained.

*2024 Decision Regulation Impact Statement (2024 D-RIS)*

The 2024 D-RIS identified and developed solutions to resolve the following identified problems:

- a number of limitations in the HVNL which contribute to ineffective fatigue management.
- limits to general access to the road network under the HVNL which creates an administrative burden and impacts freight industry productivity.
- limited confidence in the robustness of the current HVNL National Heavy Vehicle Accreditation Scheme (NHVAS) due to a lack of consistency or recognition between accreditation schemes and a regulatory environment where operators are faced with multiple and duplicative assurance audits.

Overall, these identified problems and flaws limit the effectiveness of the HVNL in meeting its stated objectives to promote public safety; manage the impact of heavy vehicles on the environment, road infrastructure, and public amenity; promote industry productivity and efficiency in the road transport of goods and passengers by heavy vehicles; and encourage and promote productive, efficient, innovative, and safe business practices.

The NTC consulted with industry and government stakeholders to develop potential solutions to these problems by identifying reform options in the 2023 D-RIS and 2024 D-RIS. These options aim to improve the effectiveness of the HVNL by looking for new ways to achieve regulatory objectives, enhance the safety and efficiency of the road freight industry, and provide benefits to the community.

ITMM agreed to these options which now form the basis of the amendment bill.

*Heavy Vehicle National Law background*

The HVNL is national scheme legislation for the regulation of heavy vehicles that is set out in the Schedule to the *Heavy Vehicle National Law Act 2012.* It is adopted as applied law by all HVNL participating jurisdictions, which are Queensland, New South Wales, the Australian Capital Territory, Victoria, South Australia, and Tasmania.

The HVNL regulates matters about the operation of heavy vehicles, such as their mass and dimensions, vehicle safety standards, the work and rest hours of heavy vehicle drivers and other measures to manage fatigue, accreditation schemes, speed compliance, and the use of intelligent transport systems. The HVNL also includes chain of responsibility offences, enforcement powers, and administrative provisions.

When operational provisions of the HVNL commenced on 10 February 2014, the NHVR assumed responsibility for the regulation of all heavy vehicles greater than 4.5 tonne gross vehicle mass in all participating jurisdictions.

Amendments to the HVNL must be agreed by responsible ministers, currently through the ITMM processes. ITMM is a forum for intergovernmental collaboration, decision-making and progressing priorities of national importance in relation to transport matters. The meetings facilitate work between Commonwealth, state, territory, and local governments to drive transport reforms that improve the safety and productivity of Australia's transport and infrastructure systems. Membership of ITMM is comprised of relevant ministers from the Commonwealth and each state and territory, in addition to representatives from New Zealand and the Australian Local Government Association. Each jurisdiction casts a single vote on any proposals considered.

## What options were considered?

All options proposed in the 2023 and 2024 D-RIS were subject to rigorous scrutiny and policy analysis with consideration given to the relative costs and benefits, alignment with best practice regulatory design and the objectives of the HVNL Review. Several of the options outlined in each respective D-RIS were not progressed because the case for change was not made or have been deferred to allow further policy analysis to be undertaken. The preferred options were those that were considered the most appropriate based upon the NTC's assessment of benefits to the heavy vehicle industry and the broader community.

*High Level Regulatory Framework Decision Regulation Impact Statement (2023 D-RIS)*

The 2023 D-RIS focused on high-level legislative reforms and key enabling mechanisms for the primary law that would enable a more flexible regulatory approach, support operator diversity, provide more choice for operators in ways to manage risks, and establish a framework to recognise safety technologies.

In keeping with the recommendations presented to ITMM, this RIS does not consider a range of alternative options as would normally be the case in a RIS. This RIS instead looks to assess the impact of implementing the enabling policies identified, which have the broad support of stakeholders. It was considered that this process would successfully set the foundations for further reform while reducing the likelihood of jurisdictions derogating from the future HVNL.

Options considered within the 2023 D-RIS included:

- a more outcomes focused and flexible law with requirements moved to regulations and other subordinate instruments (where appropriate), to support industry in developing safer, more efficient business practices, and to have those practices recognised as an alternative to compliance with prescriptive requirements. This will enable the HVNL to better support a diverse road freight industry and encourage ongoing improvements in industry practice including to accommodate advances in safety technologies and regulatory best practice.
- a more flexible way of prescribing obligations for drivers, operators, other parties in the chain of responsibility and offroad parties, including an amendment to the driver duty to make it clear that drivers should not drive if unfit for the task.
- an enhanced, opt-in NHVAS to increase flexibility and choice for industry on how to manage compliance obligations (within prescribed outer limits), underpinned by improved safety culture and practices by embedding a safety management system (SMS) approach. An enhanced and restructured NHVAS will create an alternative compliance tier for accredited operators, which works in tandem with a new power that will allow the NHVR to grant accreditation as an alternative means of complying with prescribed operational requirements (either on a bespoke basis or as part of accreditation modules developed by the NHVR) within ministerially approved limits.
- a more flexible, transparent, and streamlined mechanism for approving safety technologies to give industry greater certainty and encourage innovative safety management practices.
- improved NHVR autonomy and discretion through more targeted ministerial oversight, approvals and direction.

Refer to **Attachment 1** for further details.

*Reforms to Heavy Vehicle National Law Decision Regulation Impact Statement (2024 D-RIS)*

Recommended options in the 2024 D-RIS support HVNL amendments in the areas of fatigue record keeping, fatigue enforcement, and the creation of a new National Auditing Standard (NAS) which builds on amendments to heavy vehicle accreditation.

The 2024 D-RIS proposed several changes to record-keeping requirements to support industry requests that requirements should be risk-based and not exceed what is required to manage significant risks. Options considered included changes to record keeping requirements in the work diary so that the day of the week and total rest and work fields in the diary are not subject to an offence under the HVNL. Another option considered would see three offences relating to incorrectly completing the work diary consolidated into one offence: reducing the potential for multiple penalty infringement notices being issued for the same matter. The overall impact of this proposal is some improvement to regulatory burden to industry with no adverse impact on safety.

The proposed option for the NAS would see NAS requirements defined in primary law to enable a new standard to be developed by the NHVR and then approved by ministers. This allows the NHVR to maintain flexibility to adapt and update the NAS without legislative change. This proposal also enables a tailored approach to meet the needs of the heavy vehicle industry and potentially enable faster implementation.

Options concerning heavy vehicle mass and dimension limits for general vehicle access were considered to improve productivity without detriment to safety outcomes., with the overall aim to make exceptions to the definition of a 'general access vehicle' (that is, a vehicle that can use roads without needing to seek a permit or exemption notice), such that slightly heavier, higher or longer vehicles qualify.

Refer to **Attachment 2** for further details.

## What are the impacts?

A cost-benefit analysis is the preferred impact analysis framework of the Commonwealth Office of Impact Analysis (OIA). Where possible, it requires the impacts (benefits and costs) to be expressed in monetary terms.

However, the main challenge with taking a cost-benefit analysis approach for the 2023 D-RIS and 2024 D-RIS is that most policy proposals being assessed are enabling amendments that will not have a regulatory impact. These reforms do, however, enable future changes in the regulatory environment that could be assessed using a cost-benefit analysis but that will be tested via separate regulatory impact processes.

For the purpose of the HVNL Review, the NTC adopted a multi-criteria impact analysis approach in both the 2023 D-RIS and the 2024 D-RIS to assess the positive and negative impacts of the proposed changes to the HVNL. This approach is commonly used where full monetisation of costs and benefits is not appropriate or possible and is consistent with the OIA's cost-benefit analysis guidelines. The multi-criteria analysis is primarily qualitative because there is a lack of relevant quantitative information regarding the enabling amendments given their lack of regulatory impact. As such, quantitative analysis was not undertaken due to insufficient data and information.

The multi-criteria analysis uses six impact categories that drive impacts (costs and benefits) of the policy recommendations compared with the current HVNL (base case):

- public safety
- improvements to operational efficiency or productivity
- regulatory burden for industry
- regulatory costs for government
- asset management
- flexibility and responsiveness.

The *2020 HVNL Review Consultation Regulation Impact Statement* (2020 C-RIS) provided a preliminary assessment of the costs and benefits of individual policy reform options under key topic areas using qualitative cost-benefit analysis. As noted in the 2020 C-RIS, however, many impacts cannot be quantified, for example:

- safety, infrastructure, and overall crash risk reduction benefits are challenging to value. There is data available on the cost of road crashes and estimates of the cost of road crashes involving heavy vehicles, but there is limited understanding and certainty around the extent to which different risk management approaches might contribute to the likelihood of a crash, and the extent to which different regulatory options may reduce this risk.
- impacts on innovation or operational efficiency are also difficult to measure. It is challenging to assess the benefits forgone if regulatory policy delays, or reduces, innovation.

The 2023 D-RIS impact analysis established that the proposed changes would most likely result in limited or moderate net improvement compared with the current law for industry, governments, and the community and that these impacts are consistent across all participating jurisdictions. Given the changes are foundational and enabling in nature, the subsequent regulations and instruments will be more beneficially impactful on stakeholders.

The 2024 DRIS found that several options for amendments to the scope of fatigue management, prescriptive requirements and enforcement approaches could not be justified due to the increased regulatory burden for industry or the increased complexity to operators and governments, and resourcing requirements. Therefore, no changes to these policy settings were proposed. The agreed changes to fatigue management record keeping will provide some improvement on the regulatory burden to industry with no adverse impact on safety.

Changes to heavy vehicle mass and dimensions limits are the subject of ongoing work. Once controls and related conditions are developed to support increases to general access vehicle length and height, the impacts of these may be tested via an addendum to the 2024 DRIS. The 2024 DRIS also noted that the benefits of increasing mass limits are likely to outweigh the costs. However, it is understood that increased general mass limits will increase road funding and maintenance requirements and that there will therefore be implications on road user charging (subject to further analysis).

Each D-RIS was reviewed by the OIA, who confirmed they were compliant with the Commonwealth *Regulatory Impact Analysis Guide for Ministers' Meetings and National Standard Setting Bodies*.

Refer to **Attachments 1 and 2** for more details.

## Who was consulted?

The NTC engaged with over 50 organisations and working groups, through over 200 consultations, to develop and test policy options and positions.

The NTC also attended industry events and conferences to engage with national and state-based trucking and bus industry peak bodies, member associations, operators, and other industry stakeholders.

Preparation of the 2023 D-RIS and 2024 D-RIS were informed by a comprehensive legislative review and policy analysis process, which was undertaken in close consultation with industry and government stakeholders. This included the release of a *Reforms to Heavy Vehicle National Law Consultation Regulation Impact Statement* in October 2023, and Exposure Drafts of the Heavy Vehicle National Law Amendment Bill and Heavy Vehicle National Amendment Regulations in October 2024 for public feedback and submissions.

Throughout the HVNL Review reform process, the NTC consulted with:

- the trucking industry and trucking industry associations
- the National Heavy Vehicle Regulator
- the Commonwealth Government
- state and territory governments, including non-participating jurisdictions
- local governments
- police and enforcement agencies
- other regulated parties and their representatives
- Austroads and Transport Certification Australia
- the community.

Refer to section 1.3 Approach and consultation in **Attachment 1** and section 1.2.1 Consultation process that has informed this Decision RIS in **Attachment 2** for more details.

## What is the recommended option and why?

Industry and government worked together to achieve broad support for a package of reforms that were deemed suitable to improve heavy vehicle safety and productivity.

The following recommendations from the 2023 D-RIS and 2024 D-RIS, along with a number of policy changes that do not require an impact assessment, form the foundation of the HVNL Amendment Bill 2025 and amendment regulations. They will deliver more effective and flexible regulation, support improvements to safety and productivity, as well as streamline governance and administration:

*High Level Regulatory Framework Decision Regulation Impact Statement (2023 D-RIS)*

**Recommendation 1:** Tiered Safety Assurance Environment

That the future HVNL establish a tiered safety assurance environment comprising a baseline tier and an alternate compliance tier, designed to reflect industry diversity and deliver regulatory flexibility.

**Recommendation 1a**: Baseline compliance tier 1

That as part of the tiered safety assurance environment, the future HVNL establish a baseline tier comprised of simplified, predominantly prescriptive requirements, given effect by a broad head of power for the prescribing of heavy vehicle obligations.

**Recommendation 1b:** Alternative compliance tier 2

That, as part of the tiered safety assurance environment, the future HVNL establish an alternative compliance tier for accredited operators, underpinned by a new power allowing the regulator to issue alternative compliance options, within prescribed outer limits and other specified constraints.

**Recommendation 2:** Ministerial approvals

That, as part of establishing an appropriate balance of regulatory discretion and ministerial oversight, the future law establishes new arrangements for ministerial approvals, such that:

**2a** In recognition of restructured arrangements for alternative compliance and accreditation, ministers will no longer be required to approve accreditation business rules.

**2b** As part of enhancements to accreditation, ministers will be empowered to approve a national audit standard to be applied as part of the NHVAS, as well as other schemes and third parties. A national audit standard audit certificate will be automatically admissible as evidence in primary duty proceedings.

**2c** The law clarify that consultation requirements apply to the development of ministerially approved guidelines.

**2d** Ministers will no longer be required to approve a sleeper berth standard, noting this may be prescribed as a heavy vehicle obligation in the future.

**Recommendation 3:** Ministerial directions

To enable ministers to appropriately direct the regulator, and without impinging on regulatory autonomy, the future law will establish new ministerial direction arrangements, such that:

**3a** Ministers (collectively) will be empowered to give written directions about the issuing of alternative compliance options.

**3b** Ministers (individually or collectively) may direct the regulator to exercise a certain function or power in the case of a serious public risk, and when in the public interest to do so.

**3c** Ministers (individually or collectively) may direct the regulator to investigate or provide advice or information about a matter relating to a public risk.

**3d** Ministers (collectively) may direct the regulator to cancel a code of practice.

**3e** Ministers will retain the existing power (collectively) to direct the regulator about policies to be applied.

**Recommendation 4:** Codes of practice

That the future law establish new arrangements for codes of practice, replacing the existing industry code of practice mechanism and allowing the regulator to initiate, develop and approve codes of practice.

**Recommendation 5:** Improvement notices

That the future law revise arrangements for improvement notices to allow improvement notice and prosecution processes to run concurrently.

**Recommendation 6a:** Assurance and accreditation

That as part of the new alternative compliance tier (recommendation 1b), the future law restructure the National Heavy Vehicle Accreditation Scheme so that accredited operators can apply for an expandable range of alternative compliance options – either on a bespoke basis or as part of accreditation modules developed by the regulator, within the ministerially approved limits.

**Recommendation 6b:** Assurance and accreditation

That the law ensures a three-year transition period for current NHVAS operators to provide operators adequate time for them to develop the necessary safety management system to qualify for the enhanced scheme.

**Recommendation 7:** Assurance and accreditation

That, as a fundamental enhancement to the scheme, the law establishes a scalable safety management system as a core accreditation requirement.

**Recommendation 8:** Assurance and accreditation

That, to support mutual alignment pathways and scheme robustness, a national audit standard be developed by the regulator and approved by ministers.

**Recommendation 14:** Primary duties and responsibility

That the future law expands the driver duty not to drive while fatigued to also include not driving if unfit for other reasons.

Note the Technology and Data recommendations (recommendations 9 to 13) are not being progressed as part of the 2025 legislative amendment package.

Refer to **Attachment A** for more details.

*Reforms to Heavy Vehicle National Law Decision Regulation Impact Statement (2024 D-RIS)*

**Recommendation 1**: That the requirements for the Work Diary (WD) be changed to:

- Make recording the day of the week on the daily sheet not subject to an offence under the HVNL.
- Make recording the total work and rest hours on the daily sheet not subject to an offence under the HVNL.
- Introduce a default for the 'hours option' in the WD that is the standard hours for a solo driver of a fatigue regulated heavy vehicle.

**Recommendation 2:** Consolidate the following offences under 'Recording information under the national regulations – general' (s296):

- How information is to be recorded (s301) - noting that some requirements will be removed from the law altogether and covered in the WD instructions only,
- Failing to record specific information regarding odometer reading (s298), and
- Time zone of a driver's base must be used (s303).

**Recommendation 3:** Remove s308(1)(b)(ii) and s308(1)(c) so that a found or returned Written Work Diary (WWD), after a replacement has been issued, is no longer required to be returned to the Regulator, noting that a driver will still be required to notify the Regulator using the approved form and to cancel any unused daily sheets in the WWD.

**Recommendation 4:** Remove requirements relating to returning an existing WWD with an application for a new one (s339(3)) and replace these with a new requirement for a driver to cancel any unused daily sheets in the existing WWD.

**Recommendation 5:** Remove s308(2) and s339(4), which contains the requirements relating to what the Regulator will do with returned WWD.

**Recommendation 6:** That the definition of a fatigue regulated heavy vehicle (as defined in the HVNL) remains unchanged.

**Recommendation 7:** Remove s590(1)(b) of the HVNL, to broaden the application of formal warnings by Authorised Officers as a compliance tool for fatigue record-keeping breaches and other breaches under the HVNL.

**Recommendation 9:** Increase the current General Mass Limits (GML) to match the current CML (inclusive of the ADR 80/04 (Euro VI) mass limit increase approved by ministers), repeal the current CML, and make no changes to HML

**Recommendation 12:** That the required provisions for the National Audit Standard (NAS) be introduced in the primary law only.

Note the vehicle height and length (recommendations 10 and 11) are not being progressed as part of the 2025 legislative amendment package.

Refer to **Attachment B** for more details.

## Impact assessment

Amendments arising from the D-RIS recommended options will not require any significant additional government expenditure, and the direct regulatory impacts to industry, governments, regulators, and the community are expected to be minimal.

Any direct compliance costs to the NHVR will be met through the regulatory component of heavy vehicle registration charges, which is a portion of the registration fee that directly funds the NHVR and its operations.

The regulatory component forms part of the annual registration charge for heavy vehicles, distinct from the road user component. It is calculated to cover the costs associated with regulating heavy vehicles, including enforcement, compliance monitoring, and related activities as approved by ITMM in the NHVR's annual corporate plan and budget.

The regulatory component is passed on to the NHVR by participating states and territories after they collect heavy vehicle registration fees.

| | First full year | First 10 years** |
|---|---|---|
| **Direct costs – *Compliance costs**** | **$0** | **$0** |
| **Direct costs – *Government costs*** | **$0** | **$0** |

| | First full year | First 10 years |
|---|---|---|
| **Total costs** | Estimate is not able to be provided - see discussion of impacts above. | Estimate is not able to be provided - see discussion of impacts above. |
| **Total benefits** | Estimate is not able to be provided - see discussion of impacts above. | Estimate is not able to be provided - see discussion of impacts above. |
| **Net present value** | Net present value was not determined as part of the RIS process. | Net present value was not determined as part of the RIS process. |

## Signed

Sally Stannard
Director-General

Date: 15 / 04 / 2025

Brent Mickelberg
Minister for Transport and Main Roads

Date: 13 / 05 / 2025

# Heavy Vehicle National Law high-level regulatory framework

May 2023

## Decision regulation impact statement

National Transport Commission

# Report outline

| | |
|---|---|
| **Title** | Heavy Vehicle National Law high-level regulatory framework |
| **Type of report** | Decision regulation impact statement |
| **Purpose** | For approval by the Infrastructure and Transport Ministers' Meeting June 2023 |
| **Abstract** | This decision regulation impact statement (RIS) assesses the impact of legislative reforms intended to significantly improve the Heavy Vehicle National Law. Recommended reforms have been identified through the Heavy Vehicle National Law (HVNL) Review and subsequent consultation processes.<br><br>The key reforms being assessed in this RIS would see obligations in the HVNL restructured to support industry in developing safer, more efficient business practices and to have those practices recognised as an alternative to compliance with prescriptive obligations. This will enable the HVNL to better support a diverse road freight industry and encourage ongoing industry practice improvements.<br><br>In total, this RIS assesses 14 complementary policy reforms that are intended to deliver a more efficient, collaborative, and risk-based regulatory regime that will benefit the road freight sector and have flow-on effects for the economy and the broader community. |
| **Attribution** | This work should be attributed as follows, Source: National Transport Commission, Heavy Vehicle National Law, Decision Regulation Impact Statement.<br><br>If you have adapted, modified or transformed this work in anyway, please use the following, Source: based on National Transport Commission, Heavy Vehicle National Law, Decision Regulation Impact Statement. |
| **Key words** | heavy vehicle national law, national heavy vehicle regulator, national heavy vehicle accreditation scheme, heavy vehicle safety |
| **Contact** | National Transport Commission<br>Level 3/600 Bourke Street<br>Melbourne VIC 3000<br>Ph: (03) 9236 5000<br>Email: **enquiries@ntc.gov.au**<br>**www.ntc.gov.au** |

# Foreword

Australia's heavy vehicle sector is a key economic enabler driving the movement of freight and people across the nation. Encompassing a wide range of businesses, from small single truck or bus operators through to large fleets, heavy vehicles are essential in transporting goods, people and livestock, and vital to our mining and construction industries. Transport is also a major employer in Australia, generating over 1 million jobs, many of which are in the heavy vehicles sector.

It is therefore vital that Australia's heavy vehicle sector is able to innovate and respond to changing technology and business practices. This requires a regulatory environment that encourages industry growth and innovation, fosters productivity, enables the regulator to respond to new and emerging risks and above all supports a safe operating environment.

The National Transport Commission (NTC) has developed this Decision Regulatory Impact Statement (D-RIS) to support Australia's transport ministers in making decisions on the future Heavy Vehicle National Law (HVNL). It contains 14 recommendations that will form the foundation of a future law that will deliver more effective, flexible regulation, be more responsive to a dynamic contemporary environment, support improvements to safety and productivity, reduce red tape and streamline governance and administration.

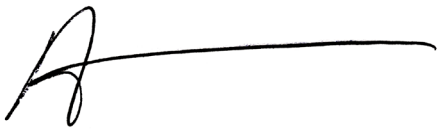
To implement these recommendations, the first step will be to establish the right foundations, by changing the design and structure of the HVNL regulatory framework so that it serves as a gateway – not a barrier – to a more flexible regulatory regime.

With the future HVNL regulatory structure locked in place, NTC can complete consultation and regulatory impact assessments for key reforms including vehicle mass and dimension changes and fatigue rules. These reforms are critical to the safety, productivity and sustainability of Australia's heavy vehicle sector.

The changes outlined in the DRIS, will complement other reforms to systems and processes that do not require changes to the law. This includes important improvements to Australia's heavy vehicle access systems. Together they will provide a more supportive environment for safety and productivity in Australia's heavy vehicle sector.

The NTC will continue to engage with industry and jurisdictions as we finalise the HVNL reforms and deliver a better law.

**Dr Gillian Miles**
Chief Executive Officer and Commissoner



**Aaron de Rozario**
Executive Leader, Regulatory Reform

# Contents

# Executive summary

The review of the Heavy Vehicle National Law (HVNL) led by the National Transport Commission (NTC) and subsequent consultation processes have identified a series of foundational changes to the HVNL. These changes are critical for the law to accommodate the current and future needs of Australia's heavy vehicle industry.

This decision regulation impact statement (RIS) assesses the impact of supported policies that will underpin a significantly improved HVNL. If approved for implementation as a package, the policies assessed by this RIS will increase the responsiveness and adaptiveness of the HVNL. The changes will lay a foundation for supporting future innovations in delivering heavy vehicle safety and productivity. They will allow the regulatory environment to more easily adapt to changing industry trends and enable the National Heavy Vehicle Regulator (NHVR) to administer ongoing improvements to the regulatory framework.

Chapter 5 analyses stakeholder-endorsed policy recommendations against a base case (the current HVNL). The consideration of these issues is broken down into themes and aligns with the HNVL Review consultation RIS. Where there are no policy recommendations relevant to the scope of this RIS, chapters instead contain an analysis of deliberations and highlight future work.

## Context

The HVNL applies to heavy vehicles over 4.5 tonnes of gross vehicle mass. The HVNL consists of the Heavy Vehicle National Law and five sets of regulations. A first principles review of the HVNL was commenced in 2019, and a consultation regulation impact statement was released for stakeholder comment in 2020.

Following the release of the consultation RIS, an extensive policy refinement process has been undertaken in collaboration with regulators, industry representatives and government stakeholders. As a result of this process, a package of policies that have broad consensus support was approved by ministers at the Infrastructure and Transport Ministers' Meeting (ITMM) in August 2022 (the ITMM reform package).

## Conclusions and recommendations

This RIS assesses policies recommended for inclusion in the future HVNL with consensus support. On balance, the policy recommendations as a package will deliver benefits to stakeholders. Individually, the recommendations are neutral or deliver small or moderate net benefits. The recommendations establish enabling mechanisms and will facilitate the realisation of more significant benefits as they are further developed and implemented. Importantly, recommendations have a consistent impact on all HVNL-participating jurisdictions.

If approved, these policies will form the foundations of the future HVNL.

While the reforms recommended by this RIS propose significant changes to the structure and mechanics of the HVNL, they do not represent the full suite of operational and legislative improvements identified by stakeholders through the HVNL review process. If endorsed, the recommendations in this RIS will set the right foundations for enabling further changes to HVNL duties, obligations and outcomes. This work will proceed through developing

regulations and subordinate instruments under the policy work program being overseen and monitored by then HVNL Steering Committee.

The key reforms being assessed in this RIS would see obligations in the HVNL restructured to support industry in developing safer, more efficient business practices and to have those practices recognised as an alternative to compliance with prescriptive obligations. Outcomes will enable the HVNL to better support a diverse road freight industry and encourage ongoing improvements in industry practice.

To complement changes to prescriptive obligations, this RIS considers enhancements to the National Heavy Vehicle Accreditation Scheme (NHVAS) based upon a safety management system approach. While it is proposed that NHVAS will continue to be a voluntary scheme managed by the NHVR, the proposed structural improvements will increase the flexibility of the scheme and empower the NHVR to establish mutual alignment arrangements and accelerated pathways for accreditation of operators already certified under non-HVNL schemes. Critically, the enhanced NHVAS will enable the NHVR to offer industry access to a broader range of accreditation options that will, in turn, allow access to alternative compliance options that may include regulatory concessions.

In recognising the role of technology in ensuring safety and increasing productivity, this RIS also assesses the impact of establishing a new technology and data framework within the HVNL. This will improve the responsiveness of the HVNL by formalising a process for certifying technologies and having them recognised within the regulatory framework.

This RIS assesses 14 complementary policy reforms intended to deliver a more efficient, collaborative, and risk-based regulatory regime that will benefit the road freight sector and have flow-on effects for the economy and broader community.

The NTC would like to acknowledge the assistance of industry and government stakeholders who have collaborated in developing these policies.

## Next steps

If approved, the foundational changes to the HVNL can be prepared. This will then allow for the development of the supporting regulations and other subsidiary instruments, such as heavy vehicle obligations and the outer limits of and constraints on the enhanced NHVAS to be developed. The regulations and other subordinate instruments, including further policy recommendations in the ITMM reform package, will be subject to further consultation with industry and other stakeholders to include regulatory impact assessments where required.

# 1 Context

**Key points**

- The Heavy Vehicle National Law (HVNL) commenced in 2014. Numerous amendment packages have been required since in response to changes to the regulatory environment, to address inconsistencies, and to improve safety and productivity.
- The HVNL Review demonstrated that the HVNL is not fit for purpose and that a reform of the law could have significant benefits.
- Extensive consultation with stakeholders across industry, governments, regulators and enforcement agencies has been conducted to seek input and agreement on policy proposals to address the issues with the HVNL. This included a consultation regulation impact statement (RIS) in 2020, and more recently a process led by Mr Ken Kanofski, at the request of ministers at the Infrastructure and Transport Ministers' Meeting (ITMM).
- In September 2022, ITMM announced a reform package consistent with Mr Kanofski's recommendations and directed the NTC to develop a decision RIS that assesses the impact of legislative reform of the HVNL (the ITMM reform package).

## 1.1 Introduction

In September 2022 ITMM directed the NTC to develop a decision RIS addressing a set of legislative policy changes recommended to ITMM by Mr Ken Kanofski. The work of Mr Kanofski built upon the outcomes of the HVNL Review, the HVNL Safety and Productivity Program and the NTC's consultation RIS, which was released in June 2020.

Mr Kanofski's recommendations were delivered through a report (Kanofski Report) in which he assessed the HVNL Review processes and considered:

- Policy settings for the future HVNL demonstrating how safety and productivity improvements can be achieved.
- Areas where policy positions are unresolved and ways forward.
- The forward work required to deliver the future HVNL, including timeframes, process, and cost-benefit analysis.
- Any systemic barriers to national heavy vehicle reform.

The Kanofski Report presented a series of policy recommendations, noting the need to undertake assessments of the costs and benefits of policies prior to implementation.

In September 2022 Ministers announced through an ITMM Communique:

> *Ministers have taken a significant step forward in delivering reforms to the Heavy Vehicle National Law, with agreement to implement the reforms recommended by Mr Ken Kanofski.*

This decision RIS has been prepared to inform infrastructure and transport ministers of the costs and benefits of foundational reforms to the HVNL that will deliver key policies that ministers have agreed to progress. If implemented, these reforms will provide a more agile HVNL that can more easily deliver supporting policies recommended through the Kanofski Report and the HVNL Review.

Through consultation during the HVNL Review, overarching problems with the structure and design of the HVNL were identified that, if resolved, will provide for a more responsive and adaptable law. At a foundational level, analysis found that:

- A better balance between prescriptive and performance-based obligations is required to support a highly diverse heavy vehicle industry that seeks both flexibility and certainty in complying with the intent and word of the law.
- The HVNL is currently unresponsive to changes in the operating environment.
- The HVNL alternative compliance options offered under the National Heavy Vehicle Accreditation Scheme are constrained by legislation.
- The HVNL is not technology neutral, does not provide a clear pathway for recognising modern technologies and does not provide adequate provisions for data sharing.
- The regulatory tools and powers for the National Heavy Vehicle Regulator (NHVR) are in some instances outdated, inflexible or unnecessarily constrained.
- Existing delegations of authority are, in some cases inefficient. These limit the ability of the NHVR to be a modern, risk-based regulator and to manage risks.

These issues are examined in greater detail in chapter 3.

The limitations of the current HVNL present a barrier to an effective, flexible regulatory regime and an impediment to improved safety and productivity. The heavy vehicle regulatory environment:

- Does not adequately facilitate a risk-based approach to regulation.
- Fails to keep pace with rapidly changing external environments and dynamic contexts to manage changes to risks for safe operations in the industry.
- Does not reflect and support the diversity of the heavy vehicle industry.
- Could more actively encourage parties to improve safety management and invest in more advanced safety technologies by recognising new technologies and systems within the compliance framework.
- Does not adequately support changing technologies, data systems and business practices.
- Does not adequately support the NHVR in its role as a modern regulator.

To assess whether the policy options being considered deliver on the aims of the HVNL Review, this decision RIS considers options against the original direction of ministers that the HVNL Review delivers a modern, outcome-focused law regulating the use of heavy vehicles that will:

- Simplify the HVNL, its administration and enforcement.
- Support the use of modern technologies and methods of operation.
- Provide flexible, outcome-focused compliance options.
- More closely align the HNVL with best practice regulatory approaches in other work health and safety regulations.

- Improve safety for all road users.
- Support increased economic productivity and innovation.

### 1.1.1 Approach to Heavy Vehicle National Law Review policy analysis

In his 2022 report to infrastructure and transport ministers, Mr Kanofski advised that the legislative package outlined in his report has broad support, even though individual aspects may not be stakeholders' first preference. Substantial compromise and reconciliation of views were reached through the consultation process between historically entrenched and often competing views of stakeholders. Mr Kanofski recommended to ministers that his recommendations be considered as a package - an approach consistent with the HVNL Review and mirrored through this RIS process.

This decision RIS does not assess all approved policy components expected to comprise the future HVNL. The focus of this decision RIS is on foundational policy changes required to change the structure and design of the law to create a modern platform for future reforms to HVNL policy. It is expected that following consideration of this foundational decision RIS, additional RIS processes will allow ministers to consider further changes to HVNL policy, including through the development of subordinate instruments and further consider key policy areas, such as heavy vehicle access and fatigue management.

The policy proposals being assessed intends to improve the ability of the HVNL and the NHVR to respond to the diverse and dynamic needs of the heavy vehicle industry. It is anticipated that the policy options assessed as part of this foundational decision RIS will predominantly result in changes to the primary law, with subsequent processes more focussed upon regulations.

The NTC acknowledges that policies being assessed are intended to enable ongoing improvements to the heavy vehicle regulatory environment however, in some cases, they will have no direct regulatory impact. As a result, the approach of this RIS is to undertake a qualitative analysis of impacts. For the purpose of analysing impacts, this RIS assumes that, in general, current policy settings will be maintained via exemptions or other mechanisms, as required.

Future RIS processes will consider additional changes to policy arising from the HVNL Review and will deliver on the remaining elements of the ITMM reform package. Policies considered as part of subsequent RIS processes will directly impact industry and regulators, requiring a new consultative approach to inform a detailed quantitative analysis. It is expected that future RIS processes will be supported by a quantitative analysis approach, analysing the impacts of substantive reform options. If supported through a subsequent RIS process, policy options presented will result in more immediate and tangible changes to the heavy vehicle regulatory environment when implementing the restructured HVNL. Fatigue management and vehicle mass and dimension limits (for as-of-right access) are viewed by the NTC asain areas for further work.

The NTC expects that Queensland Parliament will not consider the future HVNL until both the primary law and supporting instruments have been completed and approved by infrastructure and transport ministers. This will require the completion of all necessary RIS processes and legislative drafting. More detail on the process for implementation can be found at chapter 6.

## 1.2 Background

### 1.2.1 National transport reforms including a law to regulate heavy vehicles

In July 2009, the then Council of Australian Governments agreed to establish the NHVR and a national body of law governing the regulation of all vehicles weighing more than 4.5 tonnes. The intent of this new arrangement was to improve safety, reduce costs and regulatory burden for Australian transport operations, and reduce the costs of exports and trade.

The HVNL regulates the operation of heavy vehicles, such as the mass and dimensions of heavy vehicles, vehicle safety standards, work and rest rules for heavy vehicle drivers, heavy vehicle accreditation and use of intelligent transport systems. The HVNL also places obligations on identified off-road parties involved in the transport and logistics chain (chain of responsibility parties) and includes enforcement powers and administrative provisions.

The HVNL was proclaimed in 2012, and the NHVR commenced regulatory operations in January 2013.

Following a collaborative development process led by the NTC, the HVNL consolidated safety-focused heavy vehicle laws in six of Australia's eight states and territories, providing more consistent regulatory outcomes and harmonising processes across borders.

The objective of the reform was to implement a seamless, national, uniform and coordinated system of heavy vehicle regulation in a way that:

- promoted public safety
- managed the impact of heavy vehicles on the environment, road infrastructure and public amenity
- promoted industry productivity and efficiency in the road transport of goods and passengers by heavy vehicles
- encouraged and promoted productive, efficient, innovative and safe business practices.

The HVNL and its regulations commenced in 2014 in the Australian Capital Territory, New South Wales, Queensland, South Australia, Tasmania and Victoria. Although Western Australia and the Northern Territory have not adopted the HVNL, the HVNL applies equally to vehicles from those jurisdictions when they cross into one of the HVNL-participating states or territories.

Amendments to the HVNL require the approval of infrastructure and transport ministers through ITMM. As host jurisdiction for the HVNL, the Queensland Parliament must consider and pass amendments to the national law before participating jurisdictions can apply them through application legislation.

In 2020, the Productivity Commission released a report on National Transport Regulatory Reform (Productivity Commission Report). The report found that the move to national laws and regulators has 'fundamentally changed how transport safety is regulated'. However, the Productivity Commission's detailed considerations of heavy vehicle road safety and the HVNL concluded that there is difficulty in finding direct causal links between the introduction of the national law and regulatory reforms to improvements in heavy vehicle road safety performance.

### 1.2.2 Heavy Vehicle National Law Review

In many respects, the current HVNL represents a consolidation of dated model laws and policy compromise between the views of jurisdictions, industry and other key stakeholders. The result has been inefficiency and inconsistency. The law has not been adopted by two jurisdictions (Western Australia and Northern Territory). Participating jurisdictions also derogate (that is, depart) from the HVNL in certain areas through their local HVNL application laws.

Infrastructure and transport ministers agreed in May 2018 that the NTC should bring forward the planned review of the HVNL and supporting regulation by two years, to commence in January 2019. In November 2018, ITMM agreed terms of reference for the HVNL Review.

As directed by ministers under the HVNL Review Terms of Reference, the NTC has undertaken a first-principles review of the HVNL and regulations.

Without limiting its scope, ministers stated that the HVNL Review would address the following priorities:

- safe and efficient heavy vehicle access, including simpler, quicker and more amenable access decision-making processes
- a risk-based approach to regulating fatigue, based on evidence, to reduce complexity and administrative burdens
- an improved accreditation framework, designed to inspire and embed more innovative, more efficient and safer compliance
- the increasing use of technology and data for regulatory purposes
- any other priorities identified during the review.

## 1.3 Approach and consultation

### 1.3.1 Consultation informing this regulation impact statement

Preparation of this decision RIS has been informed by a comprehensive legislative review and policy analysis process, which was undertaken in close consultation with industry and government stakeholders.

Throughout this reform process, the NTC consulted with:

- the trucking industry and trucking industry associations
- the National Heavy Vehicle Regulator
- the Australian Government
- state and territory governments, including non-participating jurisdictions
- local governments
- police and enforcement agencies
- other regulated parties and their representatives
- Austroads and Transport Certification Australia
- the Australian community.

The approach taken, involving research, analysis and extensive stakeholder consultation, is summarised below.

### 1.3.2 HVNL Review issues papers

During the first stage of the HVNL Review, the NTC undertook a detailed analysis of the HVNL and researched examples of best-practice regulation from Australia and overseas. The research focused on heavy vehicle regulation but included other types of transport regulation for comparison.

The NTC produced a series of seven issues papers for public consultation covering the key HVNL policy areas (released between March 2019 to October 2019). These are listed in Table 1.

**Table 1. HVNL Review issues papers – summary**

| Title | Content |
|---|---|
| A risk-based approach to regulating heavy vehicles | Investigated the way heavy vehicles are covered under the current HVNL. It explored how taking a risk-based approach to regulation might improve the law. |
| Effective fatigue management | Examined the problems with the way fatigue management is covered by the HVNL and how the law is applied. It presented a comparison with other fatigue management laws and set out high-level principles that a revised law should cover. |
| Easy access to suitable routes | Analysed issues with the current access arrangements under the HVNL. It included a comparison with other ways heavy vehicle access is regulated. |
| Safe people and practices | Set out how the current HVNL manages safety and examined what the HVNL doesn't regulate. It looked at what is and isn't working and included a comparison with management of safe people and practices in heavy vehicle transport with other transport modes in Australia. |
| Vehicle standards and safety | Summarised current vehicle standards and safety provisions in the HVNL and how the law is applied. It explored options for a risk-based approach to managing safety. |
| Assurance models | Described assurance frameworks and their role, and summarised the way certification is regulated through the HVNL and related instruments. It set out assurance model options for a future HVNL. |
| Effective enforcement | Looked at how data and technology relate to enforcement and compliance. It explored options for better use of information, technology and data. |

In response to the issues papers, the NTC received over 250 formal and 300 informal submissions from governments, regulators, heavy vehicle drivers, operators large and small, peak industry bodies, technology providers, and many others.

Reform options identified through the issues papers were further tested at a high level with stakeholders of varied perspectives in a series of workshops held in late 2019.

In January 2020, the NTC released a summary of consultation outcomes that outlined industry feedback and other feedback and helped inform the development of the consultation RIS.

### 1.3.3 Consultation regulation impact statement

In 2020 the NTC released the HNVL Review consultation RIS. It analysed in greater detail an extensive suite of reform options which had been identified by the review to that point. It sought further feedback and comment from stakeholders on the problems identified, the options considered and a preliminary assessment of options for the future HVNL.

A suite of incremental improvements and reform options relating to key provisions of the HVNL were considered separately in the consultation RIS. It was envisaged at the time that further thought would be given to packaging reform options in developing the decision RIS.

The consultation RIS considered a full range of HVNL policy options, including many issues that have subsequently been determined to be unviable or best addressed through operational reform.

The consultation RIS divided issues into the following chapters:

- Primary duties and responsibility
- Regulatory tools
- Technology and data
- Assurance and accreditation
- Fatigue
- Access
- Safer vehicle design
- Roadworthiness.

The consultation RIS provided an opportunity for all stakeholders to comment on multiple policy options and the impact of these options. The NTC received 68 online submissions and over 300 ‘shoutbox’ (an online consultation tool) comments on consultation RIS issues.

In May 2021, ITMM was presented with consultation RIS outcomes and an analysis of stakeholder sentiment towards various policy options.

### 1.3.4 HVNL Safety and Productivity Program, Kanofski Report and decision regulation impact statement development

In May 2021, ministers agreed that the HVNL Review should transition to a programmatic approach, known as the Safety and Productivity Program.

The Safety and Productivity Program comprised the following six projects designed to deliver detailed policy recommendations for ITMM’s consideration:

- Project A: Operator Assurance Scheme
- Project B: Technology and Data
- Project C: Duties and Driver Health Project
- Project D: Fatigue Management Project
- Project E: Vehicles and Access Project
- Project F: Legislative Approach.

The Safety and Productivity Program was supported by new consultation and governance arrangements that were intended to enable the NTC to work with policy experts to more quickly develop implementation-ready policy proposals based upon the extensive industry feedback provided through the issues papers and consultation RIS processes.

Following industry requests for additional engagement, in February 2022 Mr Ken Kanofski was appointed by ITMM to lead further stakeholder consultation on the HVNL, supported by the NTC, and to present reform options to ministers that consider the interest of all stakeholders.

Mr Kanofski consulted with approximately 80 people representing industry organisations and jurisdictions over a series of forums, which included:

- 11 multi-lateral meetings
- all-day workshops
- 37 individual unilateral meetings.

Following this consultation process, Mr Kanofski presented a report to ITMM in August 2022 that included a range of policy proposals that were recommended to be progressed. Mr Kanofski observed that the problems with heavy vehicle regulatory settings could be addressed by legislative (that is, HVNL) and non-legislative reforms.

In September 2022, ministers agreed to progress a package of legislative reforms that the Kanofski Report advised has ‘strong consensus.’ The reforms are:

- Improve both flexibility for industry and safety through a two-tiered fatigue management system, with a mandatory safety management system a key feature of the second tier, where the NHVR will be able to provide greater flexibility to operators who show greater systemic focus on safety.
- Ensure that safety obligations for drivers, operators and third parties in the chain of responsibility are more clearly articulated, and encourage all parties to manage risks so far as is reasonably practical, by prescribing specific obligations on off-road parties and developing specific penalties in the future HVNL.
- Improve safety by examining mandatory risk-based medical screening of drivers via the Assessing Fitness to Drive Guidelines (note: ministers had already asked the NTC to examine this).
- Re-focus roadside enforcement to be more safety risk based on deliberate and systemic failures rather than administrative processes.
- Overhaul the Performance Based Standards approval process to maximise the opportunities for use of these safer and more productive vehicles.
- Consider how to end the multiple and duplicative assurance audits that operators are currently required to undertake.

- Make modest improvements to general access mass and dimension (subject to a cost-benefit analysis and regulatory impact assessment).
- Take an outcome-based approach to regulation that encourages and enables innovative practices, while also allowing for prescriptive measures for heavy vehicle businesses that prefer to follow the rules-based system.
- Provide a more flexible legislative framework that moves many rules down from primary legislation to regulation and other subordinate instruments, such as codes of practice. This will allow the regulator to deliver real-time safety and productivity improvements and easily adapt to future industry developments.
- Optimise the use of technology and data for both regulatory and road manager purposes by enabling the development of technology and data standards, protections for privacy and security, and a certification system, via a new technology and data framework.

This decision RIS contains analysis of options to deliver the first tranche of these recommendations, which form the ITMM reform package.

# 2 Scope

**Key points**

- This decision regulation impact statement (RIS) considers the regulatory impact of legislative changes contained in the Infrastructure and Transport Ministers' Meeting (ITMM) reform package (refer ITMM Communique, September 2022), as well as complementary policies that have been identified through the HVNL Review process.
- The scope of this RIS does not include all aspects of the ITMM reform package. Some are non-legislative and have been allocated to other organisations to progress, and some legislative aspects of the ITMM reform package will be addressed through subsequent related RIS processes.
- Some of the issues and options raised in the consultation RIS process will be addressed in subsequent related RIS processes.
- The enforcement regime, offences and penalties, while important, are not subject to an impact assessment, similarly for non-legislative reform proposals and operational matters raised through consultation.
- Derogations from the HVNL and national participation are outside the scope of this reform process.

## 2.1 What is in scope for this decision regulation impact statement

This decision RIS focuses on policies that will form the foundations of an improved regulatory framework and underpin future reforms. Critically, the reforms that are in scope for this decision RIS are intended to provide an improved regulatory framework regardless of whether remaining policies that are part of the ITMM reform package are supported for implementation following detailed impact analysis.

Broadly, the policies being considered by this RIS cover:

- The HVNL regulatory framework.
- Changes to the National Heavy Vehicle Accreditation Scheme to make it more agile and to embed a broader safety management system requirement as well as a more comprehensive auditing regime that is able to be adopted within other accreditation schemes.
- Establishing a new national framework for managing technology and data under the HVNL.
- New and modified ministerial and regulatory powers to support the future HVNL.
- Clarifying amendments to duties to make it clear that drivers must be fit to undertake the driving task.

It is intended that, if approved for implementation, these policies will provide certainty to the NTC and other stakeholders when developing supplementary policies and undertaking quantitative analysis required for the subordinate instrument RIS processes.

It is expected that additional RIS processes will be required to develop supporting policies and draft regulations for the future HVNL. These processes will include consultation and may include both a consultation and decision RIS.

## 2.2 What is out of scope for this decision regulation impact statement

### 2.2.1 Issues supported through the Kanofski Report and consultation RIS which are being progressed through subsequent RIS processes

The Kanofski Report built upon the HVNL Review consultation RIS and refined several policy proposals which ministers have agreed should be progressed for inclusion in the future HVNL. A full list of Kanofski Report recommendations is contained at Appendix A. This package of recommendations is referred to as the 'ITMM reform package' throughout this Decision RIS.

This RIS is focused on foundational reforms to the HVNL and does not assess all recommendations and policies that are expected to be included in the future HVNL. Several key policies from the ITMM reform package will require focused analysis, while others are operational issues that will be included in the operational work program being overseen by the HVNL Steering Committee.

Critical HVNL topic areas that will be analysed through subsequent RIS processes are discussed below. The NTC notes that additional policies and issues that require impact analysis are likely to be raised by stakeholders. Consequential amendments to the HVNL may also arise from the operational work program and these may need to be incorporated into the subsequent RIS processes.

**Fatigue**

Fatigue management has been consistently identified as a key concern for the heavy vehicle industry. During the HVNL Review, the consultation RIS and the subsequent HVNL Safety and Productivity Program, a range of fatigue proposals have been considered, however none of them received sufficient support from industry and jurisdictional stakeholders for a consensus to be achieved.

As a result, fatigue management was a key discussion point during the additional stakeholder engagement sessions chaired by Mr Kanofski. During this process a range of propositions were tested, and a package of reforms was agreed and subsequently approved by ministers in August 2022 for additional work.

As a result of these discussions, the options put forward in the consultation RIS will not proceed. This is because some of the options are different from those envisaged in the consultation RIS and require further consultation, but also because the recommendations in the package were conceived as a package and should be considered together. Therefore, in place of the consultation RIS options, a new set of options consistent with the ITMM reform package will be tested through the subsequent RIS processes. The subsequent processes will include stakeholder engagement on the future management of fatigue as a holistic package of fatigue reforms under the future HVNL.

The affected consultation RIS options (that is, options that will not proceed) are summarised below:

- 8.1 Making standard hours less complex

  - 8.1a Making counting time simpler
  - 8.1b Reclassifying time using a “rest reference”
- 8.2 Revision to tier 2 and 3 of fatigue management framework
- 8.3 Widen the scope of fatigue requirements
  - 8.3a Target the scope at high-risk category drivers
  - 8.3b Widen the scope of fatigue regulated heavy vehicles
  - 8.3c A combination of drivers and vehicles
- 8.4 Reforms to make record keeping simpler and risk-based
- 8.5 Mandate electronic records.

It should be noted that some of the recommendations in the ITMM reform package canvas similar matters to the options being closed out from the consultation RIS.

**Access**

Consultation RIS feedback highlighted industry concerns about inefficiencies in current arrangements for managing heavy vehicle access. However, the Kanofski Report concluded that many of industry’s concerns with how heavy vehicle access is regulated are largely a matter of operational and system deficiencies as opposed to problems inherent in the law. Participating stakeholders supported this conclusion.

Following consultation with road managers, which raised concerns about consultation RIS proposals to increase general access limits, the following access-focused consultation RIS recommendations will not be progressed as proposed:

- 9.1 Changes to increase general access via mass and dimension limits
- 9.2 Improvements to the permit access decision process by recognising precedent, allowing for delegations, providing for geospatial maps to have standing in the law and simplifying vehicle classifications
- 9.3 Improving access permit decision-making processes by changing statutory timeframes and formalising the decision framework with deemed refusals, and allowing for third-party review of access decisions
- 9.4 Moving the access decision-making framework and processes into regulations and standards
- 9.5 A national approach to pilots and escorts through a national operational accreditation scheme.

Ministers have instead endorsed progressing access initiatives through further cost-benefit and safety-risk analysis as well as a comprehensive operational package.

In progressing subsequent RIS processes, the NTC will consult with road managers and industry stakeholders to assess the impact of increasing general mass and dimension limits and whether these should be included in the future HVNL (Kanofski Report recommendation 2.6).

This additional analysis will complement a significant operational work program being monitored by the HVNL Steering Committee (see section 2.2.4 below for more detail). HVNL Reform Implementation agenda items 2.1 to 2.10 are focused on improving access arrangements.

Where further analysis of impacts is required or provisions in the law are needed to enable operational reforms or both, this work will be progressed through the subsequent RIS processes.

**Safer vehicle design and vehicle classification**

The Kanofski Report recommended a number of potential improvements to the Performance Based Standards (PBS) Scheme. These are being progressed by the NHVR through the operational PBS 2.0 project, which aims to identify options to incentivise industry uptake, accelerate growth in the PBS scheme, and enable continued fleet innovation. The NTC expects that consequential changes to the HVNL may arise from this operational work and these may require assessment through the subsequent RIS process.

Ministers have also asked the NTC to assess the benefits of moving vehicle classes and classifications from primary legislation to regulations (or other statutory instruments) to better enable future vehicle types to be recognised in the law.

**The enforcement regime, offences and penalties**

During consultation, stakeholders consistently raised issues about the fairness and effectiveness of the enforcement regime and HVNL offences and penalties.

Under Office of Impact Analysis (formerly the Office of Best Practice Regulation) guidelines, these matters are not considered in the regulatory impact assessment process. However, the NTC intends to address these issues through the HVNL reform process in consultation with industry and enforcement stakeholders.

### 2.2.2 HVNL Review consultation RIS proposals that are not being progressed

The HVNL Review consultation RIS contained a number of policy proposals that are not being progressed through this stage of the legislative reform process. Many of the policy proposals flagged in the consultation RIS have been modified as a result of consultation during the Kanofski Report process and will now progress under the ITMM reform package.

A table showing consultation RIS issues that are not specifically considered through this decision RIS, and the actions being taken, is included at Appendix C**.**

### 2.2.3 Derogations and national participation

The 2020 Productivity Commission inquiry report into national transport regulatory reform highlighted that ‘substantial’ and ‘unnecessary’ derogations from the HVNL remained in place in jurisdictions and that these should be removed. It also highlighted that the non-participation of Western Australia and the Northern Territory remains as unfinished business from the national reform process.

While it is expected that a collaborative process to develop an improved HVNL will reduce the need for derogations, ultimately whether derogations will remain (or are made) under an applied law regime is a matter for state and territory parliaments.

### 2.2.4 Issues raised by stakeholders through consultation that are primarily non-legislative operational matters

Through consultation on the HVNL, some industry stakeholders raised concerns about operational issues that are not a matter for legislative reform. These issues can be progressed without the need for legislative change and so do not require impact assessment under this process.

Non-legislative reforms, which will be progressed by nominated state or territory governments and lead transport agencies, include a new national system to automate approvals for heavy vehicle access.

The Australian Government has established a HVNL Steering Committee to oversee progression of these reforms. A copy of its expected work plan for non-legislative projects can be found on the Department of Infrastructure, Transport, Regional Development, Communications and the Arts website.

# 3 Statement of the problem

**Key points**

- The foundations of the HVNL are dated, which impacts the ability of the National Heavy Vehicle Regulator (NHVR) to implement a modern, risk-based regulatory regime that can respond to opportunities brought about by new technologies and ways of working.
- In the context of a growing road freight and passenger task, overall road safety performance has improved under the HVNL, while productivity has plateaued.
- Operation of heavy vehicles remains an inherently dangerous task and there is still significant scope to improve public safety outcomes.
- Industry, regulators and governments are concerned that the current heavy vehicle regulatory environment is no longer fit for purpose.

## 3.1 Problems with the Heavy Vehicle National Law

This section outlines problems identified through the HVNL Review that the policy recommendations considered in chapter 5 aim to address. It considers how these problems manifest in an inefficient regulatory framework and how they impact stakeholders.

The foundational legislatives issues identified during consultation that the policy proposals in this regulation impact statement (RIS) seek to address are:

- Problem 1: A better balance between prescriptive and more flexible obligations is required to support a highly diverse heavy vehicle industry that seeks both flexibility and certainty in complying with both the intent and word of the law.
- Problem 2: The HVNL is unresponsive to changes in the operating environment.
- Problem 3: The alternative compliance options (ACOs) available under the National Heavy Vehicle Accreditation Scheme (NHVAS) are too heavily constrained by legislation.
- Problem 4: The HVNL does not provide a clear pathway for recognising modern technologies and does not provide adequate provisions for data sharing.
- Problem 5: The regulatory tools and powers in the HVNL are in some instances outdated, inflexible or unnecessarily constrained.
- Problem 6: Existing delegations of authority are in some cases inefficient. These limit the ability of the NHVR to be a modern, risk-based regulator and to manage risks.

Together these flaws limit the effectiveness of the HVNL in meeting its stated objectives to:

- promote public safety
- manage the impact of heavy vehicles on the environment, road infrastructure and public amenity
- promote industry productivity and efficiency in the road transport of goods and passengers by heavy vehicles
- encourage and promote productive, efficient, innovative and safe business practices.

### 3.1.1 A better balance between prescriptive and more flexible obligations

The current HVNL is a mixture of risk, performance and prescriptive legislative requirements. Almost two-thirds of the HVNL are prescriptive. Analysis undertaken as part of the consultation RIS indicated that the HVNL has 10 prescriptive rules for each performance-based requirement, while the Rail Safety National Law and model Work Health and Safety Act are closely balanced between prescriptive and performance-based requirements.

Like other safety laws, such as for work health and safety, overarching general safety duties for those in the chain of responsibility have been introduced into the HVNL in recent years to promote a systematic approach to the management of risk. However, the current HVNL retains many highly prescriptive and strict liability requirements that have been inherited from old model laws.

This prescriptive approach has the benefit of providing certainty for industry and simplifying compliance and enforcement. For these reasons stakeholder feedback during the HVNL Review was that some operators would prefer to follow a prescriptive regulatory regime but the future HVNL should offer compliance options that focus on safety outcomes as well as guidance on how to comply through specific actions.

Excessive focus on prescriptive requirements can act as an impediment to the industry and regulator adopting more contemporary means of managing safety. Such an approach also limits the ability of the regulator to develop performance and risk-based regulatory approaches that more actively manage safety risks.

As a result of the overly prescriptive approach in the current HVNL, industry participants may focus more upon following prescriptive rules than considering, assessing and addressing the safety risks inherent in their business operations. As noted by the Productivity Commission (2020), ‘Prescription can … create a sense that businesses are primarily responsible for complying with regulation, rather than for managing safety risks to the best of their ability’ (p 5).

### 3.1.2 The HVNL is unresponsive to changes in the operating environment

Unlike other safety-focussed regulatory frameworks, in which compliance requirements and ‘how to’ guidance is in subordinate regulatory instruments such as regulations and codes of practice, the current HVNL has significant detail contained in the primary law.

Due to the level of prescriptive detail in the primary law, changes to the primary legislation (and regulation in some cases) are required to respond to innovations, new safety risks and other changes in heavy vehicle operations. Where changes to prescriptive requirements are appropriate and required, the current legislative structure means changes take a long time to implement. Even relatively straightforward amendments typically take more than a year.

The structural issues with the law, along with policy settings favouring prescriptive compliance, combine to produce an overly rigid regulatory environment. As a result, it is difficult to tailor and adapt heavy vehicle regulation as new opportunities to manage risk arise, our understanding of the severity of potential risks improves, or as new technologies emerge.

### 3.1.3 Alternative compliance options are too heavily constrained by legislation

Under the current HVNL there is limited flexibility for operators who do not wish to follow prescriptive rules to manage safety risks. These operators may apply to be accredited under

the NHVAS and access certain alternate compliance options (ACOs), for example Advanced Fatigue Management.

The ACOs allowed under the NHVAS are predominantly hardwired into the law and regulations. For example, both the Mass Management and Basic Fatigue Management modules of the NHVAS allow operators to access alternative mass and fatigue limits respectively in return for implementing management systems to manage risks, but these are specified in the law or regulations.

The prescriptive nature of the NHVAS constrains the ability of the NHVR to enable more diverse ACOs, even where improved business practices or new technologies can demonstrate that relevant safety or other risks could be managed to at least an equivalent standard as the prescriptive requirements. For example, the NHVR does not currently have the power to develop a simpler, less permissive fatigue accreditation than the prescribed Basic Fatigue Management, limiting the ability of transport operators to access minor concessions. Similarly, the NHVR is currently unable to develop modules addressing the business needs of specific industries.

The limitations of the existing NHVAS further compound issues with the overly prescriptive and inflexible requirements in other parts of the law. For example, heavy vehicle operators who invest in new technologies or develop innovative business practices to manage safety risks are still required to comply with prescriptive requirements in most cases.

The flaws with the current NHVAS manifest in the following problems for stakeholders:

- Limited ability for the NHVR to provide ACOs, even where safety management practices demonstrate no increased risk.
- Constrains productivity by failing to accommodate and reward innovative business practices of systems.
- Operators who invest in new safety equipment, develop innovative practices and undertake research and development do not necessarily gain efficiency or commercial benefit.
- Limited ability for the NHVR to offer tailored accreditation options to meet the needs of a diverse heavy vehicle industry.

### 3.1.4 No clear pathway for recognising new technologies

The prescriptive requirements in the current HVNL means that a change to the law is required to recognise new technologies to support safety and productivity.

The HVNL does not recognise technologies capable of improving the safety and productivity of heavy vehicles, except for the Intelligent Access Program and Electronic Work Diaries (and in-vehicle safety systems). The current law does not include provisions for the use of technology and sharing of data for a range of regulatory and non-regulatory purposes.

Where new technology presents an opportunity to improve the safety or productivity of heavy vehicle operations, there is no overarching framework or clear, general process to enable new technology to be used to aid compliance (for example, on-board mass devices or fatigue and driver distraction monitoring devices). While the current HVNL does enable the NHVR to make technologies a condition of a Mass, Dimension and Loading or fatigue exemption, there is no common process for identifying, certifying or integrating new technologies into these processes.

The lack of an agreed process for recognising new technologies and integrating them into the regulatory framework without amending the primary law results in the following problems:

- Limited ability for the NHVR and industry to take advantage of opportunities to leverage new technologies and business practices to improve safety and productivity.
- Recognition and integration of new technologies can require slow and sometimes complex legislative changes.
- Encourages jurisdictions to unilaterally develop arrangements for the uptake of new technologies, resulting in inconsistent application and requirements across jurisdictions.

The HVNL is also lacking in the areas of data standards, controls for data sharing and privacy and protection. There are no provisions in the current HVNL related to the privacy and protection of heavy vehicle data collected as part of the operation of heavy vehicles, except under very specific circumstances.

With the growing reliance on data across the broader transport sector, there is a need for a focused and consistent approach to the collection, management and protection of data which can increase productivity and improve the safety of heavy vehicle operations.

The iMOVE Cooperative Research Centre's comprehensive analysis of freight data released in 2019[1] found a highly fragmented environment in which a significant amount of data is collected, but inconsistency and dispersed storage reduces the utility of the data. With appropriate protections in place, data collected by new technologies can increase the efficiency of supply chains and inform prioritisation of infrastructure needed by the heavy vehicle industry.

From a broader freight perspective, the National Freight and Supply Chain Strategy National Action Plan points out that there is a lack of available information and data to measure, monitor and evaluate supply chain performance. Insufficient information or visibility across the supply chain is exacerbated by data inconsistency across jurisdictions and an absence of appropriate data sharing frameworks. Controls related to data sharing in the heavy vehicle industry to ensure privacy and commercial confidentiality are lacking.

### 3.1.5 Outdated, inflexible or unnecessarily constrained regulatory tools and powers

The HVNL Review identified a number of issues with the current HVNL that could be remedied as part of broader structural changes. HVNL-defined processes for use of regulatory tools and powers are, in some cases, inefficient or out of line with best-practice regulation. Stakeholders expect these processes to be reviewed and, if necessary, improved to ensure that the regulatory framework is operating as intended.

The issues identified could be seen as individual projects or progressed as maintenance changes, however a major review of the HVNL provides an opportunity to improve these tools and powers through a single package.

In addition to remedying existing issues, consequential changes to HVNL powers and delegations will be needed to ensure an appropriate balance between regulatory flexibility and ministerial oversight following proposed changes to make the HVNL more responsive.

[1] **iMove Freight Data Requirements Study - February 2019**

These issues include:

- As a result of proposed changes to accreditation, existing approval powers for accreditation business rules and standards will be inappropriate in the context of the new regulatory environment. Changes are required to support the development of alternate compliance options and the creation of modules and standards.
- Reforms to the ministerial guideline process have been requested to ensure that guidelines are being developed as was intended as part of the HVNL exemption power framework. Under the current law, very few guidelines have been developed.
- A new power is required to enable ministers to approve a national audit standard.
- The existing process through which ministers are required to approve standards for sleeper berths is inefficient. The NTC has been directed to progress changes to enable the development of standards to apply to sleeper berths as part of the overall vehicle standards framework.
- As the proposed future HVNL will provide a more flexible safety assurance environment, amendments to arrangements for responsible ministers to provide direction to the NHVR will be required. These new arrangements will need to set an appropriate balance between regulator autonomy and ministerial oversight.
- To support establishing a more consistent risk-based Heavy Vehicle Inspection Scheme to be operated by the NHVR, the future HVNL will require a head of power for ministerial approval of vehicle inspection schemes.

### 3.1.6 Existing delegations of authority limit the National Heavy Vehicle Regulator as a modern, risk-based regulator

During consultation, industry expressed a strong view about 'letting the regulator regulate'. While regulatory discretion is available to enforcement agencies, the Productivity Commission (2020) noted that the current HVNL constrains the regulator's ability to take flexible and risk-based approaches to regulation (p 120).

Under the current HVNL, regulatory heads of power only contemplate current and known risks to safety. This limits the ability of the HVNL and the regulator to impose appropriate requirements in relation to new technologies or business practices.

Risks, harms and risk management approaches evolve over time. To be effective, regulation needs to be responsive and adapt to any improved understanding of risks and how to manage them. The law needs to encourage operators to take on the burden of risk (where they are better placed to do this) and provide operators with the flexibility to choose the most suitable compliance approach.

Under the current HVNL Codes of Practice (CoPs) are initiated by industry, rather than the NHVR. CoPs are intended to support specific parties to manage specific risks and are a feature of many duties-based regulatory regimes where primary legislation prescribes the risks to be managed, and CoPs set out non-mandatory risk management methods. Industry has only been able to develop a limited number of CoPs applying to operators. As a result, drivers and other chain of responsibility parties do not have access to CoPs that set out risk management methods appropriate to specific operating risks.

Regulatory action, when taken, should be proportionate, targeted and based upon an assessment of the nature and magnitude of the risks and the likelihood that regulatory action will be successful in achieving its aims. During consultation, there was consistent feedback from regulated parties that their compliance and enforcement experience under the HVNL did not appear to be consistent with best-practice risk-based safety regulation.

## 3.2 An evolving regulatory task – key trends

The HVNL regulatory task is rapidly evolving. This section discusses the key trends that will require a more flexible and responsive regulatory framework.

### 3.2.1 Diversity in operational scale and tasks

Regulated road transport parties are diverse in scale of operations and the freight and passenger tasks they fulfil:

- The road freight industry has an estimated 40,332 operators, ranging from single-vehicle operators to large corporations (IBISWorld, 2018)[2].
- An Australian Transport Economic Account report from 2018[3] estimated there were 1.027 million people employed in Transport Activities – 803,000 full time and 224,000 part time.
- The NTC used Australian Bureau of Statistics (ABS) data[4] to estimate that around 58 per cent of truck drivers are in the 'transport, postal and warehouse' category and can be considered performing a 'hire and reward' task. Around 43 per cent of truck drivers may be considered to be performing an ancillary role within their primary industry of employment (for example, wholesale trade, manufacturing or construction).
- Given that around 70 per cent of all road freight operators only have one truck in their fleet and about 24 per cent have two to four trucks[5], many operators are likely to be small- or medium-sized businesses. Less than 0.5 per cent of all operators have fleets with 100 or more trucks.
- The road freight task is also diverse[6], comprising long-haul interstate tasks (accounts for around 18-19 per cent of total road freight movements), road freight movements in capital cities (around 20 per cent) and road freight movement in urban areas outside capital cities (comprising a further 10 per cent), and around 50 per cent comprises freight transported between capital cities and regional areas and other interstate and intrastate freight.
- There are also an estimated 3,000 bus companies operating across Australia in cities, towns and regional centres, as well as tour and charter bus companies, and most are small- to medium-sized businesses[7].

### 3.2.2 The road freight and road passenger environment is dynamic and evolving

The environment within which the road freight and road passenger industry exists is dynamic and evolving. Some of the key opportunities and challenges, to which governments, regulators and the heavy vehicle industry may need to respond, are:

- **Growth and changes in demand**: Road freight grew by over 75 per cent between 2000-01 and 2015-16. This growth trend is forecast to continue through to 2040 and

[2] IBISWorld, 2018, *Road Freight Transport June 2018*.

[3] The Australian Transport Economic Account (ATEA) https://www.abs.gov.au/statistics/economy/national-accounts/australian-transport-economic-account-experimental-transport-satellite-account/latest-release

[4] NTC, 2016, *Who Moves What Where August 2016* (2016) NTC commissioned analysis of ABS 2011 Census Data for estimates, See page 32-33.

[5] National Transport Insurance, 2016, p. 6

[6] NTC, 2016, *Who Moves What Where August 2016* p. 75ff

[7] NTC, 2016, *Who Moves What Where August 2016*

likely beyond. Urban freight is forecast to increase by nearly 60 per cent over 17 years to 2040 in conjunction with growing population density pressures, with changes in consumer preferences leading to changes in the freight task[8].

- **New technologies**: Advances in technology and digitisation of the supply chain will deliver opportunities and challenges for the heavy vehicle industry, regulators and road managers. As technologies provides increased capacity for automation and other new methods of freight transportation, new safety risks will emerge that may require regulatory intervention.
- **Road charging reform**: While the nature of future changes to heavy vehicle charging models is unknown, changes are inevitable, with the Australian Government-led Heavy Vehicle Road Reform program[9] aiming to turn the provision of heavy vehicle road infrastructure into an economic service where feasible. The electrification of heavy vehicles will also impact revenue collected from fuel excise. While the HVNL will not be the mechanism though which charging reform is implemented, the HVNL needs to be able to adapt to any change in industry behaviour or regulatory implications (such as access or data management) that may result from these reforms.
- **Gig economy and skills shortages**: The growth of the gig economy is expected to affect employer-employee relations. This may lead to changing work habits (such as less constancy in driver scheduling), may increase cost pressures on operators and change how interactions work along the chain of responsibility. The Australian freight sector is having difficulties in attracting and keeping skilled and experienced drivers. The stresses associated with complex and burdensome regulatory settings contributes to issues attracting and retaining workers. At the same time, automation and other technological changes are shifting workforce needs.
- **Security and cyber threats**: as data systems and use grows, there is significant interest and concern in the community and industry around the security and uses of data.
- **External disruptions**: Recent and ongoing external disruptions, including climate change, the COVID-19 pandemic and international conflict affecting resources (particularly fuel costs), have shown the importance of flexibility in regulation and highlighted Australia's reliance on the heavy vehicle industry.
- **Environmental policies and emissions targets**: Australian Government targets for zero emissions by 2050 and alternative energy usage, for example, hydrogen-fuelled and electric vehicles, will have a significant impact on the business operations of the heavy vehicle industry.

As the nature of the freight task and the make-up of the freight industry continues to evolve, a more dynamic and responsive regulatory framework is needed to support it.

### 3.2.3 Heavy vehicles and road safety

The size and weight of heavy vehicles means that crashes involving heavy vehicles are often very serious. In Australia, heavy vehicles are involved in around 18 per cent of all road fatalities[10] while making up around 3 to 4 per cent of the vehicle fleet. Heavy vehicles

[8] Department of Infrastructure, Transport, Cities and Regional Development, 2019, National Freight and Supply Chain Strategy August 2019

[9] https://www.infrastructure.gov.au/infrastructure-transport-vehicles/transport-strategy-policy/heavy-vehicle-road-reform

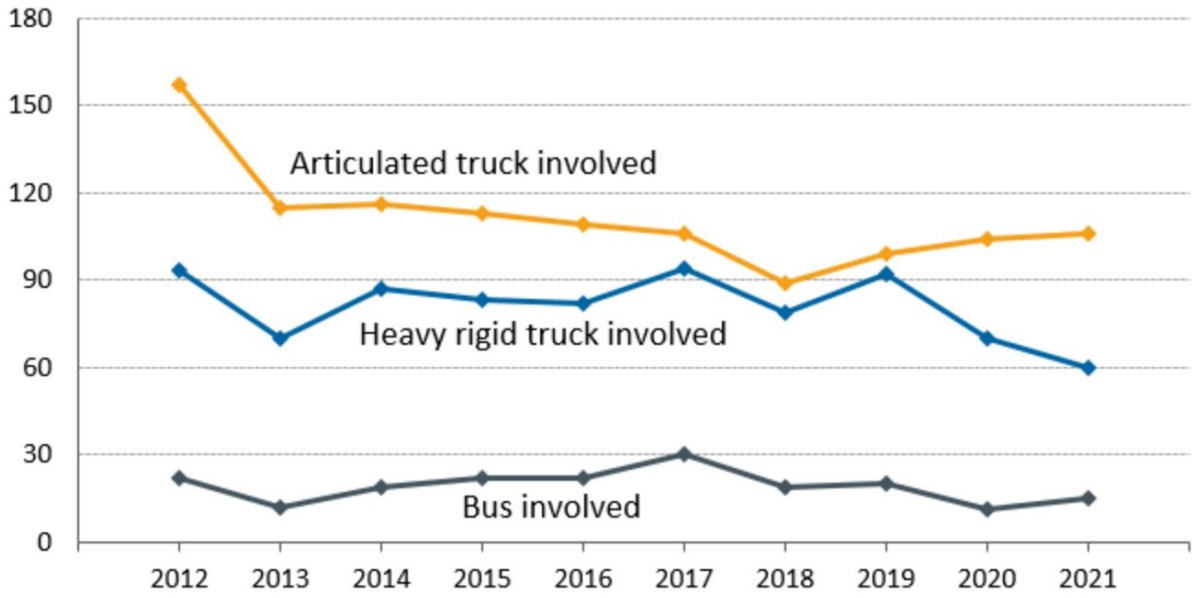
[10] https://www.bitre.gov.au/publications/ongoing/road-trauma-involving-heavy-vehicles

account for 7 per cent of vehicle kilometres travelled on Australian roads yet they are involved in 16 per cent of road crash fatalities[11].

The causes of crashes involving heavy vehicles are numerous and complex, with limited data or detailed heavy vehicle crash investigations to provide comprehensive causal factors. Importantly, interactions with other road users play a key role, and it has been estimated that in 2021 the driver of the heavy vehicle was not at fault in 70 percent of crashes[12].

Figure 1 from the Bureau of Infrastructure and Transport Research Economics (BITRE) shows fatalities in crashes that involved heavy vehicles, with an overall downward trend over time[13].

**Figure 1. Annual counts of fatalities in crashes involving heavy vehicles, 2012-2021**




The overall social cost to the Australian economy of road crashes is estimated to be $30 billion annually[14], and heavy vehicles contribute around $1.5 billion of this cost[15]. This cost is broadly borne by the community, business and government.

The regulatory settings for heavy vehicle operations need to support ongoing improvements in public safety outcomes.

### 3.2.4 Heavy vehicles contribute to the Australian economy and productivity has stalled

The heavy vehicle industry significantly contributes to the national economy. According to the Productivity Commission (2020, p 178) transport, postal and warehousing represented

[11] Department of Infrastructure and Regional Development, 2016, Heavy truck safety: crash analysis and trends.

[12] National Transport Insurance, 2022, Major Crash Investigation Report 2022 p 16

[13] BITRE 2023, Road Trauma Involving Heavy Vehicles – Annual Summaries

[14] National Road Safety Strategy 2021-2030.

[15] Department of Infrastructure, Transport, Regional Development and Communications. Reducing Heavy Vehicle Lane Departure Crashes. Consultation Regulatory Impact Statement, April 2022.

4.5 per cent of GDP and 5.1 per cent of total employment in 2018-19, and this contribution is higher when in-house transport activity by businesses outside the transport industry (for example, agriculture and construction) is included. Road transport (including heavy vehicles) represents half of the transport sector's output.

Expected growth in heavy vehicle productivity will impact the number of vehicles and drivers required to meet the future freight task, and ultimately affect the cost of goods transported by road freight. The National Freight and Supply Chain Strategy reports that a 1 per cent improvement in supply chain productivity (including all modes) could generate $8-20 billion in savings to the Australian economy over 20 years.

As reported by BITRE (2011)[16], over the period from 1971 to 2007 the average productivity of rigid and articulated trucks was an almost six-fold increase. It concluded that the principal factors that contributed to increased heavy vehicle productivity over this period include:

- The introduction of, and expanded network access for, larger heavy vehicle combinations, particularly B-double articulated trucks (which gained more widespread access to the network in the 1990s).
- Progressive increases in regulated heavy vehicle mass and dimension limits.
- Strong growth in long-distance freight.
- Cumulative long-term investment in major road infrastructure, particularly the realignment and duplication of parts of the inter-capital national highway network.

However, freight productivity and costs have plateaued overall in more recent years for the freight sector. Real interstate freight rates for road fell by 31 per cent from 1978 to 1998, and marginally increased by 5 per cent in the period from 1998 to 2018[17].

For the passenger task, the contribution of buses has been significant since the early 1980s. In 2013-14, the national domestic passenger transport task totalled 427 billion passenger kilometres, of which road accounted for almost 80 per cent and rail just under 4 per cent[18]. Passenger growth for buses in urban areas has been steady, though the sector has been substantially impacted by COVID-19[19]. In urban areas, buses support the urban passenger task and therefore contribute to reducing road congestion. Avoidable road congestion in Australia's cities cost an estimated $24 billion in 2018-19, and unless countered, is expected to grow an estimated 45 per cent by 2029-30[20]. The bus industry reports that the coach sector, which comprises long distance, rural, tour, charter and express bus operators, moves more than 1.5 million domestic travellers and contributes over $5 billion dollars to the Australian economy[21].

The Productivity Commission pointed out that a key driver of productivity relates to decisions of operators in the industry and the regulatory environment:

---

[16] Bureau of Infrastructure, Transport and Regional Economics 2011, Truck productivity: sources, trends and future prospects, Report 123, Canberra, ACT.

[17] [17] Department of Infrastructure, Transport, Cities and Regional Development, 2019, National Freight and Supply Chain Strategy August 2019 p 7

[18] NTC, 2016, *Who Moves What Where August 2016*

[19] ABS https://www.abs.gov.au/media-centre/media-releases/covid-19-natural-disasters-disrupt-201920-vehicle-use

[20] ABS https://www.abs.gov.au/media-centre/media-releases/covid-19-natural-disasters-disrupt-201920-vehicle-use

[21] [21] NTC, 2016, *Who Moves What Where August 2016*

> *"The regulatory environment influences the productivity outlook, affecting the cost structure of operators, how markets operate, and the degree of innovation by operators. The design of regulation and practices by regulators can affect productivity…[I]f operators can meet regulatory safety outcomes in a flexible rather than prescriptive way, this can provide avenues for innovation and productivity while maintaining or improving safety. The costs of operators complying with regulation and administrative costs of operators also affect productivity…" (p 178)*

Many factors will affect productivity in the transport sector over time, including technological change, innovation, competition, design of regulation and behaviour of regulators[22].

## 3.3 Need for government action

### 3.3.1 Justification for regulation remains unchanged

The consultation RIS explored the rationale for the law, which is that governments have a responsibility to attempt to protect road users in the community. By virtue of their size, heavy vehicles are disproportionately involved in casualty crashes and these crashes tend to be more severe, as outlined in the previous section. Regardless of improvements in safety outcomes over recent years, there remains significant scope to reduce the number of deaths and serious injuries associated with heavy vehicle operations.

As pointed out in the Productivity Commission's review into national transport regulatory reform (2020):

> *Transport activities involve inherent risks to safety. Governments have a role in encouraging and informing safe practices as well as ensuring that safety standards are not compromised by commercial pressures. At the same time, regulation should achieve safety objectives while minimising compliance costs and barriers to innovation, the latter being key to productivity growth and improved living standards. P.3*

Self-regulation of heavy vehicle activities is not considered to be an acceptable alternative to government regulation. In most cases the use of heavy vehicles is commercially motivated. Industry competition is significant in the road freight sector in particular. Together these factors provide an incentive for some operators to 'cheat' by sacrificing safety standards or compliance with regulations for a competitive edge. Government regulation establishes a base level of safety and through this a 'level playing field' for industry.

The business practices and decisions of heavy vehicle operators, drivers and others within the industry affect the safety of heavy vehicle operations on Australian roads. The behaviour and practices of these parties affects the risk of crashes and breakdowns involving heavy vehicles, which can be costly not only for those directly affected but also wider society.

Heavy vehicle crashes create externalities. An externality is a cost (or benefit) that affects a third party who was not involved in the action or activity. In the case of heavy vehicle crashes, operators, drivers and others within the industry do not bear the full social costs of

[22] Productivity Commission 2020, National Transport Regulatory Reform, April 2020 pg. 11

crashes that result from any action or lack of action on their part. Examples of costs related to crashes include:

- cost on drivers, other road users and their families associated with death, rehabilitation or loss of income
- cost on operators associated with any losses of capital stock, lost working hours or lost productivity
- indirect cost on operators associated with any lost customer confidence in the reliability of heavy vehicles and hence reduced volume and revenues
- cost on customers associated with any resulting delays and lost freight
- costs for other road users from resulting delays to their journey
- cost for society more broadly from environmental and infrastructure damage and clean-up, death and injury of members of the public, and costs to the health system.

These externalities mean that some individual heavy vehicle operators and drivers may not sufficiently invest in mitigating road safety risks if they only consider direct costs. This creates a risk that without government involvement, the industry may not deliver public safety outcomes that would be beneficial to society.

This is the prima facie case for regulatory intervention in the form of the HVNL. As a result, the HVNL exists as a national scheme for facilitating and regulating the use of heavy vehicles on roads in a way that, among other things, focuses on ensuring that heavy vehicles and their drivers are safe, and that they are operating on suitable routes to minimise public risks.

# 4 Assessment and analysis process

**Key points**

- This regulation impact statement (RIS) uses a multi-criteria analysis to assess the cost and benefits of each policy recommendation intended to form a cohesive package of reforms proposed for the future HVNL regulatory framework.
- The multi-criteria analysis is primarily qualitative because there is a lack of relevant quantitative information, and the proposals are mostly enabling reforms that do not have a direct regulatory impact.
- The multi-criteria analysis uses six impact categories that drive impacts (costs and benefits) of the policy recommendations compared with the current HVNL (base case):
  - public safety
  - improvements to operational efficiency or productivity
  - regulatory burden for industry
  - regulatory costs for government
  - asset management
  - flexibility and responsiveness.
- If the package of policy reforms in this RIS is endorsed, it is intended that future work will focus on detailed policy design and changes to regulations and other subordinate instruments. It is expected that further consultation and regulatory impact assessments will be required.

This chapter details the approach taken in presenting policy recommendations and the methodology for assessing their impacts.

## 4.1 A package of reforms for the future HVNL regulatory framework

In August 2022 the Kanofski Report provided infrastructure and transport ministers with a package of reforms that has been tested extensively with government and industry stakeholders through the HNVL Review and Mr Kanofski and that has broad support. Ministers agreed ‘to progress a package of propositions recommended by Mr Kanofski that will improve safety and productivity in the heavy vehicle sector’.

The Kanofski Report emphasises the need for these reforms to be considered as a cohesive package ‘to allow the reform to move forward maximising the goodwill and momentum that has been built through consultation.’

In keeping with the recommendations presented to ministers, this RIS does not consider a range of alternative options as would normally be the case in a RIS. This RIS instead looks to assess the impact of implementing the enabling policies identified, which have the broad support of stakeholders. It is considered that this process is the most likely to succeed and will set the foundations for further reform while reducing the likelihood of jurisdictions derogating from the future HVNL.

Chapter 5 of this RIS contains analysis of the proposed path forward for the HVNL through 24 policy proposals. Similar to the consultation RIS, these proposals are categorised into themes and detail specific changes to the law along with impact analyses.

Each recommendation within the proposed reform package has been subjected to regulatory impact analysis using the assessment methodology detailed below. If endorsed by ministers following consideration of this RIS, these policies will form the foundations of the future HVNL.

## 4.2 Recommendation assessment methodology

Each policy recommendation has been subjected to regulatory impact analysis using a standardised template. The template prompts the following considerations for each policy proposal:

- **What is proposed?**

  Explains the nature of the recommendation.

- **What are the objectives?**

  Outlines how the recommendation will improve the HVNL and resolve issues identified in the problem statement detailed in chapter 3.

- **How will the law change?**

  Comparison of the base case (that is, current law) and what is proposed for the future law.

- **What are the impacts?**

  Consideration of the impacts of the recommendation using the impact assessment methodology which is described in more detail in section 4.3.

- **Implementation, transition and evaluation arrangements**

  Lists any specific implementation or transition arrangements being proposed to accompany the recommendation. Outlines how and when the success of the proposal will be measured and what metrics need to be captured to gauge success.

## 4.3 Impact assessment methodology

The steps involved in developing the impact assessment approach were:

a) Choosing an assessment approach (multi-criteria analysis).

b) Identifying key impact categories and assessment criteria.

c) Identifying individuals or groups who are likely to be affected by the reform options.

d) Assessing options.

### 4.3.1 Choosing an assessment approach

A cost-benefit analysis is the preferred impact analysis framework of the Office of Impact Analysis (OIA). Where possible, it requires the impacts (benefits and costs) to be expressed in monetary terms.

The consultation RIS provided a preliminary assessment of the costs and benefits of individual policy reform options under key topic areas using a qualitative cost-benefit analysis (see Appendix A of the consultation RIS for details on the approach). As noted in the consultation RIS, many impacts cannot be quantified, for example:

- Safety, infrastructure, and overall crash risk reduction benefits are challenging to value. There is data available on the costs of road crashes and estimates of the costs of road crashes involving heavy vehicles (see problem statement, chapter 3). However, there is limited understanding and certainty around the extent to which different risk management approaches might contribute to the likelihood of a crash, and the extent to which different regulatory options may reduce this risk.
- Impacts on innovation or operational efficiency are also difficult to measure. It is challenging to assess the benefits forgone if a regulatory policy delays or reduces innovation.
- The Productivity Commission review investigated the impact of national regulation reforms on safety outcomes in the transport sector, including heavy vehicles, and concluded:

  > *it has not been possible to separate the effect of the national laws from other factors such as the introduction of safer technology or improvements in infrastructure. Some policy changes are expected to contribute to longer term improvements in risk management, their benefits might not yet be apparent but could emerge over time. (2020:p 9).*

The main challenge with a cost-benefit analysis approach for this RIS is that most policy proposals being assessed in this RIS are enabling reforms that will not have a direct regulatory impact. These reforms do enable future changes in the regulatory environment that would be assessable using a cost-benefit analysis. The future changes would need to be tested via a separate regulatory impact process.

For this RIS, the NTC has therefore used a multi-criteria impact analysis approach to assess proposed changes to the HVNL. This approach is commonly used where full monetisation of costs and benefits is not appropriate or possible, consistent with OIA's cost-benefit analysis guidelines.

### 4.3.2 Impact categories and assessment criteria

This RIS uses key impact categories and associated assessment criteria (outlined in Table 2) to identify and compare the costs and benefits of each of the recommended reform options against a base case. This allows for a qualitative comparison of the relative effectiveness of the policy proposal option (modifying the HVNL) and the 'maintain status quo' option (the current HVNL). The analysis is incremental in that it tries to identify additional costs and benefits against the base case.

The NTC selected six impact categories for multi-criteria analysis, modelled on the consultation RIS, with modifications to ensure all necessary impacts are appropriately considered. These six impact categories were selected for the following reasons:

- Public safety – having safe heavy vehicles on Australian roads is a fundamental accepted standard under existing regulation and will continue to be under any new heavy vehicle regulatory regime.
- Productivity and efficiency – the performance of the freight supply chain operating on Australian roads and the movement of people in buses and coaches is critical to Australia's future economic success and competitiveness.
- Regulatory burden to industry – a new regulatory framework has the potential to create additional administrative burden on the heavy vehicle industry. If the costs are too high, there may be detrimental effects to the sustainability of heavy vehicle businesses.
- Regulatory costs to government – a new regulatory framework will have some upfront and ongoing costs to government; these costs need to be proportionate to the benefits.
- Asset management – road infrastructure has large investment and maintenance costs, and road networks support safe and efficient movement of people and goods.
- Flexibility and responsiveness – the heavy vehicle industry is operating in a dynamic environment with rapid advances in technology and business practices. Any modern regulatory framework needs to be sufficiently flexible to adapt to realise opportunities.

The assessment is carried out at a national level. The costs and benefits will be broadly similar across different states and territories. The specific costs and benefits in each state or territory will depend in part on the nature of the heavy vehicle fleet and its use in each state or territory.

**Table 2. Impact categories and assessment criteria**

| Decision RIS impact category | Assessment criteria |
|---|---|
| 1. Public safety | a) Ensures responsibility sits with the party best able to manage the risk.<br>b) Addresses emergent safety risks that may not have been specifically identified or considered.<br>c) Enables the introduction of targeted compliance and enforcement options, including sanctions and penalties for non-compliance.<br>d) Provides community assurance that heavy vehicle safety risks have been comprehensively addressed.<br>e) Supports industry to develop and invest in safer technology and safer management practices. |
| 2. Improvements to operational efficiency or productivity | a) Supports uptake of newer and more efficient heavy vehicles in the fleet.<br>b) Supports efficient heavy vehicle access decision-making.<br>c) Enables more efficient scheduling and other business practices.<br>d) Enables industry to develop and deploy innovative technology and practices to lower costs. |
| 3. Regulatory burden for industry | a) Results in low upfront and ongoing compliance, administrative and delay costs.<br>b) Provides clear and consistent regulatory expectations to industry about its responsibilities and what is required to comply.<br>c) Supports an approach that is consistent across all jurisdictions. |

| Decision RIS impact category | Assessment criteria |
|---|---|
| 4. Regulatory costs for government | a) Minimises upfront structural, organisational and regulatory change to implement the model, including a minimal impact on existing processes and minimal regulatory layers.<br>b) Supports efficient ongoing administrative and operational processes.<br>c) Clearly defines the roles and responsibilities of states, territories, local governments and the Australian government for regulating heavy vehicles. |
| 5. Asset management | a) Ensures the impact on road infrastructure – including bridges, other structures and pavements – is sustainable and services the needs of all road users, including all general access and restricted access heavy vehicles.<br>b) Minimises the impact on community amenity. |
| 6. Flexibility and responsiveness | a) Allows flexibility for industry by focusing on safety outcomes, minimising prescriptive requirements.<br>b) Legislation should be technology-neutral and able to recognise innovative solutions.<br>c) Allows flexibility for government in addressing emerging safety risks.<br>d) Reflects and supports the diversity of the heavy vehicle industry across different freight tasks, geographical areas, and scale and type of operations.<br>e) Legislative structure can keep pace with advances in technology and other changes in context, business operating models and risk management methodologies. |

### Individuals and groups likely to be affected

To assess the costs and benefits of the reform options it is important to identify the individuals and groups affected by the reform. Table 3 outlines the key groups and individuals that are most likely to be affected by the reform options.

**Table 3. Groups likely to be affected**

| Decision RIS impact category | Group Impacted |
|---|---|
| Public safety | ▪ Heavy vehicle drivers and other road users (who may be killed or injured), including vulnerable road users such as cyclists, motorcyclists and pedestrians<br>▪ Chain of responsibility parties<br>▪ General public (through wider costs of crashes)<br>▪ Public and private providers of transport, emergency response, health, infrastructure and insurance services (secondary beneficiaries)<br>▪ Enforcement agencies, including police and the National Heavy Vehicle Regulator (NHVR) |
| Improvements to operational efficiency and productivity | ▪ Heavy vehicle drivers, operators and businesses<br>▪ Off-road chain of responsibility parties (reduced costs of moving goods)<br>▪ General public (through reduced costs of moving goods) |
| Regulatory burden to industry | ▪ Heavy vehicle drivers, operators, and businesses<br>▪ Off-road chain of responsibility parties |
| Regulatory costs to government | ▪ Australian government<br>▪ State and territory governments<br>▪ Local government<br>▪ Enforcement agencies, including police and the NHVR |
| Asset management | ▪ State and territory governments<br>▪ Local governments and other road managers<br>▪ Heavy vehicle operators, drivers and businesses<br>▪ the Australian community |
| Flexibility and responsiveness | ▪ Heavy vehicle drivers, operators, businesses<br>▪ Off-road chain of responsibility parties<br>▪ Vehicle suppliers<br>▪ Vehicle safety (and other) technology suppliers |

| Decision RIS impact category | Group Impacted |
|---|---|
| | ▪ State and territory governments<br>▪ NHVR |

### 4.3.3 Assessing the options

A comparative analysis scale to assign each policy recommendation against each impact category has been developed. Table 4 shows the scale used to indicate the option's comparative advantage or disadvantage compared with the baseline (current HVNL).

Where recommendations are 'enabling' without a direct regulatory impact, for the purpose of analysis this RIS assumes that existing base case policy settings will be maintained.

The assessment of the policy recommendations is set out in chapter 5.

A broad overview of the individual and the combined impacts of the policy recommendations is also discussed in chapter 5.

**Table 4. Impact categorisations**

| **Significant negative impact** | **Negative impact** | **Neutral** | **Improvement** | **Large improvement** |
|---|---|---|---|---|
| The option would most likely result in a **large decline** compared with the baseline option | The option would most likely result in **some (limited or moderate) decline** compared with the baseline option | The option would most likely have a **negligible impact** compared with the baseline option | The option would most likely result in **some (limited or moderate) improvement** compared with the baseline option | The option would most likely result in a **large improvement** compared with the baseline option |

# 5 Assessment of reform options for the future HVNL regulatory framework

**Key points**

- The regulatory impact assessments contained in this chapter detail the foundational changes to the HVNL that are being proposed by the NTC and provide the evidence to support their implementation.
- This chapter also details deliberations in each policy area and alternatives which were considered through the consultation regulation impact statement (RIS) and subsequent consultation processes.
- Recommendations assessed in this chapter are designed to deliver:
  - a modern regulatory framework
  - an improved National Heavy Vehicle Accreditation Scheme (NHVAS) as part of a tiered assurance environment
  - a technology and data framework
  - an expanded driver duty.
- If endorsed, the recommendations in this chapter will set in place the right foundations for an improved HVNL.

## 5.1 Summary

The HVNL Review and subsequent consultation processes identified changes to the foundations of the HVNL that the Infrastructure and Transport Ministers' Meeting (ITMM) has agreed to progress. This chapter assesses supported policies that are intended to underpin a significantly improved HVNL to ensure that there will be no significant adverse impacts and that the expected benefits can be delivered. The policies being assessed have been identified for their potential to improve the HVNL and enable the National Heavy Vehicle Regulator (NHVR) to administer ongoing improvements to the regulatory framework.

While the policies assessed in this chapter propose significant changes to the structure and mechanics of the HVNL, the enabling nature of many of these proposals means that the direct impacts are expected to be minimal. If endorsed for inclusion in the future HVNL, the recommendations in this chapter will set in place the right foundations for an improved HVNL that can accommodate future changes to regulatory framework.

Section 5.2, Regulatory framework, assesses the impacts of restructuring obligations in the HVNL to support industry in developing safer, more efficient business practices and to have those practices recognised as an alternative to compliance with prescriptive requirements. This will enable the HVNL to better support a diverse road freight industry and encourage ongoing improvements in industry practice.

The policy changes being considered in section 5.2 focus on addressing problem 1 ('a better balance between prescriptive and more flexible obligations is required to support a highly diverse heavy vehicle industry that seeks both flexibility and certainty in complying with both

the intent and word of the law') and problem 2 ('the HVNL is unresponsive to changes in the operating environment').

To complement changes to the structure of HVNL obligations, section 5.3, Assurance and accreditation, assesses changes to enhance the NHVAS and embed a safety management system (SMS) approach. Under the proposed changes, NHVAS will continue to be a voluntary scheme managed by the NHVR, however the proposed structural changes will increase the flexibility of the scheme and make it simpler for the NHVR to offer a broader range of accreditation options that will, in turn, enable access to more flexible alternative compliance options (ACOs).

The policy changes being assessed in section 5.3 are focused on resolving HVNL problem 3 ('the alternative compliance options (ACOs) available under the NHVAS are too heavily constrained by legislation).

In recognising the role of technology in ensuring safety and increasing productivity, section 5.4, Technology and data, assesses the impact of establishing a new technology and data framework within the HVNL. The recommendations being assessed aim to improve the responsiveness of the HVNL by formalising a process for certifying technologies and data-sharing schemes and having them recognised within the regulatory framework.

The policy changes being assessed in section 5.4 are focused on resolving HVNL problem 4 ('the HVNL does not provide a clear pathway for recognising modern technologies and does not provide adequate provisions for data sharing').

In response to stakeholder feedback that the clarity of duties within the HVNL could be improved, section 5.5, Primary duties and responsibility, considers the impact of a modest amendment to the driver duty to make it clear that drivers should not drive if unfit for the task. The policy change being assessed in section 5.5 is focused on resolving HVNL problem 5 ('regulatory tools and powers in the HVNL are in some instances outdated, inflexible or unnecessarily constrained').

In total, this chapter assesses 17 complementary policy recommendations which are intended to deliver a more efficient, collaborative, and risk-based regulatory regime.

### 5.1.1 Overall impact assessment summary

Table 5 contains summary assessments of the overall impact of each recommendation undertaken using in the methodology outlined in chapter 4. Each recommendation is considered in greater detail and analysed against each of the chapter 4 impact criteria within the subsequent sections of chapter 5.

The summary shows that all recommendations considered in the RIS will result in overall improvements to the regulatory framework.

**Table 5. Overall impact assessment summary**

| RECOMMENDATION | OVERALL IMPACT |
|---|---|
| **Regulatory framework** | |
| **1 – Tiered safety assurance environment**<br><br>That the future HVNL establish a tiered safety assurance environment comprising a baseline tier and an alternate compliance tier, designed to reflect industry diversity and deliver regulatory flexibility.<br><br>**1a – Baseline compliance tier 1**<br><br>That as part of the tiered safety assurance environment, the future HVNL establish a baseline tier comprised of simplified, predominantly prescriptive requirements, given effect by a broad head of power for the prescribing of heavy vehicle obligations.<br><br>**1b – Alternative compliance tier 2**<br><br>That, as part of the tiered safety assurance environment, the future HVNL establish an alternative compliance tier for accredited operators, underpinned by a new power allowing the regulator to issue alternative compliance options, within prescribed outer limits and other specified constraints. | **Improvement**<br><br>The tiered assurance environment will create greater flexibility for industry and will provide improvements to safety and productivity to benefit the community.<br><br>The regulatory regime will be better able to keep pace with advances in technologies and practices, which benefits the heavy vehicle industry, vehicle and safety technology suppliers, and the regulator and governments.<br><br>For tier 1, there are negligible impacts for industry and government as changes are structural.<br><br>For tier 2, operators will have greater choice on how to manage compliance obligations to realise productivity and gains. There will be start-up costs for accredited operators who don't have a NHVAS-compliant SMS, and for the NHVR to administer a more complex, bespoke scheme (see recommendation 7).<br><br>Note: Based on the assumption that the NHVR uses the new regulatory framework to deliver more diverse ACOs, otherwise the impacts will be negligible. |

| RECOMMENDATION | OVERALL IMPACT |
|---|---|
| **2 – Ministerial approvals**<br><br>That, as part of establishing an appropriate balance of regulatory discretion and ministerial oversight, the future law establish new arrangements for ministerial approvals, such that:<br><br>**2a** In recognition of restructured arrangements for alternative compliance and accreditation, ministers will no longer be required to approve accreditation business rules.<br><br>**2b** As part of enhancements to accreditation, ministers will be empowered to approve a national audit standard to be applied as part of the National Heavy Vehicle Accreditation Scheme, as well as other schemes and third parties. A national audit standard audit certificate will be automatically admissible evidence in primary duty proceedings.<br><br>**2c** The law clarify that consultation requirements apply to the development of ministerially approved guidelines.<br><br>**2d** Ministers will no longer be required to approve a sleeper berth standard, noting this may be prescribed as a heavy vehicle obligation in the future. | **Improvement**<br><br>Enabling mechanisms to support risk-based regulation and the new assurance environment by improving regulator autonomy and discretion and more targeted ministerial oversight and direction.<br><br>Note: Does not set out any substantive proposals and may be characterised as having no direct regulatory impact, but benefits may occur over time. |
| **3 – Ministerial directions**<br><br>To enable ministers to appropriately direct the regulator, and without impinging on regulatory autonomy, the future law establish new ministerial direction arrangements, such that: | **Neutral**<br><br>The expanded Ministerial direction powers will serve to provide assurances to Ministers and the community that the regulator will exercise its functions within the parameters of Ministers' risk appetite. |

| RECOMMENDATION | OVERALL IMPACT |
|---|---|
| **3a** Ministers (collectively) will be empowered to give written directions about the issuing of alternative compliance options.<br><br>**3b** Ministers (individually or collectively) may direct the regulator to exercise a certain function or power in the case of a serious public risk, and when in the public interest to do so.<br><br>**3c** Ministers (individually or collectively) may direct the regulator to investigate or provide advice or information about a matter relating to a public risk.<br><br>**3d** Ministers (collectively) may direct the regulator to cancel a code of practice.<br><br>**3e** Ministers will retain the existing power (collectively) to direct the regulator about policies to be applied. | Does not set out any substantive proposals and may be characterised as having no direct regulatory impact. |
| **4 – Codes of practice**<br><br>That the future law establish new arrangements for codes of practice, replacing the existing industry code of practice mechanism and allowing the regulator to initiate, develop and approve codes of practice. | **Improvement**<br><br>Guidance to drivers and chain of responsibility parties through CoPs can be provided more efficiently and effectively. This is expected to lead to improved compliance and safer behaviour, helping to reduce crashes.<br><br>Note: Analysis assumes that the regulator implements effective CoPs, otherwise impact may be negligible. |
| **5 – Improvement notices** | **Improvement** |

| RECOMMENDATION | OVERALL IMPACT |
|---|---|
| That the future law revise arrangements for improvement notices to allow improvement notice and prosecution processes to run concurrently. | More proportionate regulatory interventions lead to improved safety and productivity outcomes. |
| **Assurance and accreditation** | |
| **6a** That as part of the new alternative compliance tier (recommendation 1b), the future law restructure the **National Heavy Vehicle Accreditation Scheme** so that accredited operators can apply for an expandable range of alternative compliance options – either on a bespoke basis or as part of accreditation modules developed by the regulator, within the ministerially approved limits.<br><br>**6b** That the law ensures a **three-year transition period** for current NHVAS operators to provide operators adequate time for them to develop the necessary safety management system to qualify for the enhanced scheme. | **Improvement**<br><br>The expanded range of ACOs is expected to improve flexibility and responsiveness and contribute to safety and operational efficiency outcomes.<br><br>A three-year transition period is proposed to assist existing NHVAS operators and the regulator by allowing time to cover potential costs, particularly for operators to set up an SMS, auditors and external assistance, and for regulator resourcing. |
| **7** That, as a fundamental enhancement to the scheme, the law establishes a scalable **safety management system** as a core accreditation requirement. | **Improvement**<br><br>Safety benefits across the industry from greater focus on SMS and safety culture are difficult to quantify but are expected to have a positive impact over time that will outweigh the initial upfront costs.<br><br>Based on survey data, at least 65% of all operators have a basic SMS. Average estimated SMS start-up costs to accredited operators (around 8,400 in the current scheme, or 3.16% of the total heavy vehicle industry) per operator: |

| RECOMMENDATION | OVERALL IMPACT |
|---|---|
| | Small operators $5,000 to $10,000<br>Medium operators $6,200 to $15,000<br>Large operators $6,400 to $25,000.<br><br>The average NHVAS participant setup cost is $5,800.<br><br>Note: There are challenges in determining a cost-benefit analysis for an SMS as an SMS creates immediate, direct and ongoing costs, while benefits are mostly intangible, difficult to quantify and emerge over time (for example, improved safety culture, effective regulatory compliance, public confidence). |
| **8** That, to support mutual alignment pathways and scheme robustness, a **national audit standard** be developed by the regulator and approved by ministers. | **Improvement**<br><br>More robust auditing standards may improve community confidence in heavy vehicle regulation, leading to safety improvements.<br><br>Industry may gain productivity benefits from the potential to drive down requirements for multiple audits from customers and across schemes.<br><br>These benefits are expected to outweigh the costs to the regulator to establish the new audit standard. |
| **Technology and data framework** | |
| **9.** That the future HVNL enables technologies to be recognised under the HVNL by establishing a **technology and data framework** that | **Improvement** |

| RECOMMENDATION | OVERALL IMPACT |
|---|---|
| includes powers, functions, duties and obligations for specified roles in the framework, and appropriate rules in relation to technologies recognised under the HVNL for data protection, stewardship and assurance, and access and use. | The framework will create greater flexibility for industry and the regulator and will provide improvements to safety and productivity to benefit the community.<br><br>The regulatory regime set up by the law will be able to accommodate and respond to advances in technologies and practices, which benefits the heavy vehicle industry, vehicle and safety technology suppliers, the regulator and governments.<br><br>Note: Assumes that the framework is enlivened and implemented as per the policy intent. Direct impacts are difficult to quantify and are dependent on the efficacy of the framework in practice. |
| **10** That the technology and data framework will include the role, powers and functions of a framework administrator and include provisions for ministers to appoint one or more framework administrators. | **Neutral**<br><br>Governance arrangements are essential for reforms but will not in themselves have a direct impact. |
| **11** That the future HVNL enables the creation of data and technology applications by a framework administrator to outline the technical, data sharing, assurance and governance requirements for technologies recognised by the HVNL in line with ministerial requirements. | **Neutral**<br><br>Enabling mechanism. The benefits of data and technology applications will be specific to the forms of technology they enable. |
| **12** That the future HVNL prohibits the access and use of data produced by recognised technologies under the HVNL (other than by its owner), except as allowed by the HVNL and regulations, other applicable Acts, and as specified in the relevant data and technology application. | **Neutral**<br><br>Reinforces data restrictions and protections. |

| RECOMMENDATION | OVERALL IMPACT |
|---|---|
| **13** That the future HVNL ensures that a person can present to a court data from a non-certified application as evidence of complying with the HVNL and it will be up to the court to decide what weight to place on that evidence. | **Neutral**<br><br>Reinforces existing arrangements. |
| **Primary duties and responsibility** | |
| **14** That the future law expands the **driver duty** not to drive while fatigued to also include not driving if unfit for other reasons. | **Improvement**<br><br>Benefits due to increased public safety. |

## 5.2 Regulatory framework

### 5.2.1 Overview

This section of the RIS sets out policy recommendations designed to deliver a modern regulatory framework that will make the law more:

- responsive to new and emerging risks
- adaptive to a diverse and rapidly evolving heavy vehicle transport sector.

The policy recommendations in this chapter have also been designed to achieve a simpler and more coherent regulatory framework that is easier for parties to understand. This should, in turn, improve rates of compliance and reduce risks to safety. As discussed in chapter 3, the HVNL is a long and prescriptive law, with detailed obligations for regulated parties specified in the primary legislation. This leads to a 'one-size-fits-all' approach to regulation that fails to recognise the diverse purposes of heavy vehicle transport, the risks associated with different geographical areas, and types of operating risk.

While the law offers a limited range of alternative compliance options for operators accredited under the NHVAS, the regulatory environment underpinning this scheme is such that most ACOs are hardwired into the law or regulation.

This environment constrains the ability of the NHVR to encourage operators to invest and find new, better and more efficient ways of addressing safety risks.

This environment also fails to realise the benefits of encouraging operators to become accredited. It fails to set in place mechanisms that incentivise innovation and investment in advanced safety technology.

Other factors also constrain the regulator's ability to tailor and adapt its approach to reflect a rapidly evolving environment. Unlike other regulatory settings that employ a more performance-based approach,[23] the regulator is unable to support compliance with regulatory tools such as codes of practice. Existing arrangements around the use of business rules and improvement notices also impede the regulator's ability to respond to instances and trends of noncompliance in a way that is tailored to severity and certain behavioural drivers.

Throughout the HVNL Review and subsequent processes, several changes to the regulatory framework were considered to deliver a law that:

- Reflects a diverse and modernising heavy vehicle sector (for example, through establishing a multi-tiered safety assurance environment with a greater range of ACOs).
- Sets an appropriate balance of regulatory discretion and ministerial oversight
- Supplies tools and powers for a modern and mature regulator to deliver an adaptive and risk-based approach to regulation.

The HVNL Review identified that to achieve these improvements, changes to the structure and mechanics of the HVNL are required. These changes involve new regulatory powers,

[23] For example, Work Health Safety and Rail.

tools and instruments that will fundamentally redesign the HVNL to better align with other performance-based frameworks. These changes do not involve substantive proposals to change duties and obligations on parties. Rather, the policy recommendations in this chapter will create an enabling environment whereby changes to duties and obligations will be facilitated more responsively in the future.

### 5.2.2 Policy deliberations

During the HVNL Review, the NTC undertook detailed analysis of the current HVNL regulatory framework to identify deficiencies and consult on potential solutions. As discussed in section 1.3.2, the NTC produced a series of issues papers framed around risk-based regulation. The first tranche of issues papers covered *what* should be regulated[24] by the HVNL. The second tranche of issues papers covered *how* the HVNL should regulate and increase compliance, covering *assurance models* and *effective enforcement.*

In relation to potential regulatory frameworks for the future HVNL, the Assurance models issues paper canvassed and sought feedback of a range of options, including:

- a vertically integrated model that is similar to the current NHVAS
- a market for regulatory certification
- a market for accreditation
- a performance rules model whereby accreditation and certification are removed from the law.

In relation to the use of regulatory tools under the future HVNL, the Effective enforcement issues paper highlighted the importance of ensuring the future law is both easy to understand and straightforward to comply with. It also discussed the importance of the use of sanctions and enforcement tools in a way that is proportionate to the severity of risk.

Following the issues paper phase, the NTC convened a number of combined industry and government stakeholder workshops focused on specific policy options for the future HVNL regulatory framework and regulatory tools. These included:

- a two-tier model with strictly prescriptive or performance-based options
- a three-level regulatory structure, including a co-regulatory tier for more sophisticated operators
- compulsory safety management system (SMS) requirements
- a work health and safety-style code of practice mechanism
- empowering the regulator to develop regulatory standards.

Following this process, and based upon stakeholder feedback, the NTC developed a set of options to be formally tabled in a consultation RIS. Jurisdictions were also closely involved in identifying options suitable for inclusion in the consultation RIS.

Chapter 5 of the consultation RIS tabled four options for improving regulatory tools under the HVNL:

[24] These papers covered effective fatigue management, easy access to suitable routes, vehicle standards and safety, and safe people and practices.

- **Option 5.1: Establish a CoP mechanism in the HVNL**. This option centred on a change to the HVNL that would allow CoPs to be developed by the NHVR and approved by ministers. This option was designed to replace existing industry-led CoP arrangements under the current HVNL and replicate the way CoPs are developed and approved under model WHS laws and also the Rail Safety National Law. Under this proposal CoPs would serve as part of a more streamlined regulatory environment to provide clarity to parties on how to comply with duties under the HVNL. This option proposed that CoPs would not be mandatory, noting that non-mandatory CoPs nonetheless set minimum expectations of practice and are relevant to an assessment of how duties are met under the law.

  The option of replacing the existing industry CoP mechanism with a revised CoP arrangement was broadly **supported.** Further consultation led by Ken Kanofski resulted in further changes to the detail of this proposal, particularly in relation to oversight and approval arrangements (discussed in greater detail at recommendation 4).
- **Option 5.1: Establish a safety standards mechanism in the HVNL**. This option proposed that the HVNL establish a power to develop, vary and revoke safety standards which would prescribe rules for how to comply with duties under the primary law. This proposal was modelled on similar powers held by other transport safety regulators, such as the Civil Aviation Services Authority.

  This option was generally **not supported,** particularly by industry parties citing concerns around potential proliferation of red tape and increasingly prescriptive regulation.
- **Option 5.3: Establishing a geographic 'remote zone':** This option proposed establishing a remote zone, most likely through a geospatial instrument, to enable a more targeted risk-based approach to regulation to be developed for vehicles operating in these unique areas.

  This option was generally **not supported** as it is considered that it would add significant complexity to the regulatory framework, particularly for vehicles operating between remote and non-remote zones.
- **Option 5.4: Enable sharing of data with the NHVR.** This option considered expanding the purpose for which information can be shared between the NHVR and agencies to any purpose associated with the regulation of heavy vehicles. While jurisdictions already share information with the NHVR for purposes wider than the NHVR administering the HVNL, this currently requires an information sharing or service agreement. This option will remove the need for such an agreement.

  This option was **not supported** due to variations in privacy and data sharing legislation in in each jurisdiction and the complexity involved with applying a consistent approach through the HVNL.

Following the consultation RIS, further deliberation with industry parties, jurisdictions and the regulator highlighted the importance of ensuring the future HVNL is more flexible and adaptable. Much of this feedback related to issues originally canvassed in the first HVNL Review issues paper, *A risk-based approach to regulating heavy vehicles.* Stakeholders expressed a desire to see tangible options for ensuring the structure of the future HVNL will be responsive and able to support continuous improvement in safety in the rapidly changing and advancing industry.

To this end, the Kanofski Report, which contained a number of recommendations, was considered by infrastructure and transport ministers and became the ITMM reform package.

Table 6 outlines the recommendations in that package that are relevant to developing the regulatory framework for the future law.

**Table 6. Recommendations agreed to be progressed as part of the future HVNL regulatory framework**

| ITMM reference | ITMM reform package recommendation |
|---|---|
| 1.5 | To the maximum extent possible, the new law should be outcome based while also allowing for a prescriptive approach. |
| 1.6 | To the maximum extent possible, the new law should place detail into regulations and subordinate instruments as set out in several better regulation guidance documents |
| 3.3 | Introduce a two-tiered fatigue management regime |
| 5.2b | Recognising operator diversity, increase the flexibility for operators to meet compliance obligations to run their business now and into the future |
| 5.2c | Reduce compliance costs for operators to achieve and demonstrate compliance, including reducing the need for multiple audits requested by customers to meet their chain of responsibility obligations |
| 5.3b | More flexible and diverse alternative compliance. The regulatory framework supporting the improved NHVAS will also enable a greater range of ACOs, underpinned by Ministerial Directions. The framework should be scalable to support different levels of sophistication of operators. Operators with less sophisticated business operations who enter the scheme would be eligible for relatively small concessions and operators with more sophisticated operations would be eligible for highly flexible alternative compliance options. |
| 5.3e | Reduce the reliance on audits by customers to meet their chain of responsibility obligations. |
| 5.3f | National audit standard. A National Auditing Standard will be recognised in law as part of the scheme. The standard will be outcomes based, designed so that it can be adopted by other assurance schemes. The National Auditing Standard could also be used for non-certification audits intended to establish adherence/compliance with the primary duty. The law will also specify that a Court may consider an audit conducted under the Standard as part of determining whether the primary duty has been met. |
| 7.1 | The future law should introduce a regulatory head of power for Heavy Vehicle Safety Obligations, which would be made as regulations and subject to parliamentary disallowance in Queensland Parliament. The law will describe the risks a HVSO may regulate and the parties to which a HVSO may apply. |

| ITMM reference | ITMM reform package recommendation |
|---|---|
| | HVSOs would be developed by the NTC subject to Regulatory impact analysis process for Ministerial councils and national standard setting bodies. |
| 7.2 | The law will set out a non-exhaustive list of risk areas to which an HVSO may apply. The non-exhaustive list will align with the agreed risks to be managed under the primary duty:<br>▪ Fatigue<br>▪ Fitness to drive<br>▪ Vehicle Standards and Roadworthiness<br>▪ Mass and Dimension<br>▪ Loading<br>▪ Speed<br>▪ Competence, and<br>▪ Any other risk to public safety. |
| 7.3 | Existing prescriptive requirements in relation to fatigue, mass management and vehicle maintenance will be recast and simplified (where appropriate) as a HVSO. |
| 7.4 | The new law will allow for the establishment of prescriptive requirements, for off-road parties (HVSOs). Any off-road party to whom a HVSO applied will need to be defined (in primary law or regulations). The law should enable Ministers to prescribe parties from time to time in regulation, subject to regulatory impact assessments. It is proposed to retain the current list of specific parties in the law, and to conduct regulatory impact assessments for new proposed parties. |
| 7.5 | The law should have provisions to enable introducing specific offences for off-road chain of responsibility parties. More work needs to be done to develop specific offences. |
| 9.3 | Detailed proposals on ITMM/non-ITMM decision making, covering codes of practice, business rules, application forms, ministerial guidelines, ministerial directions, and consultation requirements etc. |

### 5.2.3 Future work

As discussed in chapter 3, the intent of the policy recommendations being assessed is to improve the HVNL to enable a more effective and flexible regulatory regime that can respond to the diverse and dynamic needs of the heavy vehicle industry. This section of the RIS canvasses policy options that can be regarded as foundational to the overall regulatory framework of the HVNL. These changes relate to enabling features and mechanisms of the law that may be described as having no direct regulatory impact. Once implemented, these

enabling features of the law will create the pathway required for substantive regulatory change, particularly in the areas of fatigue and access. To be clear:

- Recommendations 1, 1a and 1b set out the legislative mechanics of the new tiered safety assurance environment. Recommendations 6, 7 and 8 also provide detail on key enhancements to the NHVAS, which is a fundamental pillar of the alternative compliance tier of the new tiered environment. This RIS does not, however, deal with specific obligations for baseline compliance operators, or ACOs for accredited operators. Some of these ACOs will represent a translation of existing requirements to the new framework (that is, no policy change), while any new or substantially modified ACOs will be developed further and assessed through subsequent RIS processes.
- Recommendation 2 sets out revised arrangements for ministerial approvals under the future law, including revised arrangements for accreditation business rules and standards, guidelines, and a new mechanism to enable approval of a national audit standard. This RIS does not consider the detail of accreditation standards or business rules or what guidelines should be developed. While recommendation 8 also provides further detail of the role of the NAS in the context of the NHVAS,[25] this RIS does not assess a fully-developed NAS. These items will be considered for development during the subsequent RIS processes.
- Recommendation 3 sets out revised arrangements for ministerial directions. This includes an option to allow ministers to issue written directions about ACOs, and it is envisaged that a suite of ministerial directions may be developed for this purpose, ready for commencement of the future law. Nonetheless, this RIS does not consider any specific ministerial direction.
- Recommendation 4 sets out the legislative mechanics of revised arrangements for codes of practice. This RIS does not assess any specific CoP or propose what CoPs should be developed for commencement of the future HVNL. The development of specific CoPs will be the task of the regulator.

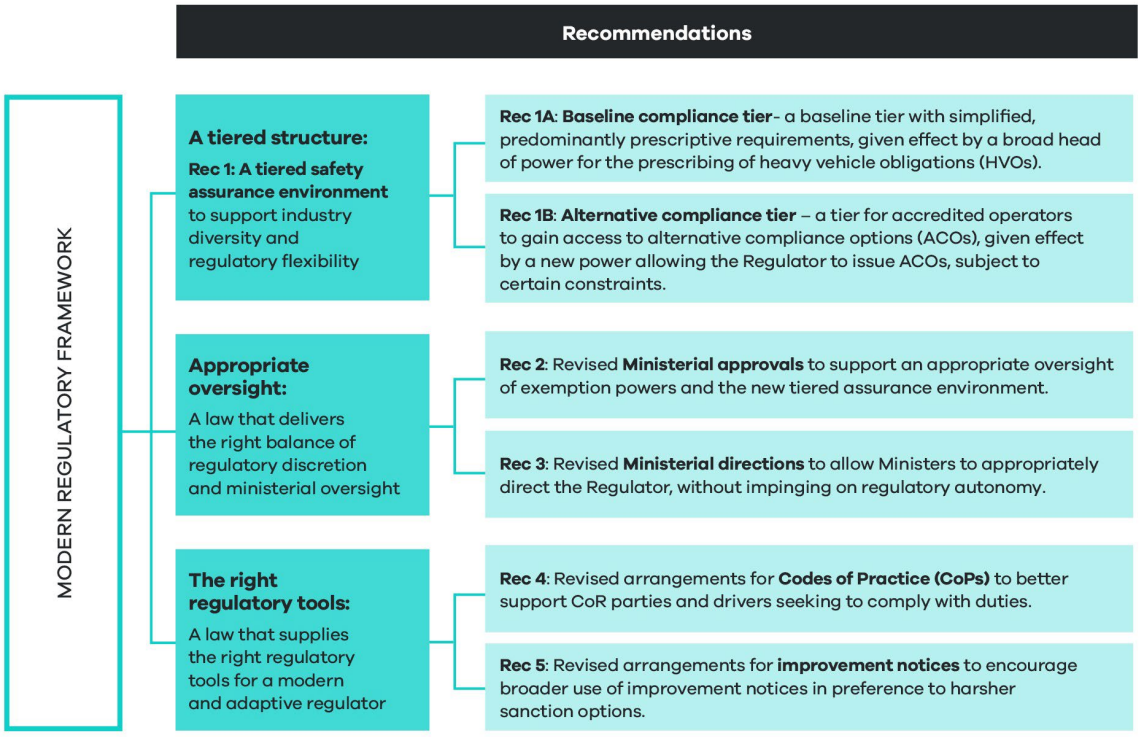
Noting the new regulatory framework involves many subsidiary instruments designed to support operation of the law, developing and finalising a suite of ministerial directions, ministerial guidelines, as well as the NAS, will be critical for implementation of the future HVNL.

### 5.2.4 Assessment of policy recommendations

Figure 2 provides a summary of the policy recommendations in this section of the RIS, and how they relate to specific outcomes, that in turn will address problems identified. Each policy recommendation is assessed individually, but together these recommendations are designed to establish a modern, outcomes-focused regulatory framework.

[25] Although the NAS has a broader application than the NHVAS.

**Figure 2. Overview of regulatory framework recommendations for the future HVNL**




### Links to other decision RIS recommendations

The recommendations in this chapter link together to provide an overarching regulatory framework for a modern and responsive law. All other sections of the RIS should be read against this framework, noting the following key links:

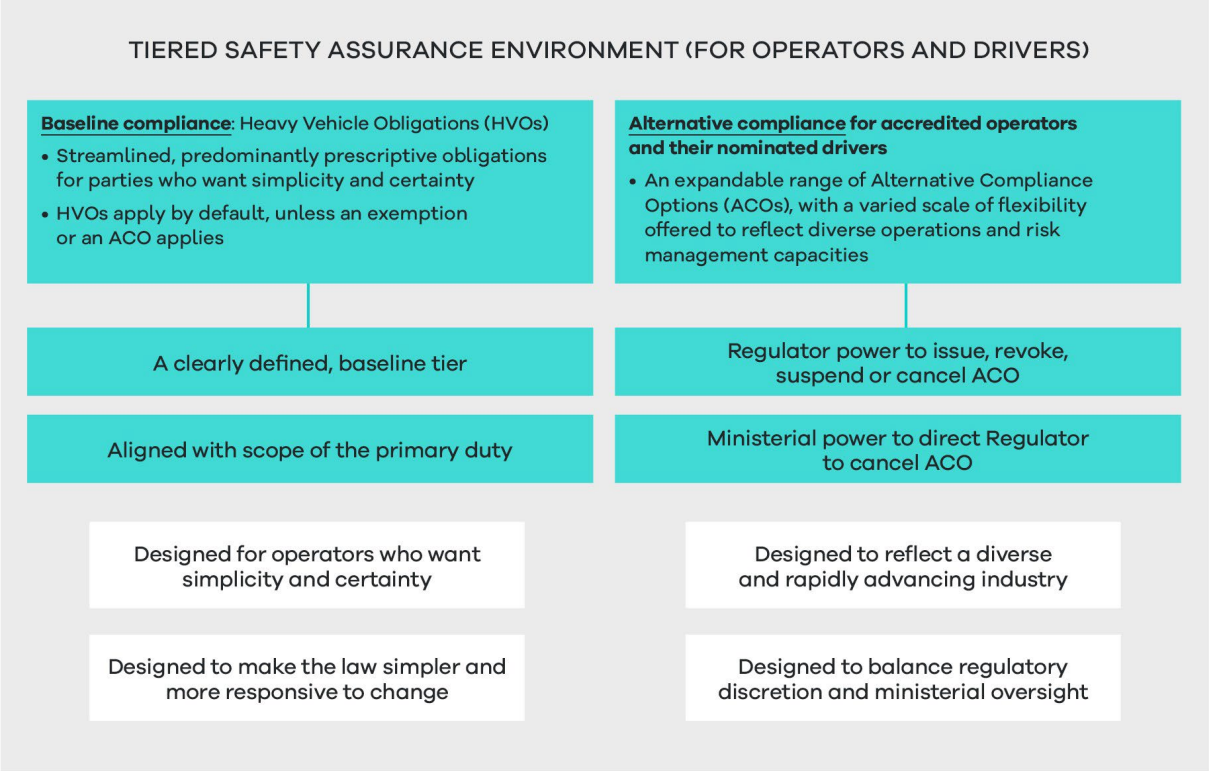
- **Accreditation (section 5.3, recommendations 6 to 8):** examines the detail of how an enhanced accreditation scheme will work under the future HVNL. This forms one critical feature of the tiered assurance environment covered under recommendations 1, 1a and 1b. These recommendations also cover the detail of how a new national audit standard will improve the robustness of the new accreditation scheme. This topic is also covered under recommendation 2, which explains the legislative mechanics of the NAS, including its legal impact and applicability beyond HVNL accreditation.
- **Technology and data (section 5.4, recommendations 9 to 13):** sets out arrangements for establishing a data and technology framework to enable technologies to be recognised under the HVNL. The framework interacts with the overarching regulatory framework by enabling recognition of new technologies in the context of baseline, prescriptive regulations, or as conditions or requirements for accreditation and alternative compliance.
- **Duties (section 5.5, recommendation 14):** proposes that the current duty on drivers to avoid driving while fatigued, be expanded to include fitness for work. In the context of the proposed regulatory framework, this duty constitutes an indispensable duty. It cannot be exempted or subject to an alternative compliance option, in any circumstances.

**Recommendation 1 – Tiered safety assurance environment**

That the future HVNL establish a tiered safety assurance environment comprising a baseline tier and an alternate compliance tier, designed to reflect industry diversity and deliver regulatory flexibility.

**What is proposed?**

**Figure 3. Overview of recommendation 1**




This recommendation has been designed to progress propositions 1.5, 1.6, 3.3, 5.2b, 5.3b, and 7.1 to 7.5 of the ITMM reform package (see Appendix A). Fundamentally, these propositions recommended a restructure of the law to enable a tiered safety assurance environment comprising:

- **A baseline compliance tier (tier 1)**: a default tier with simplified, predominantly prescriptive requirements, mechanised by a broad head of power for the prescribing of heavy vehicle obligations (HVOs).
- **An alternative compliance tier (tier 2)**: a tier for accredited operators to gain access to a diverse range of ACOs, mechanised by a new power allowing the regulator to issue ACOs, subject to certain constraints.

While the law already contains elements of a tiered approach to regulation, the future law will enable a more expansive alternative compliance environment to support a more diverse range of ACOs, with degrees of flexibility.

This section analyses impacts of the new tiered safety assurance environment holistically. Recommendations 1a) and 1b) then examine the detail of each tier and their impacts separately.

**What are the objectives?**

As discussed in chapter 3, the HVNL fails to:

- Provide a clear and coherent compliance regime for operators who prefer the simplicity and certainty of prescriptive regulation.
- Reflect and support industry diversity.
- Keep pace with changing technology and business practices, and emerging risks.
- Encourage parties to improve safety management and invest in more advanced safety management technology.

With these problems in mind, the proposed tiered safety assurance environment has been designed to:

- Establish a simple, clear and coherent baseline tier of predominantly prescriptive obligations for operators who prefer simplicity and certainty.
- More responsively enable the prescribing of requirements and obligations, as new risks to safety emerge.
- Support and recognise industry diversity, including the diverse range of:
  - freight tasks
  - geographical variances
  - risk management capacities.
- Establish a more flexible accreditation scheme that:
  - the regulator can adapt and expand in line with emerging risks, advancing technology and increasing sophistication of operators
  - can encourage operators to take on increased risk management responsibility
  - offers a diverse range of ACOs.

In recognising the new tiered environment will increase the discretion of the NHVR to develop and offer pathways for alternative compliance, the environment will also build in additional ministerial direction powers. The goal of these arrangements is to ensure that ministers are able to set a clear risk appetite for alternate compliance by specifying clear parameters for the regulator. Striking an appropriate balance of regulatory discretion and ministerial oversight is therefore a key objective of the proposal.

**How will the law change?**

<u>Current law (the base case)</u>

The law already contains some aspects of a tiered safety assurance environment in that it:

- Sets out a range of prescriptive, baseline requirements relating to:
  - fatigue (standard work and rest hours, and record keeping requirements)
  - mass and dimension (general mass limits and dimension requirements)
  - vehicle standards.

- Establishes the NHVAS, which gives accredited operators some flexibility to operate out of prescribed regulations within the context of accreditation modules, as follows:
  - NHVAS Mass Management: accredited operators are able to operate at above general mass limits.
  - NHVAS Basic Fatigue Management (BFM) and Advanced Fatigue Management (AFM): accredited operators receive access to longer working hours and flexibility in scheduling.
  - NHVAS Maintenance Management: accredited operators receive exemptions from annual inspection requirements, which can be resource intensive[26].
- Establishes the Performance Based Standards (PBS) Scheme, which provides exemptions from many prescriptive vehicle standard requirements.

To a large extent, ACOs are hardwired into the law and regulation. This is particularly the case for Mass Management and BFM which offer alternative schedules of prescriptive requirements.

Advanced Fatigue Management represents a more flexible approach, whereby the regulator is able to approve bespoke work and rest hour schedules. The process for gaining AFM accreditation is, however, cumbersome and resource intensive, and generally not available to smaller, simpler operators who may still be able to manage safety with the benefit of small adjustments to the general schedule.

The HVNL otherwise does not enable the regulator to expand and adapt ACOs for accredited operators, for example with fatigue regimes that would provide more varied levels of flexibility, either sitting between standard hours and BFM, or BFM and AFM.

Future law

The future law will be more explicit about establishing a tiered safety assurance environment.

In terms of establishing the baseline tier:

- Where possible, the law will be redrafted to ensure that prescriptive obligations are simpler and clearer for regulated parties to understand.
- To the maximum extent possible, obligations and requirements will be prescribed in regulation, not the primary law, to make the law more responsive.
- To the maximum extent possible, the law will be able to prescribe new obligations and requirements relating to new and emerging risks.

In terms of establishing the alternative compliance tier:

- ACOs will no longer be hardwired into the law.
- A regulatory head of power (or equivalent mechanism) will allow the setting of outer limits and other relevant aspects of ACOs.
- The regulator will receive new powers to be able to create modules, apply conditions and issue ACOs.

[26] This exemption is mechanised operationally and is only available to operators in New South Wales and Queensland.

- Ministerial direction powers will be expanded to reflect the new regulatory environment.

A step-by-step example of how this tiered environment will work in the context of fatigue is included later in this section.

**What are the impacts?**

An enabling environment

As already discussed, this recommendation is an 'enabling reform' that relates to the overall structure of the HVNL.

For example, while a new heavy vehicle obligation mechanism is proposed, this RIS does not propose any substantive changes to prescriptive obligations, or any new obligations. Rather, it proposes an environment that will enable more responsive changes to prescriptive requirements in the future.

Similarly, the proposal in this section outlines the legislative mechanisms for enabling a new diverse alternative compliance environment. Specific alternative compliance options are not considered in this RIS.

Potential impacts

In terms of assessing the impacts of the new tiered environment holistically[27], improvements can be projected across all assessment criteria when compared to the baseline option, particularly in the areas of safety, operational efficiency or productivity, and flexibility and responsiveness.

As highlighted below, some negative impacts may be projected in the categories of regulatory burden for industry and costs for government.

To a large extent, and owing to the enabling characteristics of this proposal, the new tiered assurance environment may deliver a neutral or negligible impact if the regulator does not utilise the new regulatory framework to deliver more diverse ACOs.

Potential improvements

Considering the new tiered safety assurance environment as a whole, a fundamental aim is to cater to a more diverse range of operators, ranging from simpler operators who want simplicity and certainty, through to highly sophisticated operators who can manage safety effectively with highly flexible options in place.

The terminology of a 'tiered' regulatory environment is used because it is familiar to industry and government agencies. However, this proposal may also be described as a sliding spectrum of options that reflects the highly varied landscape of operating models, transport tasks and levels of sophistication across the sector.

As discussed at recommendation 7 in section 5.3, the safety management system requirement for entry into the alternative compliance tier will be scalable so as to create an

[27] Please note that the impacts of the baseline tier and alternative compliance tier proposals have been assessed separately under recommendations 1a and 1b below.

appropriate standard for entry and to allow smaller or less complex operators into the scheme. This will enable the regulator to offer modest ACOs to simpler operators who may still prefer predominantly prescriptive rules over more flexible performance-based options.

This new environment has potential to deliver productivity benefits to industry in a variety of ways:

- **For smaller or less complex operations**, the new regulatory environment will enable creating alternative compliance options for operators that would not receive access to ACOs under the base case. Although these operators will need to make an initial investment in a basic safety management system, these costs are able to be offset by the offer of modest ACOs that are nonetheless able to be implemented.
- **For mid-tier operations,** the new regulatory environment will enable a greater range of ACOs not previously catered for under the HVNL. For example, fatigue-related ACOs are limited to BFM and AFM. Many operators do not require the flexibility of a bespoke AFM schedule and therefore refrain from investing in AFM accreditation. BFM, however, is based upon a prescriptive work and rest hour schedule which, while more flexible than standard hours, may not be suitable for a range of mid-tier operators. The new environment will allow the regulator to develop a range of 'mid-level' ACOs that properly reflect the risk management capacities of mid-tier operators and the diversity of operations at this level of the sector.
- **For sophisticated operators**, the new regulatory environment will enable more flexible ACOs, subject to outer limits. While AFM currently enables the approval of bespoke work and rest hour schedules, this process can be administratively cumbersome and costly, partly because operators must invest in developing a safety case. Under the new regulatory environment, the regulator will be able to convert common AFM schedules into ACOs available to highly sophisticated operators. Here, the safety case can be embedded into the requirements of the ACO.

In summary, this more nuanced safety assurance environment should reduce the misalignment of risk-management methods to specific operating models, allowing operators to adopt the most effective safety management strategy for their business (assessment criteria 1e). If implemented effectively, this more flexible environment has the potential to increase the overall value of accreditation for operators, better incentivising uptake of accreditation by operators, thereby also increasing regulatory visibility of heavy vehicle operators and fleet. This can support the regulator's risk profiling system and better enable the introduction of targeted compliance and enforcement options (assessment criteria 1c).

Potential negative impacts

A more diverse alternative compliance environment is also likely to make enforcement more complex, although it should be noted that there are existing problems around the interaction of enforcement officers and accredited operators. Currently, accredited operators report that some police officers, in particular, have a limited understanding of ACOs for fatigue available under the NHVAS. Complexities around the enforcement of bespoke AFM schedules are likely to continue under the new environment. Nonetheless, the new environment will also enable the regulator to streamline AFM schedules, in turn reducing enforcement complexity (assessment criteria 4b). The negative impacts of complexity of enforcement may also be counterbalanced by enhancements to operator risk profiling systems.

The new tiered environment is also likely to be more complex for the regulator and other parties to administer. Costs associated with recruiting, educating and training staff and developing new systems are likely to increase at inception of the new alternative compliance system. Ongoing costs associated with maintaining and administering the system are also likely to increase (assessment criteria 4b). Similarly, road manager consent processes may

be more complex, particularly if and when new mass-related ACOs are developed (assessment criteria 4b).

Unknown impacts, or areas of neutral or negligible impact

Greater flexibility for the prescribing of obligations on off-road parties will allow for better allocation of responsibility with supply chain parties best able to manage risk (assessment criteria 1a). This will also increase the responsiveness of the law in terms of addressing emergent safety risks (assessment criteria 1b).

The assessment considers impacts at a national level. The costs and benefits will be broadly similar across different states and territories. The specific costs and benefits in each state or territory will depend in part on the nature of the heavy vehicle fleet and its use in each state or territory.

**Implementation, transition and evaluation arrangements**

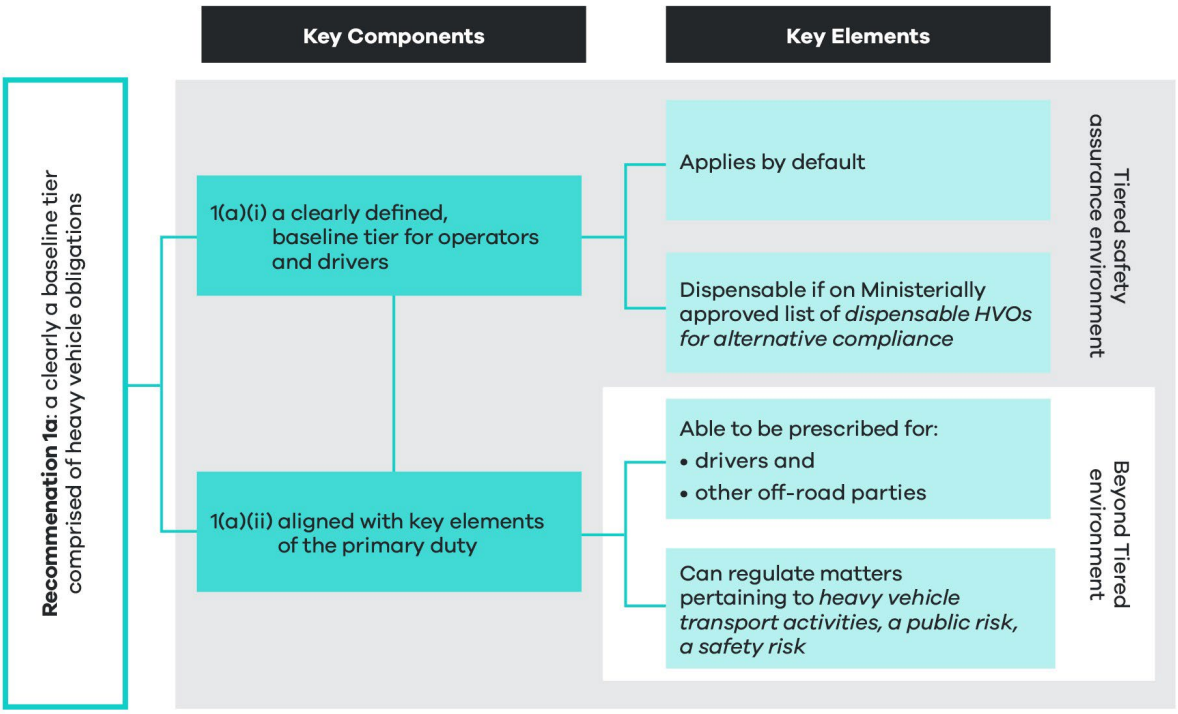
As already discussed, this RIS examines the legislative mechanics of establishing a tiered safety assurance environment. Subsequent RIS and consultation processes will delve into the detail of substantive obligations, outer limits and ACOs for each tier.

**Recommendation 1a – Baseline compliance tier 1**

That as part of the tiered safety assurance environment, the future HVNL establish a baseline tier comprised of simplified, predominantly prescriptive requirements, given effect by a broad head of power for the prescribing of heavy vehicle obligations.

**What is proposed?**

**Figure 4. Overview of recommendation 1a**




This recommendation has been designed to implement propositions 1.5, 1.6 and 7.1 to 7.5 of the ITMM reform package (see Appendix A). Fundamentally, those propositions proposed the introduction of a regulatory head of power for Heavy Vehicle Safety Obligations (HVSOs), which would be made as regulations and subject to parliamentary disallowance in Queensland Parliament.[28] While remaining consistent with the ITMM reform package, this recommendation has reframed the HVSO construct, instead using the terminology of heavy vehicle obligation (HVO). This is because the object of the HVNL is broader than safety, and the HVSO recommendation is primarily intended to enable the prescribing of obligations, in regulation, to support the object of the law.

Primarily this RIS examines the HVO construct within the context of the new tiered safety assurance environment. Currently the tiered safety assurance environment is only relevant to operators who are able to gain access to ACOs as part of their accreditation, and the drivers who are employed or contracted by these operators.

[28] A regulation disallowed in Queensland Parliament would then not be applied in any participating jurisdiction.

HVOs will, however, have a broader application than just operators and drivers. For example, the law currently sets out a range of prescriptive obligations for off-road parties such as employers, consigners, packers and vehicle owners (to name a few). These obligations are not part of the tiered safety assurance environment because the law does not envisage ACOs for these parties.[29] The HVO construct will, however, be sufficiently broad to enable the prescribing of obligations for off-road parties, including parties in the chain of responsibility (as defined in section 5 of the HVNL), and other parties not currently identified in law.

To this end, the ITMM reform package also envisaged that this head of power would be used as a mechanism to facilitate a redistribution of obligations down from the Primary Law and into regulations, to create a more responsive regulatory regime.

In terms of how HVOs will be constructed as part of the tiered safety assurance environment, HVOs will be established as a clearly defined baseline tier for operators and drivers. This baseline tier will apply by default unless it is dispensed with as part of an exemption or exception, or an ACO. If an HVO is to be dispensed with as part of an ACO, the HVO will need to be on the ministerially approved list of dispensable HVOs for alternative compliance. An overriding policy principle of this reform is to construct the HVO power as broadly as possible, to enable the prescribing of obligations for off-road parties and for new and emerging risks. Here, the scope of HVOs will be designed to align with the non-exhaustive scope of risks to be managed as part of the primary duty. This is based on the definition of 'transport activities' (section 5 of the HVNL) and the definitions of 'public risk' and 'safety risk' (section 5 of the HVNL). Noting this policy objective, the precise construction of the regulatory head of power or powers will be subject to the requirements of Parliamentary Counsel's Committee and fundamental legislative principles.

1a(i) A clearly defined baseline tier for operators and drivers[30]

As part of the tiered safety assurance environment, the future law will establish a baseline tier comprised of predominantly prescriptive requirements, described as heavy vehicle obligations. This element of the recommendation is most relevant to operators, who are able to apply for ACOs once they become accredited, but also drivers who may be employed or contracted by accredited operators.

A HVO will apply to an operator or a driver unless the HVO is dispensed with, either:

- through the issue of an ACO to an accredited operator, in relation to the specified HVO
- by way of an exemption or an exception.

*Distinguishing heavy vehicle obligations from indispensable duties and obligations*

As part of the construct for defining the HVO baseline tier, the law will effectively demarcate some duties and obligations under the law which are 'indispensable', distinguishing them from HVOs, which will be dispensable in certain circumstances.

[29] To be clear, ACOs are not proposed for these obligations either.

[30] As discussed, this aspect of recommendation 1a is limited to operators and drivers, because the HVNL does not establish any kind of "Tiered" environment for off-road parties.

From a policy perspective,[31] indispensable safety duties and obligations are those duties and obligations that are fundamental to the object of the law and which cannot be dispensed with under any circumstances.

Some examples of indispensable duties and obligations are obvious, including the primary duty (section 26C of the HVNL) and the duty to avoid driving while fatigued (section 228 of the HVNL). The ability to dispense with some other duties and obligations may be subject to further policy analysis and debate. For example, there are differing views around whether an overarching record-keeping requirement should be dispensable under the future law.

The subsequent regulatory impact analysis processes will involve close examination of each offence provision under the law to determine whether they should be categorised as indispensable or as an HVO. For illustrative purposes only, Appendix D provides a list of examples of duties and obligations that are likely to be indispensable under the future HVNL. The assessment of whether a duty or obligation should be deemed indispensable will involve thorough policy analysis that will consider a range of factors. Further policy analysis will involve consideration of factors, summarised below, to determine how a duty or obligation should be categorised.

**General policy considerations relevant to determining whether a duty or obligation should be indispensable**

These considerations will be used to guide further policy analysis of every obligation and duty under the HVNL to determine whether a duty or obligation should be categorised as indispensable.

1. **Object of the law**: Does the duty or obligation establish an absolute, non-derogable requirement that is fundamental to achieving the object of the law?

2. **Overarching obligations vs prescriptive requirements**: Does the duty or obligation establish an overarching requirement to manage risk, or alternatively does it prescribe a method for managing a risk, that is linked to other obligations under the law?

3. **Fundamental legislative principles**: Does the duty or obligation raise issues relating to rights and liabilities of individuals, and the institution of parliament?

Appendix D elaborates on these considerations.

*Circumstances under which a heavy vehicle obligation may be dispensed with for alternative compliance*

It is envisaged that most indispensable duties or obligations will be established in primary law. HVOs will be prescribed in regulation. In the context of the tiered safety assurance

[31] The law may or may not specifically define a class of 'indispensable' duties and obligations. This will be a drafting decision left to Parliamentary Counsel's Committee.

environment, a HVO will be dispensable and able to be replaced with an ACO in particular circumstances.

In order for a HVO to be dispensed with by issuing an ACO, the HVO must be on a ministerially approved list of dispensable HVOs for alternative compliance. The law will specifically empower ministers to approve a list of dispensable HVOs for alternative compliance and a first list will be required to be approved by ministers for commencement of the future law.

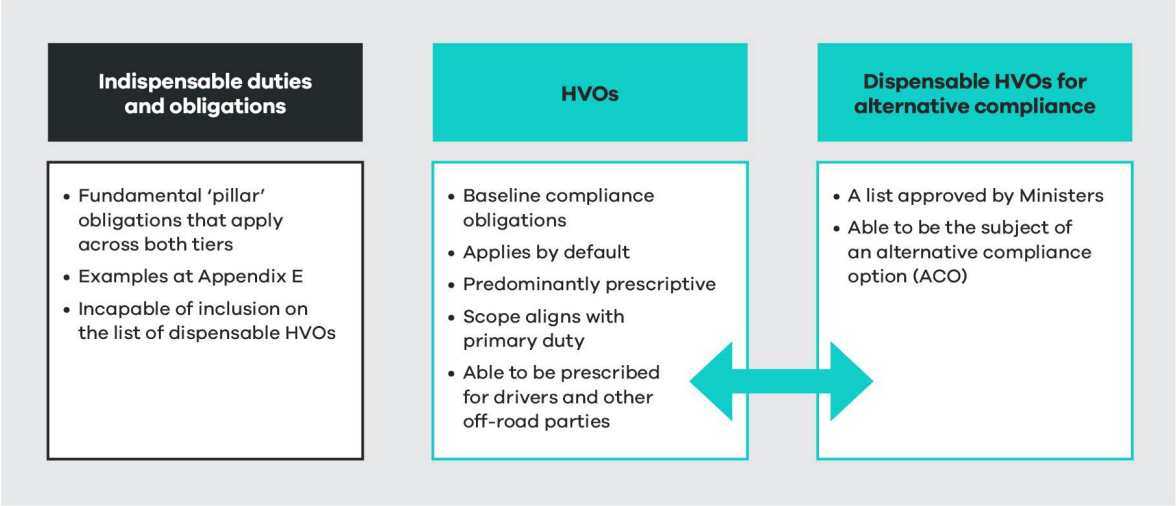
While the HVO mechanism will form a key feature of the tiered safety assurance environment, the mechanism will also allow the prescribing of obligations for off-road parties, including other parties in the chain of responsibility (s 5), and potentially other parties defined in law. These parties are not subject to the tiered safety assurance environment and considerations around dispensability of the obligation are not relevant.

It is also relevant to note that HVOs may be dispensed with by way of a regulator exemption power. Exemption power arrangements fall outside the tiered safety assurance environment and are unlikely to change under the future law.

*Three categories for duties and obligations under the future HVNL*

The effect of this construct will be to create three broad categories of duties and obligations under the future law, as outlined in Figure 5.[32]

**Figure 5. High-level categories of duties and obligations under future regulatory framework**




To be clear, when an HVO is classified as a dispensable HVO, it is not automatically dispensed with. Rather, a dispensable HVO may enliven the regulator's power to issue an ACO (subject to other constraints discussed in recommendation 1b.

1a(ii) A broadly constructed head of power, the scope of which will align with risks to be managed under the primary duty

[32] The law may not need to explicitly establish three main categories of obligations. This will ultimately depend on drafting decisions for Parliamentary Counsel's Committee.

As part of delivering a more responsive law, to the maximum extent possible, HVOs will be prescribed regulation.

HVOs will cover a broader range of matters than the scope of risk-management areas currently covered by existing heads of power in the HVNL. To enable this, the primary law may establish a single head of power or several heads of power.

While the precise construction of regulatory heads of power is a matter for Parliamentary Counsel's Committee, the overriding policy principle is that the future law should enable the prescribing of HVOs pertaining to the broadest range of matters possible, limited by the scope of risks required to be managed under the primary duty.

By design, the scope of risks required to be managed under the primary duty is broad. This has the benefit of ensuring parties are accountable for managing all risks relevant to the conduct of the heavy vehicle transport task, including new risks as they emerge. The scope of the primary duty is based upon:

- the definition of 'transport activities' (section 5 of the HVNL) (see Appendix E)
- the definition of 'public risk', which refers to a definition of safety risk (section 5 of the HVNL) (see Appendix E).

If necessary, the law will put beyond doubt that 'transport activities' and 'public risk' is intended to capture a non-exhaustive list of risks arising from the use of heavy vehicles on roads. This proposal is designed to ensure the law comprehends future risks around the advents of automation, electrification, digitisation, climate change and any other future advent with potential to impact on public safety.

While the scope of matters able to be regulated by HVOs will align with the primary duty, HVOs will also be able to be prescribed for drivers and parties other than those captured by the chain of responsibility under the primary duty. Table 7 provides a summary of the scope of HVOs.

**Table 7. Scope of heavy vehicle obligation construct**

| Scope components | Heavy vehicle obligations |
|---|---|
| **What may be prescribed** | 1. Any matter captured by the definition of 'heavy vehicle transport activities' (section 5 in the HVNL) (see Appendix E). This definition refers broadly to *'activities, including business practices and making decisions, associated with the use of a heavy vehicle on a road'*.<br><br>2. Any matter captured by the definition of 'public risk' (section 5 of the HVNL) (see Appendix E). This definition refers to the risk of damage to road infrastructure. It also refers to a 'safety risk', which is defined in section 5 of the HVNL as including a risk to public safety or harm to the environment. |
| **Who can be regulated?** | 1. Any party in the chain of responsibility, as defined exhaustively in section 5 of the HVNL to include employers of drivers, prime contractors, operators, schedulers, consignors, consignees, |

| Scope components | Heavy vehicle obligations |
|---|---|
| | packers, loading managers, loaders, and unloaders (see Appendix E).<br>2. Drivers of heavy vehicles.<br>3. Other off-road parties, noting these additional off-road parties would need to be defined in regulation. This may include auditors, heavy vehicle repairers, parties preparing livestock for transportation, and so on. |

**What are the objectives?**

As discussed in chapter 3, the HVNL fails to:

- Provide a clear and coherent compliance regime for operators who prefer the simplicity and certainty of prescriptive regulation.
- Keep pace with changing technology, business practices and emerging risks.

Throughout the HVNL Review and subsequent consultation, industry parties, particularly operators, expressed there was a need to ensure the future law can prescribe additional obligations for off-road parties, for example, heavy vehicle repairers.

With these problems in mind, this reform has been designed to:

- Increase the responsiveness of the law – to the maximum extent appropriate, obligations should be placed in regulation and subsidiary instruments to allow the law to respond quickly to changes in context, technologies, knowledge and practices.
- Increase adaptability of the law, including the ability to responsively prescribe obligations on parties.

**How will the law change?**

Current law (the base case)

The current HVNL contains regulatory heads of power for a range of safety matters including (but not limited to):

- heavy vehicle standards (section 59)
- vehicle modification (section 88)
- mass requirements (section 95)
- dimension requirements (section 101)
- loading requirements (section 110)
- standard hours (section 249)
- work diary requirements (section 295).

The law does not definitively enable the prescribing of additional requirements for off-road parties.

The HVNL also does not expressly enable the prescribing of requirements relating to other known risks to heavy vehicle safety – for example, fitness for duty, driver distraction or competency.

The HVNL also appears to be limited in terms of what may be prescribed for risks to heavy vehicle safety that may arise in the future – for example, risks relating specifically to electric and automated vehicles.

Future law

The HVO mechanism will be designed to encompass the current suite of regulatory heads of power that enable the prescribing of requirements or obligations. But the list of matters to which a HVO will apply will be constructed as broadly as possible.

In effect, this will broaden the scope of safety matters to which a safety obligation may be prescribed. This will make the law more adaptive and ensure the law can move rapidly to regulate new risks to safety, while still ensuring that obligations relate directly to heavy vehicle activities.

The law will also incorporate a mechanism to allow ministers to approve a list of 'dispensable' HVOs. This list will reflect the range of HVOs to which ministers are comfortable that an exemption or an ACO may be applied. It is envisaged that this list be reviewed periodically to reflect the evolving heavy vehicle transport landscape and the potential for new ACOs in the future.

If appropriate (as determined by Parliamentary Counsel's Committee), the law will specifically define a class of indispensable duties and obligations.

Appendix D provides a potential list of indispensable duties and obligations for the future law. This potential list is for illustrative purposes only and does not represent a concrete set of recommendations. A definitive list will be considered during a subsequent RIS process.

Appendix D provides a potential list of HVOs for the future law and a brief discussion around policy considerations for deciding on a list of dispensable HVOs to be approved by ministers.

**What are the impacts?**

An enabling environment

This proposed reform is an enabling provision that will change the structure of the law and the scope of matters that are able to be regulated by the law. This proposal does not consider any substantive proposals to prescribe additional obligations on parties, or any changes to existing obligations.

It should be noted that this recommendation describes one feature of an overarching framework and should be considered in that context. Therefore, while in isolation this recommendation may be described as having no direct regulatory impacts, as a fundamental feature of the tiered safety assurance environment there are whole of system impacts to flow from a restructuring of the law.

Potential impacts

Noting the enabling characteristics of this proposal, longer term improvements are projected across assessment criteria categories, particularly in the areas of road safety, operational efficiency, reduced regulatory burden and flexibility and responsiveness.

Impacts are expected to be neutral or uncertain in terms of regulatory costs for government, and asset and environmental protection.

Again, noting the mechanical nature of this proposal and the fact that it does not involve any substantive change to obligations under the law, no significant negative impacts have been identified.

Potential improvements

The fundamental objectives of this proposal are to simplify the HVNL and enable the prescribing of obligations in response to current, new and emerging risks.

A simpler law will:

- Make the law easier for parties to understand and apply, in the long-term increasing compliance and a reduction in overall public risk.
- In the long term, reduce compliance costs – for example, training costs for drivers and the risk of incurring fines due to noncompliance (assessment criteria 3a).

A more responsive law will:

- Deliver greater flexibility for the prescribing of obligations on off-road parties that will allow for better allocation of responsibility with supply chain parties best able to manage risk (assessment criteria 1a). This will also increase the responsiveness of the law in terms of addressing emergent safety risks (assessment criteria 1b and 6c).
- Ensure the law can keep pace with advances in technology and changes in context, technologies, knowledge and practices (assessment criteria 6c and 6e).

Unknown impacts, or areas of neutral or negligible impact

The HVO construct and its relationship to alternative compliance may be perceived as adding an additional layer of unnecessary bureaucracy to decisions around how HVOs can become dispensable (assessment criteria 4b). Establishing a process that requires ministers to approve a list of dispensable HVOs for alternative compliance may give rise to some administrative costs, particularly in the first instance where the NTC will run a consultation process to develop a list of dispensable HVOs, ready for commencement of the future HVNL.

From thereon, any review process for the list of HVOs can be embedded into the NTC's existing legislative function of 'monitoring and maintaining uniform or nationally consistent regulatory and operational reforms' (section 3 of the *National Transport Commission Act 2003* CTH).[33]

Stakeholders have raised that a list of dispensable HVOs should instead be specified in regulation. The administrative costs associated with this option are likely to be the same, or slightly more, than creating a ministerially approved list, as a ministerially approved list would not require drafting resources or parliamentary scrutiny processes associated with specifying such a list in regulation.

[33] The NTC has traditionally run an annual legislative maintenance process involving jurisdictions, the regulator and industry stakeholders.

Noting any administrative costs are likely to be absorbed into existing maintenance processes run by the NTC, when compared to the base case these are also likely to be offset by the benefits of lifting the alternative compliance system out of regulation and into a more flexible environment (assessment criteria 6c).

The assessment considers impacts at a national level. The costs and benefits will be broadly similar across different states and territories. The specific costs and benefits in each state or territory will depend in part on the nature of the heavy vehicle fleet and its use in each state or territory.

**Implementation, transition and evaluation arrangements**

An enabling environment

As discussed above, this reform element is an enabling feature of the proposed HVNL option. Noting the three categories of obligations discussed above, following this foundational RIS further policy work will be carried out to determine:

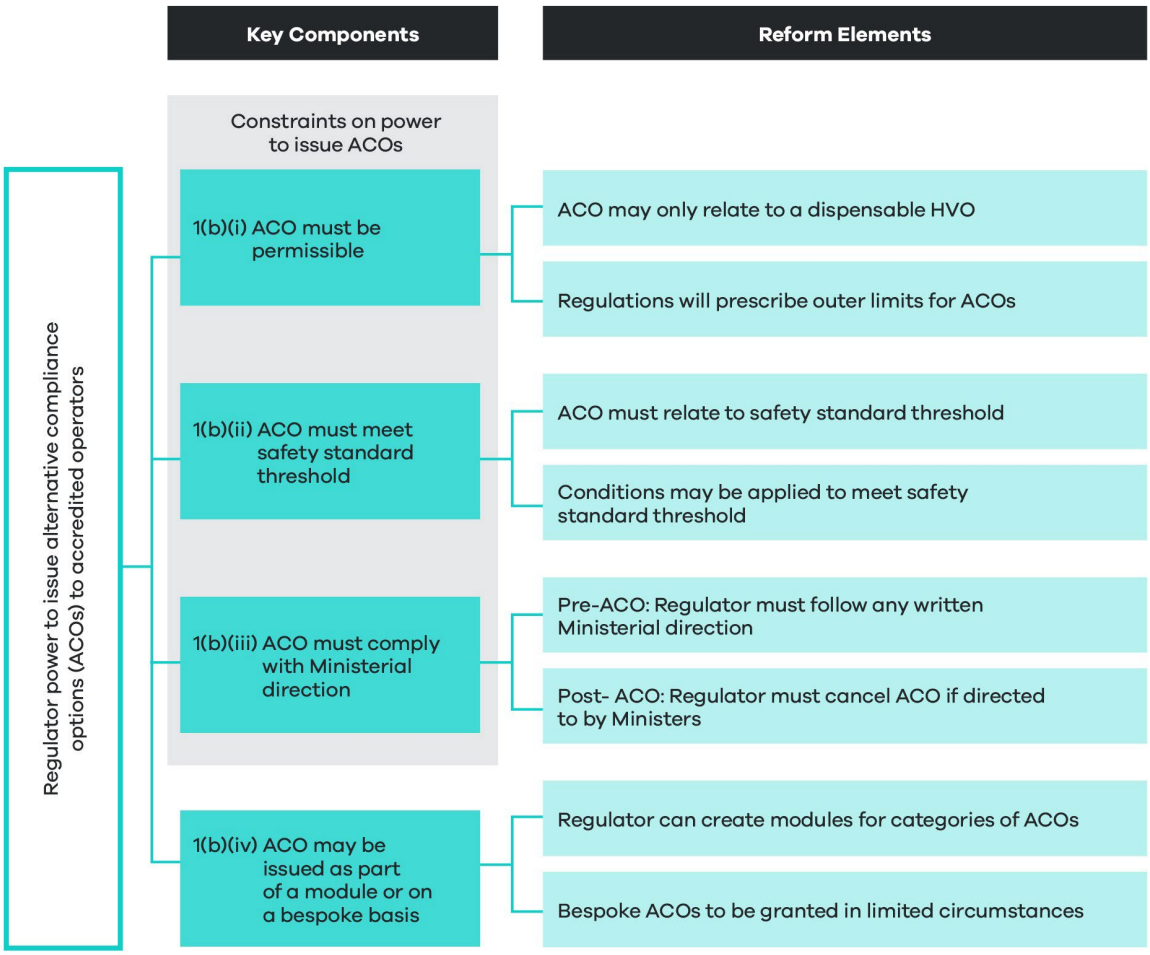
- which duties and obligations will be indispensable
- which obligations should be classed as HVOs
- which obligations should be placed on the list of dispensable HVOs.

**Recommendation 1b – Alternative compliance tier 2**

That, as part of the tiered safety assurance environment, the future HVNL establish an alternative compliance tier for accredited operators, underpinned by a new power allowing the regulator to issue alternative compliance options, within prescribed outer limits and other specified constraints.

### What is proposed?

### Figure 6. Overview of recommendation 1b




This recommendation has been designed to implement proposition 5.3b of the ITMM reform package (see Appendix A), which relates to establishing an environment for more flexible and diverse ACOs, underpinned by ministerial directions.

Instead of hardwiring ACOs into law and regulation, the future law will empower the NHVR to issue ACOs to accredited operators either:

- as part of an accreditation module
- on an individual, bespoke basis where a safety case and unique business need can be demonstrated.

This new power will allow the regulator to expand and adapt the new accreditation scheme in line with advances in technology, changing business models and new and emerging risks to heavy vehicle safety. While this change represents an increase in regulatory discretion, the power to issue ACOs will not be a broad-based power, but a constrained power, as detailed under the key components listed in Figure 6 above and summarised below.

**Summary of constraints on regulator power to issue alternative compliance options**

Before the NHVR can exercise this power it will need to assess a proposed ACO in light of three key constraints:

- It must be **permissible** under the law. Permissibility arrangements will include:
  - A new head of power to enable the prescribing of limits on ACOs, in regulation.
  - A new mechanism allowing development and approval of a list or schedule of 'dispensable HVOs', such that the regulator will only be empowered to offer ACOs in relation to the HVOs on this list.
- The ACO must meet a **safety standard threshold**, meaning:
  - The ACO must result in a standard of safety that is at least equivalent to tier 1.
  - Conditions may be applied to the operator to ensure the standard can be met.
- The ACO must follow any relevant **ministerial direction** which may be either:
  - provided prior to the issuing of an ACO
  - provided in relation to an ACO that has already been issued, but only in limited circumstances where the ACO gives rise to a serious risk to public safety.

These constraints on the regulator's power will be the same irrespective of whether the power is used to issue an ACO on an individual or modular basis. Operationally, the process for issuing an ACO will differ between each group (discussed further later in this section).

**Figure 7.**

**Key definitions for understanding new arrangements for alternative compliance**

**Alternative compliance option**: an ACO, once issued to an accredited operator, will result in dispensation of a relevant baseline HVO and a requirement to comply with a new set of requirements and conditions contained in the ACO.

**Risk area standards**: standards to be established in regulation that relate to particular risk areas, for example, fatigue, mass and maintenance. In line with risk-area standards, the regulator may establish accreditation modules.

**ACO accreditation modules**: developed by the regulator, accreditation modules will set out criteria and standards to be met and assessed as part of obtaining and maintaining accreditation and gaining access to an ACO. These modules will be based around risk area standards, laid out in regulation.

**Non-ACO accreditation modules**: as part of the new environment, the regulator may develop accreditation modules that do not give rise to ACOs. This will be up to the discretion of the regulator, but could involve modules relating to driver competency, health and fitness, sustainability, and so on.

**Figure 8.**

**Linking policy recommendations around accreditation and alternative compliance**

The policy recommendations in this section fundamentally link with policy recommendations on the new accreditation scheme in section 5.3.

While the regulator will have increased discretion to issue ACOs, this will be matched by measures geared towards increasing trust in the robustness of the scheme, and the level of safety assurance of accredited operators. These measures include:

- a core safety management system (SMS) requirement
- a national audit standard (NAS).

The detail of this scheme is discussed in section 5.3.

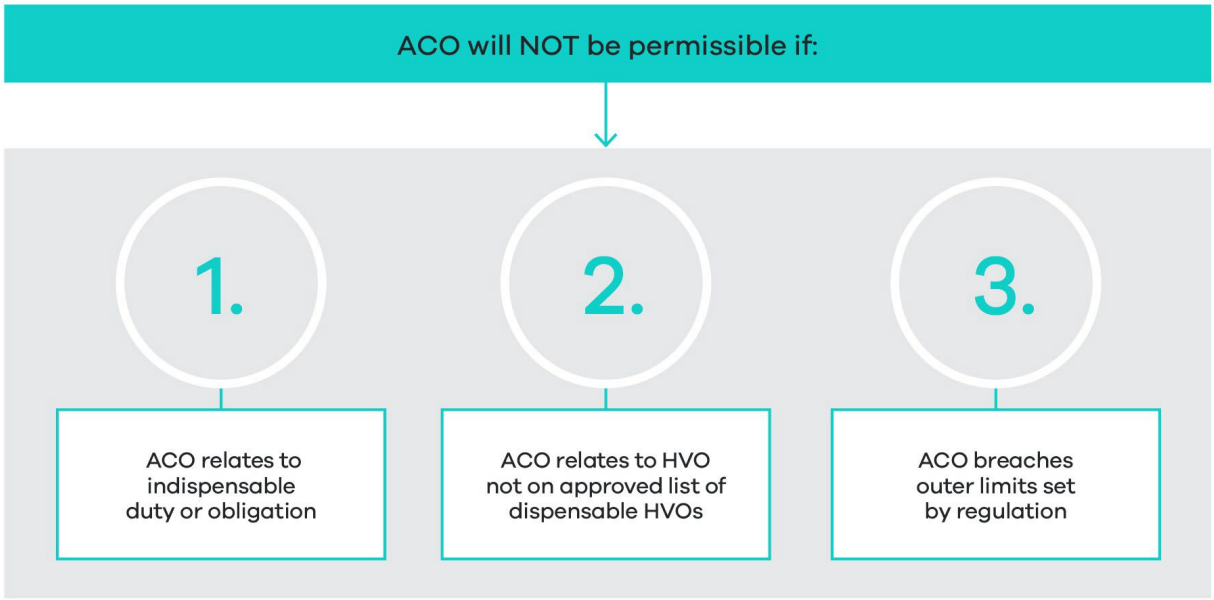
Section 5.3.4 provides a holistic picture of how new arrangements for alternative compliance will operate together with other aspects of the enhanced accreditation scheme and the NAS.

Section 5.3.4 also provides a step-by-step process of how an operator may gain access to an ACO as part of the accreditation process (see table 9).

1b(i) Constraint on power: the alternative compliance option must be legally permissible

In order to issue an ACO the regulator will first need to consider whether the ACO is permissible under the HVNL.

**Figure 9. Overview of permissibility arrangements for alternative compliance options under the HVNL**




The ACO will not be permissible if:

- The ACO relates to an indispensable duty or obligation, for example the primary duty (section 26C of the HVNL) or the duty not to drive fatigued (section 228 of the HVNL). Appendix D provides a list of potential indispensable duties and obligations.
- The ACO relates to a HVO that is not on the ministerially approved list of dispensable HVOs.
- The ACO breaches an outer limit set by regulation. Here, the law will (most likely through regulation) prescribe outer limits for ACOs in particular risk areas. While the precise formulation of outer limits will be determined during the subsequent regulatory impact analysis process, existing work and rest hour limits for AFM operators will be translated into the future law for the fatigue risk area.[34]

1b(ii) Constraint on power: the alternative compliance option must meet safety standard threshold

In order to issue an ACO, the regulator will be required to assess and demonstrate that the ACO meets the 'safety standard threshold'. This threshold will be established clearly in law to reflect the overriding policy objective that an ACO must not result in an increased risk to safety.

Noting the proposed ACO power operates in a similar manner to an exemption power, the proposed constraint has been modelled on Regulation 685 of the Work and Safety Regulations, which sets out a range of matters to be considered in granting an exemption, namely that:

[34] This was agreed by ITMM in August 2023 (see Kanofski Report recommendation 3.3)

> *whether…the exemption will result in a standard of health and safety…that is at least equivalent to the standard that would be achieved by compliance with the relevant provision or provisions.*

This legal threshold will be constructed as a strict constraint on the regulator's ACO power. That is, the regulator will not be able to grant an ACO unless it is satisfied that the granting of the ACO will not result in a lower standard of safety than established by complying with the HVO.[35]

As part of assessing the proposed ACO against the safety standard threshold, the regulator will be empowered to apply conditions to an operator and should also consider whether the application of additional conditions will result in the safety standard threshold being met.

In addition to assessing the ACO against the safety standard threshold, the regulator will be required to demonstrate that this assessment has been carried out, including a summary of findings of the assessment, as part of issuing the ACO.

1b(iii) Constraint on power: alternative compliance option must follow a ministerial direction

As a final 'failsafe' to ensure the regulator does not step outside expectations of ministers, the HVNL will also empower ministers to give directions to the regulator about the issuing of ACOs. As part of issuing an ACO, the regulator will be required to follow any such direction.

In this context, ministerial directions may operate in a similar way to how ministerial guidelines work with respect to exemption powers under the current HVNL.[36] However, the law will be clear that the regulator must follow a direction in issuing an ACO. This is a stricter obligation than simply being required to have regard to a guideline.

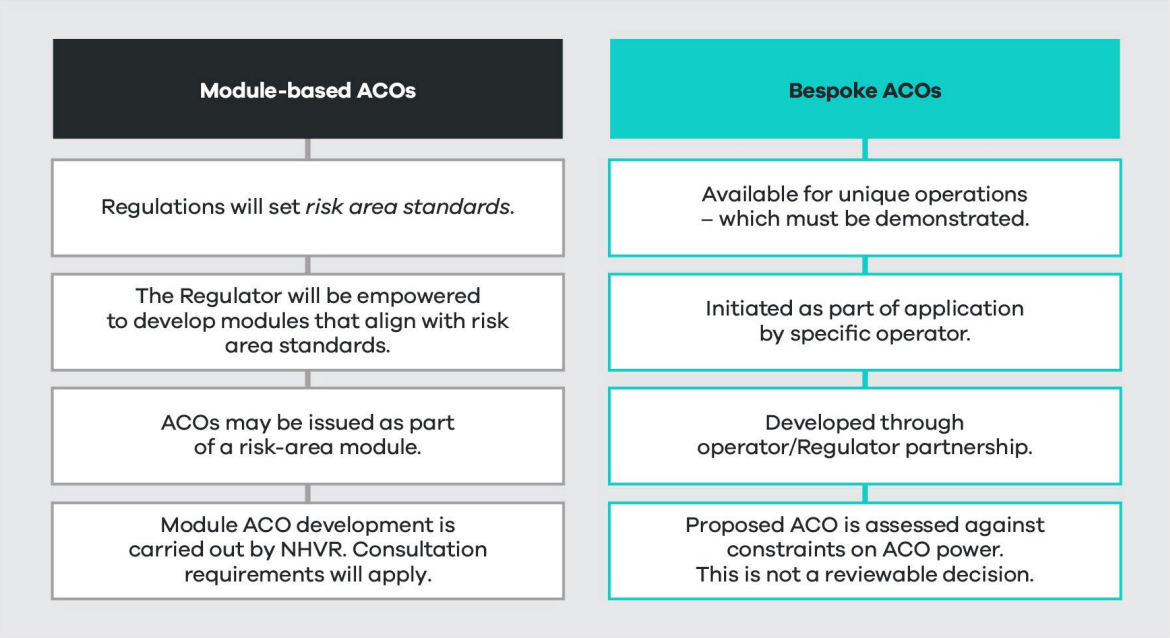
This proposed power relates to the issuing of ACOs. It will not apply in relation to an ACO that has already been issued. If, however, it emerges that an ACO is posing a serious risk to public safety, ministers will be able to lean on a separate ministerial direction power to direct the regulator to suspend or cancel the ACO. This power will only be available to use in circumstances of a serious public risk, and when in the public interest to do so. More information about the legal machinations of both ministerial direction powers is provided in the discussion on recommendation 3, further below.

[35] This is different to the WHS exemption power, which only requires the regulator to 'consider' whether a lower standard of safety might arise.

[36] Currently under the HVNL, most exemption powers require the regulator to 'have regard to' a relevant ministerially approved guideline.

1b(iv) Alternative compliance options may be issued as part of a module, or on a bespoke basis for operators demonstrating a unique business case

**Figure 10. Overview of arrangements for module-based and bespoke ACOs**




*Module-based alternative compliance options*

Instead of hardwiring accreditation modules into law and regulation, the new regulatory environment will allow the regulator to establish new accreditation modules. These modules will be established as an integrated feature of the new power to issue an ACO, but the regulator will also have the ability to establish modules that do not directly give rise to an ACO (as discussed in the breakout box below).

If a module is developed as part of or in association with an ACO, the module must align with risk area standards set in regulation. For example, the regulations may set out risk area standards for fatigue. The regulator will then be able to develop a library of fatigue-related modules with associated ACOs, in line with these fatigue standards.

**Figure 11. Arrangements supported by law for accreditation modules and associated alternative compliance options**

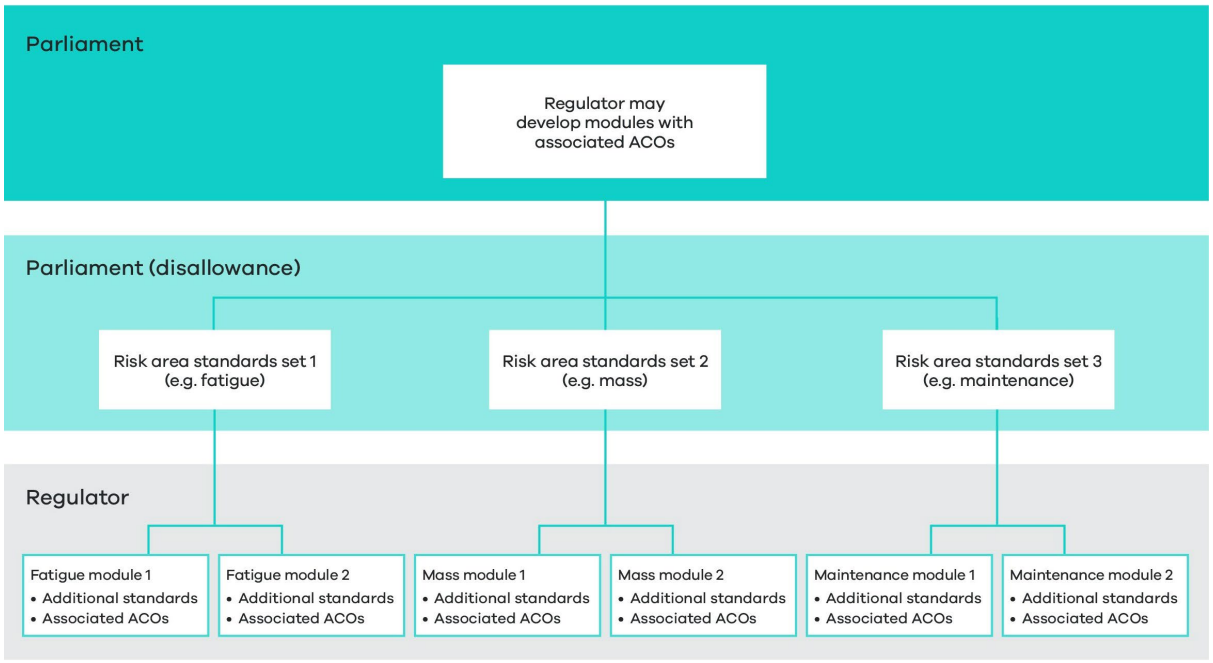



Figure 11 provides a basic outline of the legislative mechanics for the way modules and associated ACOs are created under the law. Recommendation 6 expands on this explanation in the context of the NHVAS scheme architecture more broadly.

In terms of the administrative process around developing module-based ACOs, Table 8 outlines high level steps for the regulator to follow.

**Non-alternative compliance option modules**

Under the new regulatory environment, the regulator may also choose to develop modules that do not lead to ACOs. For example, modules around driver competency, driver health and fitness, environment and sustainability may be developed at the regulator's discretion. The development of these modules would not be constrained by risk area standards or by outer limits set in regulation, because they would not give rise to an ACO.

There is potential for the regulator to use this mechanism to establish 'highest standard' risk management practices in certain areas. Operators may see value in becoming certified in a non-ACO module, particularly if customers specify as part of procurement arrangements that an operator should be accredited in such a module.

Accreditation in a non-ACO module would also serve to provide assurances (though not a complete guarantee) that an operator is complying with that particular component of the primary duty. A non-ACO module will be auditable under the national audit standard, discussed under recommendations 2b and 8. As laid out under recommendation 2b, an audit relating to a non-ACO module will also be admissible as evidence of compliance with the primary duty.

**Table 8. Administrative process supported by law for developing modules and alternative compliance options**

| Initiation | Development | Publish |
|---|---|---|
| The regulator may identify an opportunity to develop a module and associated ACO.<br><br>Ministers may request the regulator to develop a module and related ACO.<br><br>An industry party may request the regulator to develop an ACO. | The regulator will develop the module and related ACOs, considering the three constraints.<br><br>As part of assessing the safety standard threshold, the regulator will need to carry out and document a safety assessment.<br><br>The regulator will be required to consult on the proposed module and ACO and consider any comments. | The regulator will be required to publish the ACO and the safety assessment accompanying the ACO, on its website.<br><br>An operator will receive access to the ACO once they are accredited in the relevant module. |

*Bespoke alternative compliance options*

The future law will allow individual operators to propose bespoke ACOs to the regulator. As part of this proposal, the operator will need to demonstrate:

- a safety case setting out how the safety standard threshold is met
- a unique business need
- that both the baseline HVOs and available ACOs are impractical and inappropriate for meeting the unique business need.

The regulator may develop policy and guidance material setting out key considerations for satisfying the above criteria. For example, as part of demonstrating whether a relevant HVO or available ACO is impractical or inappropriate, guidance material may set out that an operator should provide evidence of matters such as:

- undue economic hardship
- potential welfare concerns (for example, animal welfare)
- how the HVO or relevant ACO makes the freight task prohibitively difficult to deliver.[37]

Administratively, a proposal for a bespoke ACO will run as a separate process to applying for access to the ACO. Operationally, these processes will likely coincide, but the proposal for an ACO will be assessed against the three constraints. This is ultimately a decision on the legality of the ACO itself and whether the regulator is able to exercise the ACO power. This assessment goes to the validity of the application and it will not be reviewable.

[37] To be clear, these are examples of criteria the regulator could refer to as part of its assessment. They are not intended as legislative criteria.

Once the proposed ACO is determined to be valid, the regulator is then able to assess whether the operator meets standards required for the ACO to be safe.

Table 9 outlines the administrative process for issuing an individual or bespoke ACO supported by the law.

**Table 9. Process steps supported by law for issuing an individual or bespoke alternative compliance option**

| Proposal for bespoke ACO | Assessment of ACO | Assessment of accreditation application | Publish |
|---|---|---|---|
| An operator may propose a bespoke ACO – either:<br><br>1. As part of an application for accreditation.<br><br>2. As an add on to an existing accreditation. | The regulator will assess the proposed ACO in light of the three constraints.<br><br>The regulator will also assess whether the applicant has established a unique business need that can't be addressed through the relevant HVO or any available ACO.<br><br>The assessment of the ACO is not a reviewable decision. | The regulator may grant, refuse or elect to reconsider the application for accreditation.<br><br>This process differs from assessing the legality of the ACO, and instead focuses on assessing whether the operator meets requisite standards.<br><br>A refusal decision will be a reviewable decision under the HVNL, and therefore subject to internal review, and further judicial review. | The bespoke ACO and accompanying safety assessment will also be published on the NHVR website. |

**What are the objectives?**

As agreed by ministers, the framework will be scalable to support different levels of sophistication of operators. Operators with less sophisticated business operations who enter the scheme should be able to access relatively small concessions, and operators with more sophisticated operations should be able to receive access to highly flexible ACOs.

This includes supporting the diverse range of freight tasks, risks associated with geographical areas, and types of operators. It also includes recognising the varied capacities of heavy vehicle operators, noting that:

- Some operators prefer the simplicity and certainty of prescriptive compliance options and have no interest in alternative compliance.
- Some operators may still be able to manage safety effectively with only minor ACOs in place.
- Some operators have a highly sophisticated risk management capability and are able to manage safety effectively with highly flexible ACOs in place.

While the law should be able to support ACOs for unique business operations, this must also be balanced against the need for regulatory efficiency. To avoid the risk of overwhelming the regulator with bespoke ACO applications, the process for applying for an ACO has been designed to encourage operators to make use of module-based ACOs.

**How will the law change?**

Current law (the base case)

The HVNL establishes the NHVAS, which gives accredited operators some flexibility to operate out of prescribed regulations, within the context of accreditation modules, as follows:

- NHVAS Mass Management: accredited operators are able to operate at above general mass limits.
- NHVAS Basic Fatigue Management (BFM) and Advanced Fatigue Management (AFM): accredited operators receive access to longer working hours and flexibility in scheduling.
- NHVAS Maintenance Management: accredited operators in New South Wales and Queensland receive exemptions from annual inspection requirements, which can be resource intensive.[38]

To a large extent, ACOs are hardwired into the law and regulation. This is particularly the case for Mass Management and BFM, which offer alternative schedules of prescriptive requirements.

AFM represents a more flexible approach, whereby the regulator is able to approve bespoke work and rest hour schedules within prescribed limits. The process for gaining AFM accreditation is, however, cumbersome and resource intensive, and generally not available to smaller or simpler operators who may still be able to manage safety with the benefit of small adjustments to the general schedule.

The HVNL otherwise does not enable the regulator to expand and adapt ACOs for accredited operators.

Future law

The future law will change from the current HVNL by:

- Establishing a power allowing the NHVR to issue ACOs. As part of this, the NHVR will also be able to develop accreditation modules. Consultation requirements will apply.
- Establishing a head of power that enables the prescribing of limits on ACOs.
- Allowing ministers to approve a list of dispensable HVOs.
- Establishing a new ministerial direction power regarding the granting of ACOs.

The regulator's functions may be amended to reflect increased regulatory discretion as part of the new regulatory environment proposed.

**What are the impacts?**

[38] This benefit is not available to operators based in other jurisdictions.

An enabling environment

As discussed previously, the tiered safety assurance environment proposal involves a series of structural reforms to the HVNL that have no direct regulatory impact.

The proposal in this section outlines the legislative mechanisms for enabling a new diverse alternative compliance environment. Specific ACOs are not considered in this RIS.

In addition, ACOs are by nature 'opt-in', and as such, this reform can be described as having no direct regulatory impact.

Potential impacts

While noting the enabling characteristics of this proposal, some longer-term improvements can be projected across assessment criteria categories, particularly in the areas of road safety, operational efficiency, and flexibility and responsiveness.

Impacts in the area of asset and environmental protection are projected as neutral or uncertain.

There is potential for some negative impacts in the areas of regulatory burden and costs for both industry and government. These may, however, be offset by overall improvements to operational efficiency, road safety, and regulatory visibility of the heavy vehicle fleet.

Potential improvements

The proposed changes are projected to deliver benefits including:

- A law that better reflects the diversity of heavy vehicle operators, in turn:
  - Allowing operators to realise productivity gains when more flexible or appropriate ACOs are offered to suit their business (assessment criteria 2c and 2d).
  - Enabling a reduction in overall safety risk, risk to infrastructure, and overall crash risk by allowing operators to adopt the most appropriate risk management approach for their business (assessment criteria 1d, 1e and 5a).
- A law that can keep pace with rapid advances in technology and changes across the heavy vehicle transport sector and support innovation, in turn:
  - Increasing operational efficiency and productivity gains where operators adopt the most cutting-edge safety management technology (assessment criteria 2d and 6b).
  - Supporting an overall reduction in risk to safety and infrastructure, and overall crash risk by ensuring operators are not locked into old and ineffective risk management approaches (assessment criteria 1e).
- A law that will enable the NHVR to expand and adapt the accreditation scheme to encourage operators to take increased responsibility for managing risk (assessment criteria 1c, 6c).
- The offer of more attractive and appropriate ACOs should also result in an increased uptake of accreditation. This in turn should support:
  - Improvements in overall safety of the heavy vehicle fleet and reduction in adverse safety incidents and overall crash risk, noting that accredited operators will be required to demonstrate they have a safety management system (SMS) (assessment criteria 1e).

- Increased regulatory visibility of the heavy vehicle fleet, with associated benefits relating to risk profiling and more efficient concentration of regulatory effort on higher risk operators.

Potential negative impacts

The process of applying for an individual or bespoke ACO is likely to be administratively cumbersome for both operators and the regulator (assessment criteria 3a and 4a), although not necessarily more so than the current process for applying for AFM accreditation. While the regulator will be able to charge an application fee to recoup costs, the value of this reform for operators is dependent upon the degree of flexibility and associated improvement that can be gained from receiving the bespoke ACO.

The process of establishing an ACO assessment process will also involve administrative and resourcing costs for the regulator. This is particularly the case for bespoke ACO applications, which will also require establishing an internal review process.

A more diverse alternative compliance environment is also likely to make enforcement more complex, although it should be noted that there are perceptions of existing problems around the interaction of enforcement officers (particularly police) and accredited operators (assessment criteria 3b). As discussed previously, currently accredited operators report that some police officers, in particular, have a limited understanding of ACOs for fatigue available under the NHVAS. Complexities around the enforcement of bespoke AFM schedules are likely to continue under the new environment. Nonetheless, the new environment will also enable the regulator to streamline AFM schedules, in turn reducing enforcement complexity (assessment criteria 4b). The negative impacts of complexity of enforcement may be counterbalanced by enhancements to operator risk profiling systems.

**Implementation, transition and evaluation arrangements**

To ensure continuity for existing accredited operators, the regulator will adapt existing ACOs such that they can be applied as part of the new regulatory environment.

To deliver on the overall objectives of the new legislative environment, the regulator will also be expected to develop a limited suite of other ACOs, ready for commencement of the new law. Evaluation and consultation on new proposed ACOs will be carried out by the NHVR as part of the next RIS process.

**Recommendation 2 – Ministerial approvals**

That, as part of establishing an appropriate balance of regulatory discretion and ministerial oversight, the future law establish new arrangements for ministerial approvals, such that:

2a In recognition of restructured arrangements for alternative compliance and accreditation, ministers will no longer be required to approve accreditation business rules.

2b As part of enhancements to accreditation, ministers will be empowered to approve a national audit standard to be applied as part of the National Heavy Vehicle Accreditation Scheme, as well as other schemes and third parties. A national audit

standard audit certificate will be automatically admissible as evidence in primary duty proceedings.

2c The law clarify that consultation requirements apply to the development of ministerially approved guidelines.

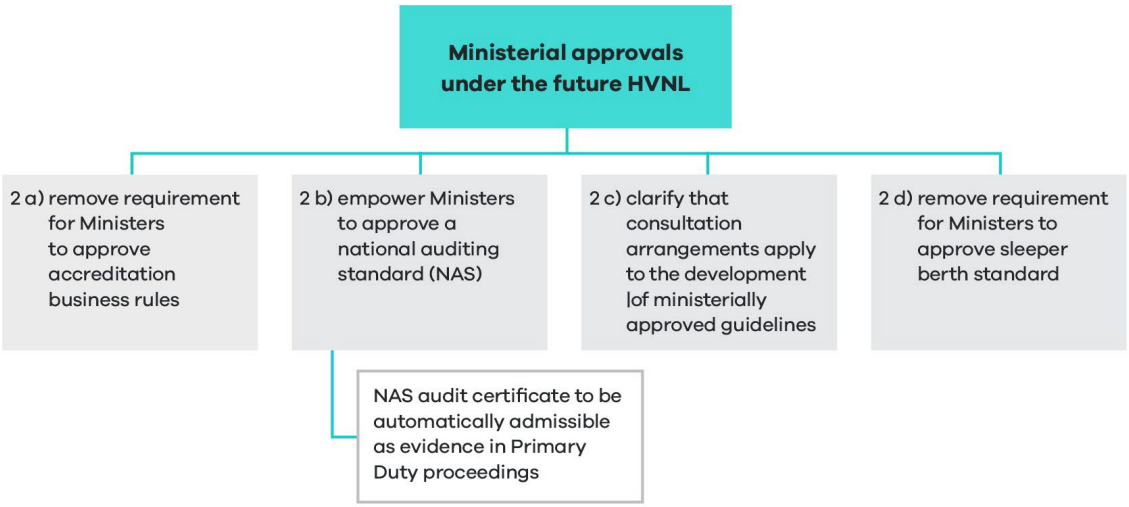
2d Ministers will no longer be required to approve a sleeper berth standard, noting this may be prescribed as a heavy vehicle obligation in the future.

**What is proposed?**

Recognising that the proposed regulatory framework includes a more flexible safety assurance environment, the future law will also include revised approval arrangements for responsible ministers[39] to ensure that increased regulatory discretion is balanced with appropriate ministerial oversight.

Revised arrangements for ministerial approvals powers are comprised of four main elements (see Figure 12).

**Figure 12. Overview of recommendation 2**




2a Remove ministerial approval power for accreditation business rules and standards

In September 2022, ITMM agreed to progress arrangements for accreditation business rules to be revised to allow the regulator to develop and approve accreditation business rules.[40]

In their current form the NHVAS business rules serve a number of different purposes. They set out:

- operational detail of applying for and maintaining accreditation

[39] Currently set out under Part 12.1 of the law.

[40] Refer to 9.3b of the package of propositions recommended by Ken Kanofski.

- conditions that apply to all NHVAS operators
- module-specific conditions
- module-based standards and audit framework to be satisfied in order to become accredited
- information on NHVAS sanctions
- review arrangements
- auditor compliance rules.

In the context of how ACOs will be developed and issued under the new scheme, it is no longer necessary for the HVNL to include a mechanism for approving accreditation business rules and standards.

This reform speaks to the machinations of the new accreditation scheme, and in particular how the safety management system standards, ACOs and accreditation modules will link together (detailed under recommendations 6, 7 and 8). In effect, matters currently covered by accreditation business rules will be redistributed into a more efficient regulatory environment. Table 10 provides an overview of how accreditation business rules will be adapted into the new regulatory environment.

**Table 10. Adaptation of business rules into new regulatory environment**

| Current NHVAS business rules | Future regulatory environment |
|---|---|
| Operational detail | Guidance material, developed and maintained by the regulator |
| Conditions common to all NHVAS operators | Likely set out in regulation |
| Module-specific conditions | Likely applied by the regulator as part of an ACO power |
| Module-based standards | Likely set out in regulation, with added regulator power to set additional standards |
| Audit framework | Provided under the national audit standard, to be approved by ministers |
| Information on sanctions | Guidance material, designed to support understanding of sanctions under law |
| Review arrangements | Guidance material, designed to support understanding of review arrangements under law |
| Auditor compliance rules | National audit standard |

To implement the above, the law needs to:

- allow regulations to establish risk area standards for modules and conditions
- allow the regulator to establish module standards and apply additional conditions
- allow ministers to approve a NAS (discussed below under section 5.3 recommendation 8)

2b Empower ministers to approve a national audit standard

The future law will allow ministers to approve a NAS developed by the regulator in consultation with jurisdictions, industry and interested parties. This will replace the existing approval power which relates to a class of auditors (section 654(1)(c) of the HVNL).

This power will be constructed broadly and will not prescribe detailed requirements as to what the NAS will contain. That said, the purpose of this approval mechanism and the standard is to:

- Support a more robust auditing system for the new NHVAS.
- Set standards for the conduct of audits for non-HVNL accreditation schemes that wish to enter into mutual alignment arrangements with the NHVR.
- Set standards of conduct for the conduct of audits for 'non-certification', third-party audits intended to help establish compliance with the primary duty [41].
- Provide assurance (although not a 100 per cent guarantee) to governments and the community that accredited operators have implemented an effective SMS.

To achieve this, the NAS will be designed around the key elements of a safety management system.

*Developing the standard*

The regulator will develop the national audit standard, in collaboration and consultation with jurisdictions and industry. The regulator will be required to consult with:

- governments and government bodies
- industry representatives
- other interested people, bodies and organisations.

*Content of the standard*

The law will not prescribe the content of the audit standard. The regulator will, however, be required to develop the standard in line with the overall objectives of ensuring the standard is sufficiently robust; can be applied to non-accreditation audits; and provide a pathway for mutual alignment with non-HVNL schemes.

While the regulator will develop the standard to support a robust auditing system for the new NHVAS, the standard will be drafted agnostically, such that it can be applied by both non-

[41] It should be noted that the primary duty requires a practical, proactive and preventative approach to managing safety. An audit in isolation cannot be used to establish compliance with the primary duty, however it may feature as part of a suite of measures used by a chain of responsibility party to manage their primary duty obligations.

HVNL accreditation schemes, and third parties seeking to carry out non-accreditation audits relating to the primary duty.

It is anticipated that the regulator will develop additional, NHVAS-specific audit guidance for the NHVAS auditing regime. This material will not be subject to ministerial approval.

*National audit standard audit certificate to be automatically admissible as evidence relevant to considering breach of primary duty*

The law will establish a complementary measure to send a signal to accreditation providers and third parties that a recent NAS audit carried out is an indicator (although not a guarantee) of compliance with the primary duty (section 26C of the HVNL).

The law will state that an audit certificate issued following a NAS audit is admissible as evidence, and relevant to an assessment of whether an operator has done what is reasonably practicable to manage the safety of heavy vehicle transport activities under the primary duty. This provision will be similar to section 632A of the current HVNL, which relates to the use of codes of practice in proceedings.

This proposal is not intended to limit or prevent other evidence from being adduced during proceedings for prosecution of the primary duty.

This proposal is also not intended to impose an obligation on the court as to what it must consider in assessing a potential breach of the primary duty, or the weight it must give to this evidence.

The law will not impose any requirement about the currency of the audit certificate. However, it stands to reason that an old audit certificate would not carry weight with respect to an assessment of whether an operator is currently managing primary duty obligations. If appropriate[42] the law or explanatory memoranda may confirm that as part of assessing the weight to be given to an audit certificate, the court may take into account the currency of the certificate.

It is worth noting that if such a provision were not included in the HVNL, evidence of such an audit would not be prevented from being admitted. The intention of including such a provision is to send a signal that an audit carried out under the national audit standard should be regarded as credible evidence (although not holistic evidence) that a party has taken steps to do what is reasonably practicable to manage safety.

This does not mean that a NAS audit will amount to deemed compliance with the primary duty. In fact, the primary duty requires proactive and preventative safety risk management. An audit alone is unlikely to meet the standard of so far as is reasonably practicable. It is, however, one factor to be considered as part of an overall assessment of whether the primary duty has been met.

**Figure 13.**

**Relationship between the primary duty, safety management systems, accreditation, and the national audit standard**

[42] This will depend on advice from Parliamentary Counsel's Committee.

Appendix G provides a diagrammatic representation of the relationship between the the primary duty, an SMS, accreditation and the NAS. This relationship is critical for understanding the role of the NAS in the context of the overarching regulatory framework. The underpinning logic of this relationship is as follows:

1. The primary duty requires operators, as chain of responsibility parties, to manage the safety of heavy vehicle transport activities, so far as is reasonably practicable. It also requires chain of responsibility parties to eliminate or at least minimise public risks.

2. 'Transport activities' is defined under the law to capture a non-exhaustive range of risks. 'Public risk' is defined under the law to mean a safety risk or a risk of damage to road infrastructure. 'Safety risk' is also defined to mean a risk to public safety or of harm to the environment.

3. An SMS may be defined as 'a systematic approach to managing safety, including the necessary organisational structures, accountabilities, policies and procedures, which is integrated throughout a business wherever possible.' By definition, an SMS should contemplate and respond to the broad range of risks captured by the HVNL definitions of transport activities, public risk and safety risk.

4. While the primary duty does not specifically require an SMS, if an operator can demonstrate implementation of an effective SMS, this provides a strong indicator that they are meeting their primary duty obligations – so far as is reasonably practicable.

5. The NAS will be designed to audit an operator's SMS in the context of accreditation, both under the enhanced NHVAS, and other SMS-based schemes. Here, the NAS should deliver increased trust that accredited operators are also meeting their primary duty obligations.

6. The NAS will also be designed to be applied by non-accredited operators and third parties. Here also, the NAS should deliver increased trust that the operator is complying with the primary duty.

7. As detailed above, the law will send a signal around the reliability of a NAS audit by allowing a NAS audit certificate to be automatically admitted as evidence of partial compliance with the primary duty.

2c Revise arrangements for ministerially approved guidelines

The future law will clarify that before ministers can approve a guideline for the purposes of section 653 of the HVNL,[43] it must first be consulted on. To support this change, the law will

[43] Or the equivalent provision for the future law.

specify that the regulator, jurisdictional agencies, police, industry and any other interested party must be consulted.

2d Remove ministerial power to approve sleeper berth standard

Section 654(a) of the current HVNL allows responsible ministers to approve a standard for sleeper berths.

In September 2022, ministers approved that work progress on removing this approval power from the HVNL, and that, should any future standards regarding sleeper berths be developed, these be developed as vehicle standards and prescribed in regulation.[44]

This RIS does not consider any substantive proposal for the development of sleeper berth regulations. However, this element of proposed regulatory framework will restructure the law to facilitate future work in this area. Currently there is no specific proposal to develop sleeper birth regulations, however the NTC will request input from stakeholders on whether any such proposal should be considered during a subsequent RIS process.

**What are the objectives?**

Reforms to ministerial approval arrangements have been designed to ensure the new safety assurance environment is overlayed with appropriate ministerial oversight:

- Sleeper berth proposal: the objective here is to enable the development of standards to apply to sleeper berths as part of the overall vehicle standards framework, noting that these are prescribed in regulation. This RIS does not consider any substantive proposal to develop sleeper berth standards but sets in motion a pathway for this to be considered as part of a subsequent RIS process.
- Business rules proposal: this reflects other broader reforms relating to the issuing of ACOs and the creation of modules and module standards in instruments which grant an ACO.
- Guidelines proposal: reforms in this area respond to stakeholder concerns that under the current law many guidelines have not been developed, notwithstanding the fact that exemption powers require the regulator to have regard to them.
- National audit standard proposal: The proposal to allow ministers to approve a national audit standard has been developed in line with overarching objectives to:
  - support more robust auditing under the NHVAS
  - support a pathway towards mutual alignment of HVNL and non-HVNL accreditation schemes
  - set a standard for auditing operators to assess whether they are meeting primary duty obligations.

**How will the law change?**

Current law (the base case)

Sections 653 and 654 of the HVNL allow responsible ministers to approve guidelines about a select group of matters (see appendix E, as well as a standard for sleeper berths,

[44] See 9.3e of the Overall Reform Propositions recommended by Ken Kanofski, agreed to by ITMM as the ITMM reform package.

accreditation standards and business rules, and a class of auditors for the purpose of chapter 8 of the HVNL.

These approvals must be gazetted, and the regulator is required to publish these approvals on its website.

The law also allows the NHVR Board to approve minor and insubstantial amendments to existing ministerial approvals.

In terms of regulator guidelines, currently the HVNL sets out 19 provisions that require the regulator to have regard to an approved guideline in exercising its powers:

- PBS approvals (sections 22 and 23)
- vehicle standards exemptions (sections 62 and 70)
- mass and dimension exemptions (sections 118 and 124)
- Class 2 authorisations (sections 139 and 145)
- road manager consent (sections 156A, 174 and 178)
- work and rest hour exemptions (sections 267 and 275)
- electronic recording system approvals (section 343)
- record keeper exemptions (sections 378 and 384)
- grant of accreditation (section 461).

Future law

The future HVNL will:

- Remove the requirement for ministers to approve a sleeper berth standard.
- Remove the requirement for ministers to approve accreditation standards and business rules.
- Retain the guideline mechanism, including the matters about which a guideline may be made, but also clarify arrangements around how a guideline must be developed.
- Allow ministers to approve a national audit standard, replacing the power to approve a class of auditors.
- Provide that a national audit standard audit may be considered by a court as part of an assessment of whether the primary duty has been met.

**What are the impacts?**

An enabling environment

This proposed reform sets out enabling provisions for what responsible ministers will be able to approve under the future law. This section does not set out any substantive proposals around guidelines or standards to be developed, and therefore may be characterised as having no direct regulatory impact.

Potential impacts

Reforms to proposed arrangements around ministerial approvals can be expected to deliver longer term improvements across assessment criteria areas relating to road safety, operational efficiency and productivity, and flexibility and responsiveness.

Noting the enabling characteristics of this set of policy recommendations, this analysis has not identified negative impacts.

Potential impacts in the area of regulatory burden for industry, costs for government, and asset and environmental protection impacts, have been assessed as neutral or uncertain.

Potential improvements

Potential improvements around removing the ministerial approval requirement for accreditation business rules have been discussed earlier in this section.

By establishing a mechanism for a national audit standard, the law will enable the regulator to:

- Implement a more robust auditing system for the NHVAS, leading to safety improvements for accredited operators (assessment criteria 1d).
- Develop mutual alignment arrangements for non-HVNL operators, reducing the administrative burden and overall cost for operators participating in multiple accreditation schemes (assessment criteria 3a and 3c).

An auditing standard that is able to be relied upon by third parties as part of meeting primary duty obligations also has the potential to drive down instances of duplicative auditing by consignors and consignees. This in turn will result in improvements in operational efficiency for operators, and other participants in the supply chain (assessment criteria 2d and 3a).

Clarified arrangements for development of ministerially approved guidelines are likely to create a stronger mandate for the development of guidelines which inform the exercise of exemption powers. While these clarified arrangements do not guarantee that guidelines will be developed, if they are developed this will likely provide greater assurance that HVNL exemption powers are exercised appropriately and in line community expectations (assessment criteria 1d).

The assessment considers impacts at a national level. The costs and benefits will be broadly similar across different states and territories. The specific costs and benefits in each state or territory will depend in part on the nature of the heavy vehicle fleet and its use in each state or territory.

**Implementation, transition and evaluation arrangements**

Existing ministerially approved guidelines will continue to be used under the future HVNL.

Existing NHVAS business rules will be adapted to the future HVNL, ready for commencement of the new accreditation scheme.

The regulator will develop the new national audit standard, ready for commencement of the future HVNL.

**Recommendation 3 – Ministerial directions**

To enable ministers to appropriately direct the regulator, and without impinging on regulatory autonomy, the future law will establish new ministerial direction arrangements, such that:

3a Ministers (collectively) will be empowered to give written directions about the issuing of alternative compliance options.

3b Ministers (individually or collectively) may direct the regulator to exercise a certain function or power in the case of a serious public risk, and when in the public interest to do so.

3c Ministers (individually or collectively) may direct the regulator to investigate or provide advice or information about a matter relating to a public risk.

3d Ministers (collectively) may direct the regulator to cancel a code of practice.

3e Ministers will retain the existing power (collectively) to direct the regulator about policies to be applied.

**What is proposed?**

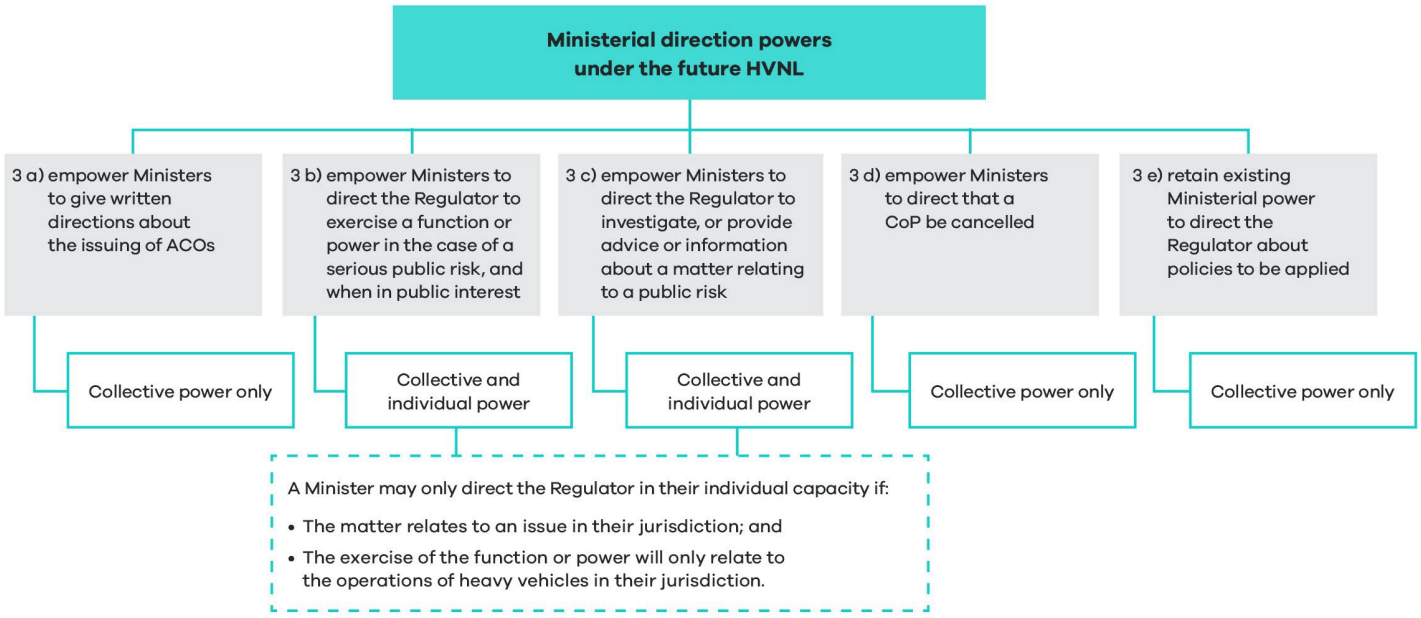
Overview

Recognising that the new regulatory framework proposes a more flexible safety assurance environment, the future law will also include revised arrangements for responsible ministers[45] to ensure that increased regulatory discretion is balanced with appropriate ministerial oversight.

Revised arrangements for ministerial direction powers are comprised of five main elements (see Figure 14).

[45] Currently set out under Part 12.1 of the law.

**Figure 14. Overview of recommendation 3**




<u>3a Allow minsters to give directions relating to the issuing or granting of alternative compliance options for accredited operators</u>

The future HVNL will empower ministers to issue written directions about granting ACOs. This provision is intended to give ministers an additional mechanism for setting limits around the use of the ACO power, noting this power will also be constrained by legislative parameters (in regulation), and a safety standard threshold (as discussed under recommendation 1b.

The law will be clear that the regulator must follow a ministerial direction with respect to the granting of an ACO. This is a stricter obligation than simply being required to have regard to a guideline, as is currently the case in relation to exemption powers under the HVNL.

ACO ministerial directions may work in a similar way to ministerially approved guidelines and exemption powers. The power will be constructed broadly to allow for directions about a number of matters, but could cover matters such as:

- The matters the regulator must consider when assessing the safety standard threshold of an ACO.
- That an ACO not be issued in breach of certain limits (for example, work and rest hours, mass and dimension).[46]
- That a certain data and technology application be specified as a condition of an ACO (for example, ministers may specify that a greater-than-12-hour driving limit must not be granted unless an operator implements electronic work diaries).

[46] Regulations will also specify outer limits for ACOs, but this ministerial direction option provides an additional mechanism for the specifying of outer limits.

Written ministerial directions for ACOs will be designed to constrain the way the regulator exercises its ACO power and therefore apply before an ACO is granted.

Once an ACO is granted, ministers will still be empowered to direct that the ACO be suspended or revoked, but only if it emerges that the ACO poses a serious public risk and that it is in the public interest to do so (using the power proposed at 3b below).

3b Ministers' power to direct the regulator to take action in circumstances of a serious public risk and when it is in the public interest

The future law will empower responsible ministers to give directions in particular circumstances, namely:

- where there is a serious 'public risk' (as defined in section 5 of the HVNL)
- where ministers consider it is in the public interest to give such a direction.

The power will enable ministers to direct the regulator to do any of the following:[47]

- perform a particular function or exercise a particular power
- perform a function or exercise a power in a manner that is subject to conditions that ministers consider appropriate
- not perform a function or exercise a particular power.

This power will include three limitations, including that the direction should not concern any one of the following:

- a particular person
- a particular heavy vehicle; or
- a particular application or proceeding.

The power will, however, specify one exception to the three limitations, relating to the cancellation of an ACO for a particular operator, or their accreditation. In effect, this will allow ministers to respond swiftly following serious safety incidents involving particular accredited operators.

This power will also allow ministers to direct that a module-based ACO be revoked. This power could be used if ministers were not satisfied that an adequate safety case assessment was carried out before issuing an ACO.

This power will be given to ministers to exercise collectively, or in their individual capacity. However, the ability of a minister to exercise this power individually will be constrained as follows:

- An individual minister will not be able to direct the regulator to perform functions or exercise powers in other jurisdictions.
- An individual minister will may only direct the regulator to perform a function or exercise a power in relation to the operations of heavy vehicles in their jurisdiction.

[47] A similar power is provided to Ministers under section 22 of the *Road Management Act 2004* (VIC).

The regulator will be required to publish a copy of the ministerial direction in its annual report with an explanation of how it complied with the direction.

3c Ministers (individually or collectively) may direct the regulator to investigate, provide advice or information about a matter relating to a public risk

The future law will empower ministers to direct the NHVR to investigate, or provide advice or information about, a matter relating to a public risk. This provision will be similar in form and serve a similar purpose to section 41 of the Rail Safety National Law. Under that provision, ministers are not empowered to:

- Direct the regulator as to how to conduct an investigation.
- Direct the regulator as to which persons the regulator may request, direct, or provide assistance to in investigating a rail safety matter.
- Direct about any outcome of any such investigation
- Direct the regulator to stop any such investigation.

The power proposed is slightly broader than section 41 of the Rail Safety National Law in that the direction may relate to a 'public risk' as opposed to 'a safety matter'. Public risk is defined under the HVNL to cover 'a safety risk', or a 'risk of damage to road infrastructure' (section 5 of the HVNL).

This power will be given to ministers to exercise collectively, or in their individual capacity. However, a minister will only be empowered to give a direction in their individual capacity if the 'particular safety matter' relates to a public risk in their own jurisdiction.[48] The direction must also not result in inconsistent compliance arrangements for a group of operators (that is, more than one operator).[49]

The regulator will be required to publish a copy of the direction in its annual report with an explanation around how it complied with the direction.

3d Empower ministers to direct the regulator to amend or cancel a code of practice, in certain circumstances

The future law will empower ministers to direct the regulator to amend or cancel a CoP, in circumstances where either:

- the CoP creates standards of practice that are unreasonable or impracticable
- the CoP is otherwise not supporting the object of the law.

The future law will also empower ministers to direct the regulator to amend a CoP, in the same above circumstances. However, the regulator will need to consult on any amendments that are not minor or insubstantial.

As discussed under recommendation 4, CoPs will not be mandatory under the future law. Parties will be free to implement equivalent or better risk management practices than those laid out in a CoP. Codes of practice do however have the effect of setting minimum

[48] This will not prevent the regulator from undertaking further investigations in the event that a safety matter identified in one jurisdiction, becomes a multi-jurisdictional matter.

[49] This unlikely to occur, noting that the power is about investigating and providing information about particular safety matters, not changing compliance arrangements.

standards of practice, because the law states that a court may have regard to a CoP as evidence of what is 'reasonably practicable' to comply with a duty. Therefore, for a CoP to create 'standards of practice that are unreasonable and impracticable', it would need to be shown that the CoP 'sets the bar too high' and that no alternative means of risk management can be regarded as equal to of equivalent to the CoP.

3e Retain ministers' current power to give directions about policies, and require the regulator to report back on this as part of their annual report

Section 651 of the HVNL will be preserved under the future law,[50] meaning that ministers will be able to give directions about the application of policies. The same exclusions provided under section 651(2) of the HVNL will apply, meaning the power will not extend to directions about a particular person, a particular heavy vehicle, or a particular application or proceeding.

In addition to the existing requirement for the regulator to publish a copy of a section 651 direction in the annual report, the regulator will also be required to supplement this with an explanation of how it has complied with the direction.

**What are the objectives?**

Ensure the new safety assurance environment is overlayed with appropriate ministerial oversight

Revised arrangements for ministerial direction powers have been designed to reflect and complement the new safety assurance environment which gives the regulator increased discretion to grant ACOs.

In this context it is necessary that ministers have avenues to set clear parameters for the granting of ACOs, noting that the regulator's power is already constrained by other factors, including legal permissibility arrangements and the safety standard threshold.

Ensure that ministers can respond adequately in the event of significant or systemic risks to safety

During the Services Transition Assurance Review, jurisdiction representatives expressed concern that the transition of services from state-based authorities to the regulator has removed the ability of individual responsible ministers to direct regulatory action, in particular when major incidents or suspicion of system risks occur.

Noting that ministers are generally responsible for their road network and road safety, these ministers need assurance that the regulator will respond adequately to significant events or systemic risks. However, this should be balanced against the principle of regulatory autonomy and reserved for the most serious of circumstances.

**How will the law change?**

Current law (the base case)

Section 651 of the HVNL allows responsible ministers to give directions to the regulator about the application of policies in exercising its functions under the HVNL. The law does not

[50] Noting that Parliamentary Counsel's Committee may choose to redraft this provision.

specially empower ministers to give directions about performing certain functions or investigating certain events. This is distinct from other transport regulatory environments which allow ministers to give directions about the performance of functions and exercise of powers:

- 'in relation to the performance of functions and exercise of powers' (section 14 of the *Australian Communications and Media Authority Act 2005* (CTH))
- 'to investigate, or provide advice or information about, a safety matter relating to the particular jurisdiction' (section 41 of the Rail Safety National Law)
- 'perform a particular function or exercise a power' (section 22 of the *Road Management Act 2004* (VIC)).

Future law

The future law will establish a new ministerial direction power, or potentially several powers[51] to enable ministers to:

- make directions about policies to be applied
- make directions to investigate or provide advice or information about a safety matter
- make directions about the performance of functions and exercise of powers, but only in the advent of a serious safety risk
- make directions about the issuing of ACOs.

**What are the impacts?**

The expanded ministerial direction powers will serve to provide assurances to ministers and the community that the regulator will exercise its functions within the parameters of ministers' risk appetite.

The assessment considers impacts at a national level. The costs and benefits will be broadly similar across different states and territories. The specific costs and benefits in each state or territory will depend in part on the nature of the heavy vehicle fleet and its use in each state or territory.

**Implementation and transition and evaluations arrangements**

New ministerial direction powers will be available to ministers upon commencement of the law.

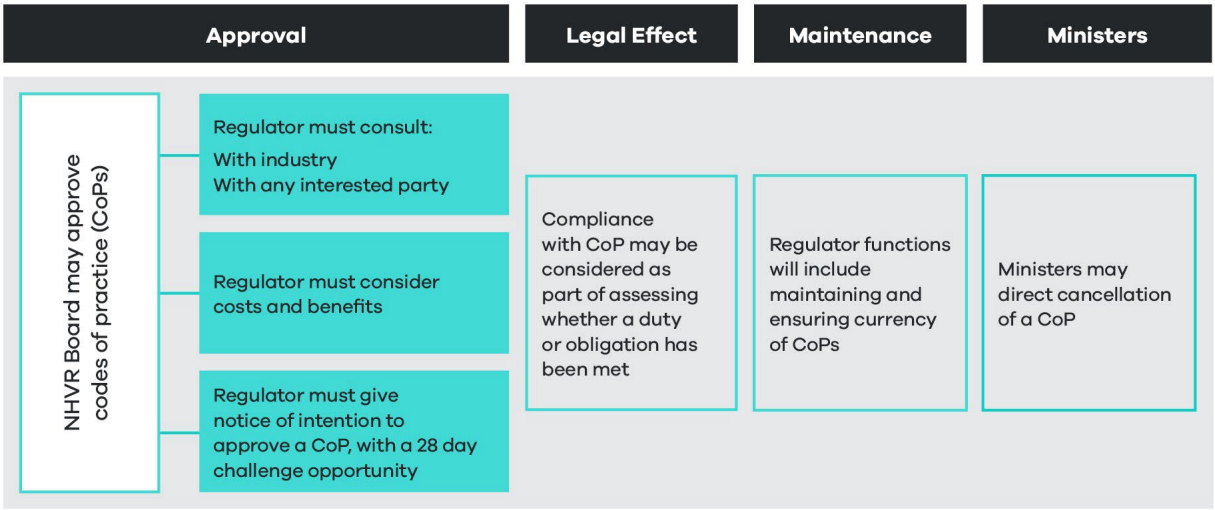
**Recommendation 4 – Codes of practice**

That the future law establish new arrangements for codes of practice, replacing the existing industry code of practice mechanism and allowing the regulator to initiate, develop and approve codes of practice.

**What is proposed?**

[51] Parliamentary Counsel's Committee will determine the most appropriate construction of powers.

**Figure 15. Overview of recommendation 4**




This recommendation has been designed to implement propositions 9.3a and 9.3g of the ITMM reform package. It also builds on recommendations previously agreed to by ministers in December 2021.

A code of practice may be generally defined as a document providing practical guidance on how to comply with legal obligations, often setting out best practice methods for managing safety in a particular industry or area of work.

CoPs are utilised in a variety of regulatory settings, particularly where primary legislation requires compliance with broad-based duties but does not specify particular requirements for managing these duties.

CoPs will play a more prominent role in the future HVNL. As agreed by ministers, this will bring the HVNL into closer alignment with the model WHS laws, where CoPs form one feature of a performance-based regulatory environment geared towards supporting compliance with broad-base duties.

A new CoP mechanism will replace the existing industry CoP mechanism, however the law will require the regulator to consult with industry as part of developing any CoP, and also provide industry with opportunity to challenge a CoP.

The law will empower the NHVR Board to approve CoPs, but only when:

- satisfied that the specified consultation process has been followed
- satisfied that the regulator has adequately assessed the costs and benefits of the CoP
- a notice of intention to approve a CoP has been issued, with a 28-day challenge opportunity.

Initiating a code of practice

The future law will allow for the development of a code of practice to be initiated in three main circumstances – see Table 11.

**Table 11. Circumstances supported by law for initiating a code of practice**

| 1. Regulator identifies need | 2. Industry proposes development of CoP[52] | 3. Ministers request regulator to develop CoP |
|---|---|---|
| The regulator will be able to initiate development of a CoP of its own volition. The regulator may do this to:<br>▪ support compliance<br>▪ elevate the importance of a particular area of risk management to establish minimum expectations around achieving compliance<br>▪ provide general information and managing particular hazards, risks and control measures. | The law will allow an industry party to propose the development of a CoP. The regulator will need to consider the proposal and act on it in good faith, by either:<br>▪ Developing the CoP in a timely fashion.<br>▪ Providing reasons why the proposed CoP is not necessary or beneficial, including any alternative course of action to help solve industry concerns.[53] | The law will allow ministers to request the regulator to commence the process of developing a CoP.<br><br>The regulator will be required to report back to ministers on the progress of the development of the CoP, including any consultation feedback that may prevent the regulator finalising a CoP. |

The law may not need to specifically empower ministers to request the regulator to develop a CoP, and the ability of ministers to do this will not be constructed as a 'direction' power. While ministers may make this request, a CoP may not be able to proceed due to consultation feedback or cost-benefit analysis findings.

Development, consultation, minor amendments

The law will specifically charge the regulator with responsibility for developing CoPs.[54]

The law will specify that CoPs can only be approved, revoked or varied if a process of consultation is followed. Participating jurisdictions, industry representatives, and all interested people, bodies and organisations (including other government agencies, relevant road managers and police) will need to be consulted as part of this process, and the regulator will also be required to consider any comments provided as part of consultation.

The law will specify a minimum 28-day timeframe be provided for comment on the proposed CoP.[55]

[52] There is a risk that the regulator will be overwhelmed with industry proposals for CoPs, noting the law will also impose an obligation on the regulator to consider any proposal and respond. To avoid this the regulator may be able to develop an approved form requiring a clear business and safety case for the CoP.

[53] A decision not to develop a CoP proposed by Industry will not constitute a reviewable decision under the HVNL.

[54] This may be reflected in the functions of the regulator.

[55] This is consistent with times frames proposed in other similar regulatory contexts, for example the Aviation Regulations require the Civil Aviation Services Authority to provide at least 28 days for comment on a proposed standard.

The law will provide that amendments can be made without consultation if, and only if, the amendment is minor, editorial and does not alter the meaning of the CoP.

Approval, revocation and challenge

The future law will:

- Empower the NHVR Board to approve codes of practice, but only:
  - once satisfied that the specified consultation process has been followed
  - once satisfied that an adequate cost-benefit analysis has been carried out
  - when a notice of intention to approve a CoP has been issued, with a 28-day challenge opportunity.

The law will state that a party may challenge the implementation of a CoP if they are not satisfied that a proper consultation process has been followed. The NHVR Board will then be required to consider the challenge as part of determining whether it is satisfied that the consultation process has been followed.

The law will also empower the NHVR Board to revoke a CoP. The board's power to do this will be dependent upon the same process of consultation, notice of intention to revoke and opportunity to challenge.

Legal effect and evidentiary value

Codes of practice will not be mandatory under the future HVNL. CoPs do, however, have the effect of establishing minimum expectations of practice and therefore can have a regulatory impact.[56]

The current HVNL states that a registered industry CoP is admissible as evidence of whether or not a duty or obligation under the HVNL has been complied with (section 632A(2) of the HVNL), and that the court may have regard to the CoP as evidence of what is known about a hazard or risk, risk assessment or risk control. It may also rely on the CoP to determine what is reasonably practicable, which is relevant to an assessment of whether the Primary Duty has been breached. This model is also used in the model WHS laws (section 275) and the Rail Safety National Law (section 250). It is intended to retain these principles in the new CoP mechanism.

To be clear, CoPs under the future HVNL will not be used as a deemed-to-comply mechanism, although in most instances compliance with a CoP will amount to strong evidence of that a duty has been met.

Maintaining codes of practice

The law will state that as part of the regulator's function to develop CoPs comes an added obligation to maintain CoPs. This should encourage the regulator to be proactive about proposing to revoke CoPs when they no longer serve their intended purpose or where they impose an unnecessary regulatory burden on regulated parties.

Ministers' ability to direct that a code of practice be cancelled

[56] This means that a code of practice may be the subject of a regulatory impact assessment process, following rules and guidelines set out by the Office of Impact Analysis.

As set out under proposition 3d, the ITMM reform package recommended that ministers should have the ability to cancel a CoP. Noting that CoPs can have a regulatory impact, it is proposed that this should only happen in particular circumstances, for example where either:

- the CoP creates standards of practice that are unreasonable or impracticable
- the CoP is otherwise not supporting the object of the law.

**What are the objectives?**

During the HVNL Review stakeholders raised that the current industry CoP process under the HVNL is complex and inefficient.

As at end-April 2023, only three CoPs are registered:

- The Master Register Code of Practice (Master Code) was developed by the Australian Trucking Association and the Australian Logistics Council and was registered on 23 November 2018.
- The Tasmanian Agricultural and Horticultural Registered Industry Code of Practice was developed by the Tasmanian Farmers & Graziers Association on 30 June 2022.
- The Managing Effluent in the Livestock Supply Chain Registered Industry Code of Practice was developed by the Australian Livestock and Rural Transporters Association on 23 December 2022.

In relation to the Master Code, smaller operators raised that it was developed with input from large operators, with limited opportunity or consideration of simpler operations.

The HVNL is also deficient in that it does not allow the regulator to initiate the development of a CoP when it identifies opportunities to:

- Develop a CoP to support parties to comply with the primary duty, which is drafted broadly to capture new and emerging risks.
- Elevate the importance of a particular risk by highlighting best practice methods for managing certain risks.
- Provide sector- or party-specific guidance, for example to drivers.

As discussed in chapter 3, the HVNL also fails to provide a clear and coherent compliance regime that is easy for parties to understand.

Codes of practice can be used to offer sector-specific tailored guidance on how to manage risk. They can support drivers and chain of responsibility parties to comply with the HVNL by setting out risk management methods appropriate to specific operating tasks.

With this in mind, the new CoP mechanism has been designed to:

- Support the regulator in delivering a risk-based approach to managing compliance for a diverse range of operators and parties.
- Ensure the regulator is able to develop CoPs responsively and adaptively.
- Ensure that industry still has a role in the CoP process.

**How will the law change?**

<u>Current law (the base case)</u>

Part 13.2 of the HVNL allows industry parties to develop codes of practice in line with guidelines developed by the NHVR. The NHVR may then register an industry CoP for the purposes of the law.

Section 632A of the HVNL provides that a CoP is admissible as evidence of whether or not a duty or obligation has been complied with. Section 632A(3) sets out that a court may have regard to a CoP as part of assessing what would have been reasonably practicable as part of complying with a duty.

The law does not empower the NHVR or any other party to develop a CoP of its own volition. This differs from other transport and safety regulatory environments, for example, rail and work health and safety, which allow regulators and others to develop CoPs which are then approved by ministers.

Future law

The future law will specifically empower the NHVR Board to approve codes of practice.

If necessary, the law may also clarify that it is part of the NHVR's role to develop CoPs.

The law will specify that a CoP may not be approved unless:

- The required consultation process has been followed.
- An adequate cost-benefit analysis has been carried out.
- A notice of intention to approve a CoP has been issued, with a 28-day challenge opportunity.

The law will replicate section 632A of the current HVNL, in effect applying the same legal and evidentiary standard.

**What are the impacts?**

An enabling environment

While the proposed reform will enable the NHVR to develop codes of practice in the future, this RIS does not consider the regulatory impact of any specific CoP. As such, this reform element may be described as having no direct regulatory impact.

Potential impacts

While noting this proposal does not involve developing a specific CoP, some longer-term improvements of the new CoP can be projected across assessment criteria categories, particularly in the areas of road safety, operational efficiency, and flexibility and responsiveness, when compared to the base case.

Potential improvements

A key area of difference from the base case relates to the regulator's ability to initiate the development of CoPs in response to emerging safety risks, or where it identifies an area where industry would benefit from specific guidance on how to manage obligations.

Codes of practice have potential to support a more coherent and clear compliance environment, where parties receive sector-specific and potentially party-specific guidance on how to manage obligations under the law. For example, the regulator may develop:

- A CoP providing guidance to drivers on how to manage fatigue as part of their general duty to avoid driving while fatigued (section 228 of the HVNL).[57]
- A CoP directing particular attention to the issue of managing driver competency.
- A CoP providing specific risk management advice to specific sectors such as waste management, mining or food industry transport.

Both of these changes may indirectly make obligations clearer and easier to understand and drive an increased rate of compliance (assessment criteria 3b).

When compared to the base case, the new approach to developing CoPs is likely to reduce operational and administrative costs for both industry and government (assessment criteria 3a, 4a, and 4b). It is widely agreed that the industry CoP process has been cumbersome, time consuming and ineffective. While the regulator will be required to consult on any new proposed CoP, this is likely to be a more seamless process than the base case which relies on an industry-led consultation process and a regulator registration procedure.

Potential negative impacts

It is plausible that the regulator may have some minimal increased administrative costs associated with maintaining and updating CoPs. The scale of this impact will depend on the extent to which the regulator utilises this power, but costs associated with this are unlikely to exceed existing costs around issuing and maintaining regulatory advice, and are also likely to be offset by benefits around reduced administration for industry CoPs (assessment criteria 4b).

**Implementation, transition and evaluation arrangements**

Existing Industry codes of practice will be reviewed by the regulator and transitioned to the new environment. Any changes will be subject to consultation and challenge, following the process laid out above.

The assessment considers impacts at a national level. The costs and benefits will be broadly similar across different states and territories. The specific costs and benefits in each state or territory will depend in part on the nature of the heavy vehicle fleet and its use in each state or territory.

[57] It should be noted that in this context a CoP would not have the same evidential value as a CoP that is considered as part of assessing what is “reasonable and practicable” in the context of the primary duty.

**Recommendation 5 – Improvement notices**

That the future law revise arrangements for improvement notices to allow improvement notice and prosecution processes to run concurrently.

**What is proposed?**

The future law will retain existing improvement notice provisions but remove section 573(3). This will allow improvement notice and prosecution processes to run concurrently. The Regulator will be able to:

- commence proceedings against a party, even where an improvement notice has been issued for the same offence; and
- issue an improvement notice, even while prosecution proceedings are underway for the same offence

Consistent with the WHS Model Law, the future HVNL will also clarify that as part of an improvement notice a party may be required to implement a code of practice.

**What are the objectives?**

During the HVNL Review the regulator raised that section 573(3) of the HVNL creates perverse policy outcomes for both industry parties and government.

Improvement notices and prosecution are used as complementary regulatory tools in a variety of regulatory contexts. Unlike section 573(3) of the HVNL, section 191 of the model WHS laws does not prevent offence proceedings while an improvement notice is on foot. Section 178 of the *Commercial Passenger Vehicles Act 2017* (VIC) goes further and specifically states that the issue of an improvement notice does not prevent offence proceedings. These arrangements enable an ongoing contravention to be immediately remedied while an investigation occurs and, if appropriate, a prosecution is finalised.

Part of the policy rationale for section 573(3) of the HVNL was to ensure that parties are afforded an opportunity to comply with an improvement notice and rectify a breach before being proceeded against. In practice, the regulator has raised that if a prosecution is on foot but a safety risk needs to be remedied for the same contravention, the regulator is forced to employ tools further up the enforcement pyramid, including:

- issuing a prohibition notice
- an enforceable undertaking may be entered into
- the court may need to issue a supervisory intervention order.

These mechanisms are cumbersome and costly for all parties involved. Prohibition notices can effectively shut an operation down. Enforceable undertakings and supervisory intervention orders often contain similar terms to improvement notices but are less responsive and more expensive for both the regulator and the prosecuted party.

In contrast, the Rail Safety National Law, like the model WHS laws and *Commercial Passenger Vehicles Act 2017* (VIC) , recognises that duties proceedings (and associated investigations) can take time and that improvement notices can be utilised during this period to remedy certain risks to safety. This is particularly relevant in the context of primary duty proceedings whereby several safety risks may be identified and easily remedied,

notwithstanding the need to continue primary duty proceedings to address systemic issues of non-compliance.

On this basis, the objectives of this reform are to:

- Bring improvement notice provisions into closer alignment with other regulatory environments, including WHS, commercial passenger vehicles, and rail.
- Support the regulator and police with the right tools to implement a risk-based approach to managing compliance.
- Ensure the regulator and police can respond to existent safety risks with proportionate measures.

**How will the law change?**

Current law (the base case)

Section 573(3) of the HVNL states that a person who is given an improvement notice cannot be proceeded against for an offence constituted by the contravention unless the improvement notice is not complied with or the improvement notice is revoked.

This provision of the HVNL differs from improvement notice provisions in other regulatory contexts:

- Model WHS laws (sections 191-194): allows inspectors to issue improvement notices requiring a person to remedy or prevent a likely contravention of the law. This provision is not constrained by the advent of a prosecution.
- *Commercial Passenger Vehicles Act 2017* (VIC) (section 178): explicitly states that the service of an improvement notice does not have any effect on a proceeding for an offence against the Act or regulations.
- Rail Safety National Law (section 175): sets out a similar improvement notice mechanism to the model WHS laws. If the regulator is of the opinion that the action is likely to result in significant costs or expenses, section 175(3) requires a cost-benefit analysis of the improvement notice action. This mechanism is not otherwise constrained by the advent of a prosecution.

Future law

Improvement notice provisions are likely to remain substantially the same under the future law. Section 573(3) of the HVNL will simply be removed.

**What are the impacts?**

Potential impacts

The regulator utilises improvement notices to secure compliance as part of its incident-triggered enforcement approach. While this element of the regulator's intervention strategy is directed towards parties whose risk profiles indicate a history of noncompliance,[58]

[58] NHVR, *Our Regulatory Intervention Strategy – a roadmap for compliance monitoring and enforcement* : p 3, **https://www.nhvr.gov.au/files/media/document/81/202209-1324-regulatory-intervention-strategy.pdf#:~:text=The%20NHVR%27s%20Regulatory%20Intervention%20Strategy%20applies%20risk%20profiles%20to%20locate,are%20complying%20with%20the%20HVNL**, accessed 27 April 2023.

improvement notices are less punitive than other enforcement measures, such as enforceable undertakings and prohibition orders.

This recommendation is intended to remove a barrier for the issuing of improvement notices to parties in order to secure compliance and remedy an immediate safety risk.

The potential expansion of the use of improvement notices to secure compliance is projected to have positive impacts in road safety, regulatory burden for industry and costs to government.

Some parties may perceive that the proposal to allow the regulator to run a prosecution process may undermine the overall rationale of improvement notices, which in theory should allow a party the opportunity to remedy a safety risk.

The impact of this proposal in the areas of operational efficiency and productivity, asset and environmental protection, and flexibility and responsiveness, are likely to be neutral.

Potential improvements

Improvement notices are often the most appropriate regulatory intervention for securing timely compliance and mitigation of an ongoing safety risk. Prosecution processes are often long and drawn out, during which time a party may continue to pose a risk to road infrastructure and the community.

Allowing the regulator and police to run improvement notice and prosecution processes concurrently will likely improve road safety through direct remediation of ongoing and identified risks to safety (assessment criteria 1c). This will be of particular utility for parties whose profile indicates a history of lower-level noncompliance that nonetheless pose a safety risk to the community and warrant prosecution, but where a prohibition notice or enforceable undertaking may not be a disproportionate response (assessment criteria 1d).

Allowing the regulator and police to exercise more proportionate regulatory interventions will also result in productivity improvements and reduce the regulatory burden for industry. This reform will potentially reduce the likelihood of the regulator or police issuing a prohibition notice to a party. The regulator reports that prohibition notices can effectively shut a company down or come at a high cost.

Similarly, this reform may also reduce the likelihood of being issued an enforceable undertaking or a court-issued supervisory intervention order in response to a safety breach. Both of these interventions involve a time-intensive and costly exchange between the regulator or police, regulated parties and the court (assessment criteria 3a and 4a).

Potential negative impacts

Some parties may perceive that the ability to commence a prosecution after an improvement notice is issued removes an incentive to comply with an improvement notice, in effect undermining the rationale of this provision.

In effect, compliance with an improvement notice can sometimes be a mitigating factor in sentencing. This potentially creates a stronger incentive to comply with an improvement notice. Furthermore, a prosecution for a contravention of the HVNL would not dissolve the ability of the regulator to further prosecute an offence for failing to comply with the terms of an improvement notice, so this incentive to comply with the improvement notice remains.

The assessment considers impacts at a national level. The costs and benefits will be broadly similar across different states and territories. The specific costs and benefits in each state or

territory will depend in part on the nature of the heavy vehicle fleet and its use in each state or territory.

**Implementation, transition and evaluation arrangements**

The NTC will proceed with developing drafting instructions to remove section 573(3) of the law.

The regulator will be able to rely on new improvement notice arrangements on commencement of the future law.

If necessary, transition provisions will make it clear that the new improvement notice arrangements are able to be relied on in relation to proceedings commenced prior to commencement of the future law.

### 5.2.5 Summary impact analysis

Table 12 summarises the impact analysis for the regulatory framework recommendations.

**Table 12. Regulatory framework recommendations – summary impact analysis, including impact category**

| RECOMMENDATION | Overall impact | Public safety | Improvements to operational efficiency or productivity | Regulatory burden for industry | Regulatory costs for government | Asset Manage-ment | Flexibility and responsiveness |
|---|---|---|---|---|---|---|---|
| **1 – Tiered safety assurance environment**<br><br>That the future HVNL establish a tiered safety assurance environment comprising a baseline tier and an alternate compliance tier, designed to reflect industry diversity and deliver regulatory flexibility.<br><br>**1a – Baseline compliance tier 1**<br><br>That as part of the tiered safety assurance environment, the future HVNL establish a baseline tier comprised of simplified, predominantly prescriptive requirements, given effect by a broad head of power for the prescribing | **Improvement**<br><br>The tiered assurance environment will create greater flexibility for industry and will provide improvements to safety and productivity.<br><br>For tier 1, there are negligible impacts for industry and government, as changes are structural.<br><br>For tier 2, there will be start-up costs for accredited operators who don't have a NHVAS-compliant | **Large improvement**<br><br>Improvement for the community by making the law easier for parties to understand and apply, leading to increased compliance and a lower number of crashes.<br><br>Improvement for industry, the regulator, and community by increasing responsiveness of the law to address emergent risks.<br><br>Improvement for industry as operators can | **Large improvement**<br><br>Improvement for industry as tier 2 allows operators more choice on how to manage compliance obligations to realise productivity gains. Reduced cost of moving goods provides benefits to off-road chain of responsibility parties, customers, and the public.<br><br>May increase the number of operators that will be able to gain access to alternative | **Improvement**<br><br>Industry, particularly those participating only in the baseline compliance tier 1, may experience negligible impact of changes to the structure of the law. Over time, industry is expected to have reduced compliance costs as the law is simpler and easier to understand.<br><br>Industry operators in the accreditation scheme will incur upfront costs to establish an SMS, (see recommendation 7). Over time, | **Improvement**<br><br>For tier 1, there may be administrative costs to government to develop a list of dispensable heavy vehicle obligations. However, these costs will largely be absorbed by existing NTC HVNL maintenance processes.<br><br>The flexibility of tier 2 will be more complex for the regulator to administer, incurring upfront costs to set up staff, processes and systems, and ongoing costs to maintain a more complex scheme.<br><br>Increased complexity of tier 2 may increase | **Neutral** | **Large improvement**<br><br>Better caters to a more diverse range of operators, from those who want simplicity and certainty to businesses with complex operations to manage safety effectively with highly flexible options in place.<br><br>The proposed structure of the law and flexibility of Tier 2 will ensure that the law keeps pace with advances in context, technologies, knowledge and practices which benefits the heavy vehicle industry, |

| RECOMMENDATION | Overall impact | Public safety | Improvements to operational efficiency or productivity | Regulatory burden for industry | Regulatory costs for government | Asset Manage-ment | Flexibility and responsiveness |
|---|---|---|---|---|---|---|---|
| of heavy vehicle obligations.<br><br>**1b – Alternative compliance tier 2**<br><br>That, as part of the tiered safety assurance environment, the future HVNL establish an alternative compliance tier for accredited operators, underpinned by a new power allowing the regulator to issue alternative compliance options, within prescribed outer limits and other specified constraints. | safety management system, and for the regulator to administer a more complex, bespoke scheme (see recommendation 7).<br><br>Note: Based on the assumption that the regulator uses the new regulatory framework to deliver more diverse ACOs, otherwise the impacts will be negligible. | adopt more effective safety management strategies for their business. Improved safety systems are linked to reduced number of crashes and deliver safety benefits for the community.<br><br>Greater flexibility for prescribing obligations for off-road parties best able to manage risk, supporting changes in behaviour to lower number of crashes.<br><br>Supports risk-based regulation and better enables targeted compliance and enforcement | compliance options, across all sizes of operations (small, medium, and large), enabling broader productivity gain across the industry. | industry may achieve savings depending on the flexibility of ACOs made available under the scheme. SMS costs should also be offset by benefits accrued through increased scheme robustness and reduction in duplicative auditing (see recommendation 2b). | the complexity and costs of on-road enforcement, particularly in the short term. Over time, better targeted, risk-based enforcement will result in a more efficient compliance effort. | | vehicle and safety technology suppliers, and the regulator and governments.<br><br>Enables the regulator to expand and adapt the accreditation scheme to encourage operators to take increased responsibility for managing risk. |

| RECOMMENDATION | Overall impact | Public safety | Improvements to operational efficiency or productivity | Regulatory burden for industry | Regulatory costs for government | Asset Manage-ment | Flexibility and responsiveness |
|---|---|---|---|---|---|---|---|
| | | options to deter unsafe practices and encourage safer behaviours and result in a lower number of crashes. | | | | | |
| **2 – Ministerial approvals**<br><br>That, as part of establishing an appropriate balance of regulatory discretion and ministerial oversight, the future law establish new arrangements for ministerial approvals, such that:<br><br>**2a** In recognition of restructured arrangements for alternative compliance and accreditation, ministers will no longer be required to approve accreditation business rules. | **Improvement**<br><br>Enabling mechanisms to support risk-based regulation and the new assurance environment by improving regulator autonomy and discretion and more targeted ministerial oversight and direction.<br><br>Note: Does not set out any substantive proposals and may be | **Large improvement**<br><br>Enables accredited operators to develop and invest in safer management practices under a more robust auditing system which encourages ongoing safety management improvements (assessment criteria 4b).<br><br>Assures the community that | **Large improvement**<br><br>Industry will benefit from the opportunity for more efficient business processes based on an expectation that instances of duplicative auditing decline (assessment criteria 3a). | **Large improvement**<br><br>Industry benefits for operators in multiple schemes by reduced administrative burden and overall costs as over time the NAS is intended to support mutual recognition with other schemes (assessment criteria 3a).<br><br>Potential benefits in driving down instances of duplicative | **Neutral** | **Neutral** | **Neutral** |

| RECOMMENDATION | Overall impact | Public safety | Improvements to operational efficiency or productivity | Regulatory burden for industry | Regulatory costs for government | Asset Manage-ment | Flexibility and responsiveness |
|---|---|---|---|---|---|---|---|
| **2b** As part of enhancements to accreditation, ministers will be empowered to approve a national audit standard to be applied as part of the National Heavy Vehicle Accreditation Scheme, as well as other schemes and third parties. A national audit standard audit certificate will be automatically admissible evidence in primary duty proceedings.<br><br>**2c** The law clarify that consultation requirements apply to the development of ministerially approved guidelines.<br><br>**2d** Ministers will no longer be required to approve a sleeper berth standard, noting this may be prescribed as a heavy | characterised as having no direct regulatory impact, but benefits may occur over time. | heavy vehicle safety risks have been addressed with more targeted oversight of the regulator's activities such as exemption powers (assessment criteria 1d). | | auditing by allowing schemes and third parties to rely on NAS audits as part of demonstrating compliance with primary duty obligations.<br><br>Industry may experience some added costs associated with participation in consultation processes for guidelines, although these processes are voluntary. | | | |

| RECOMMENDATION | Overall impact | Public safety | Improvements to operational efficiency or productivity | Regulatory burden for industry | Regulatory costs for government | Asset Manage-ment | Flexibility and responsiveness |
|---|---|---|---|---|---|---|---|
| vehicle obligation in the future. | | | | | | | |
| **3 – Ministerial directions**<br><br>To enable ministers to appropriately direct the regulator, and without impinging on regulatory autonomy, the future law establish new ministerial direction arrangements, such that:<br><br>**3a** Ministers (collectively) will be empowered to give written directions about the issuing of alternative compliance options.<br><br>**3b** Ministers (individually or collectively) may direct the regulator to exercise a certain function or power in the case of a serious public risk, and when in the public interest to do so. | **Neutral**<br><br>The expanded ministerial direction powers will serve to provide assurances to ministers and the community that the regulator will exercise its functions within the parameters of ministers' risk appetite.<br><br>Does not set out any substantive proposals and may be characterised as having no direct regulatory impact. | **Neutral** | **Neutral** | **Neutral** | **Neutral** | **Neutral** | **Neutral** |

| RECOMMENDATION | Overall impact | Public safety | Improvements to operational efficiency or productivity | Regulatory burden for industry | Regulatory costs for government | Asset Manage-ment | Flexibility and responsiveness |
|---|---|---|---|---|---|---|---|
| **3c** Ministers (individually or collectively) may direct the regulator to investigate or provide advice or information about a matter relating to a public risk.<br><br>**3d** Ministers (collectively) may direct the regulator to cancel a code of practice.<br><br>**3e** Ministers will retain the existing power (collectively) to direct the regulator about policies to be applied. | | | | | | | |
| **4 – Codes of practice**<br><br>That the future law establish new arrangements for codes of practice, replacing the existing industry code of practice mechanism and allowing the regulator to initiate, develop and | **Improvement**<br><br>Guidance to drivers and chain of responsibility parties through CoPs can be provided more efficiently and effectively. This is expected to lead | **Improvement**<br><br>Public safety benefits as a CoP can be initiated by the regulator in response to emerging safety risks, or where industry would benefit from | **Improvement**<br><br>Industry may benefit from more efficient process for developing CoPs through reduced operational costs and receiving | **Improvement**<br><br>Potential benefit to industry by supporting a more coherent and clear compliance environment. | **Neutral**<br><br>Potential for administrative costs to the regulator to update and maintain CoPs, although these are unlikely to be greater than existing costs associated with the regulator issuing | **Neutral** | **Improvement**<br><br>Industry and the regulator benefit from greater flexibility as a CoP can be updated and initiated more efficiently and responsively. |

| RECOMMENDATION | Overall impact | Public safety | Improvements to operational efficiency or productivity | Regulatory burden for industry | Regulatory costs for government | Asset Manage-ment | Flexibility and responsiveness |
|---|---|---|---|---|---|---|---|
| approve codes of practice. | to improved compliance and safer behaviour, helping to reduce crashes.<br><br>Note: Analysis assumes that the regulator implements effective CoPs, otherwise impact may be negligible. | specific guidance on how to manage safety obligations.<br><br>If safety obligations are clearer and easier to understand, this may increase compliance rates, improving behaviour and reducing crashes. | more effective guidance. | | and maintaining advice. | | |
| **5 – Improvement notices**<br><br>That the future law revise arrangements for improvement notices to allow improvement notice and prosecution processes to run concurrently. | **Improvement**<br><br>More proportionate regulatory interventions lead to improved safety and productivity outcomes. | **Improvement**<br><br>Likely to improve road safety through direct remediation of ongoing and identified risks to safety. | **Improvement**<br><br>More proportionate regulatory interventions will improve overall productivity. | **Improvement**<br><br>More proportionate regulatory interventions will reduce regulatory burden for industry. | **Improvement**<br><br>More proportionate regulatory interventions will reduce time and cost in the courts. | **Neutral** | **Neutral** |

## 5.3 Assurance and accreditation

### 5.3.1 Overview

The previous section provided an overarching regulatory framework for the future HVNL. In particular, recommendation 1 explained the legislative mechanics of a new, tiered safety assurance environment. This proposal included fundamental changes to how alternative compliance options will be developed and issued to accredited operators. This section provides more information about the practical application of the regulatory framework in the context of accreditation. It explains new operator assurance and accreditation arrangements under an enhanced NHVAS and includes a detailed analysis of the scheme's proposed structure, policy arrangements and cost impacts on industry, governments and the community.

Throughout the HVNL Review, stakeholders consistently raised problems with the current assurance and accreditation approach, including:

- Lack of comprehensiveness: the current NHVAS does not encourage a comprehensive approach to managing safety as it does not explicitly require an operator to have a safety management system (SMS). Several incidents, including a fatal crash in Mona Vale, Sydney, in 2013, have revealed that some NHVAS operators do not meet community expectations concerning comprehensive safety management. Furthermore, the NHVAS does not support operators in meeting the full range of obligations under the primary duty.
- Lack of confidence: peak bodies and operators have expressed that because the scheme is not comprehensive, third parties can't be confident they are engaging with a safety-assured operator, partly explaining the rise of duplicative auditing practices, mainly by customers seeking to cover their primary duty obligations.
- Lack of flexibility and utility: modules within the NHVAS are overly prescriptive and do not actively encourage operators to manage the risks associated with their operations. Moreover, NHVAS-accredited operators are currently only provided with limited ACOs, limiting the potential benefits for participating operators.
- Lack of regulatory flexibility: the hardwiring of concessions to accreditation modules limits the ability of the regulator to maximise accreditation as a tool to encourage operators to improve compliance and safety management practices.

The HVNL Review and the Safety and Productivity Program identified limitations in the current NHVAS structure, with several possibilities for improvements to be delivered in the future law.

### 5.3.2 Policy deliberations

The consultation RIS considered several policy options for an improved accreditation approach. These were:

- **Operator enrolment or licensing (consultation RIS Option 7.1).** Proposed that operators should be required to enrol with the NHVR or become licensed as operators. This option canvassed four sub-options intended to enhance the NHVR's visibility of the industry:
  - Voluntary enrolment (consultation RIS option 7.1a).
  - Mandatory enrolment (consultation RIS option 7.1b).
  - Operator licensing (all operators) (consultation RIS option 7.1c).

  - Operator licensing (higher risk operators only) (consultation RIS option 7.1d).

    There was **low support** for enrolment in schemes and less support for operator licensing due to concerns about cost and regulatory burden to industry with limited safety benefits and a view that the NHVR should have access to data via existing systems for enhanced visibility of regulated parties.

- **Remove the regulatory assurance framework and rely on performance standards (consultation RIS option 7.2)**. Under this option, the NHVAS would be discontinued. Instead, performance standards, which define acceptable outcomes relating to mass, vehicle maintenance and fatigue, would replace prescriptive requirements within the HVNL.

  This option was **not supported** overall by stakeholders. Removing the assurance scheme was seen as a backwards step in recognising industry's efforts and investments in safety management.

- **Enhanced opt-in single regulatory certification scheme (consultation RIS option 7.3).** Here, the framework of the current NHVAS assurance model would remain.

  The NHVR would continue administering the NHVAS, setting the standards and certifying operators that meet those standards using an audit framework. The NHVR will continue to have powers to impose sanctions on certified operators for non-compliance, including suspension from the scheme.

  This option received the most **support** and is considered in greater detail below.

- **Enable multiple regulatory certification schemes (consultation RIS option 7.4)**. This option focuses on changing the assurance framework to recognise assurance schemes other than the NHVAS that meet the necessary standards.

  This option was **not supported**, with concerns including the ability of non-regulatory agencies to enact regulatory concessions and added complexity if drivers and operators had to enrol in many schemes to meet contractual requirements.

The Kanofski Report reinforced the policy option supported in the consultation RIS, specifically, 'a single voluntary certification scheme to give operators the flexibility to meet compliance obligations, administered by the NHVR'. The ITMM reform package included:

- *The new certification scheme will be an improvement on the current NHVAS as it will:*
  - *Create a base level that includes a safety management system requirement.*
  - *Allow the development of a more diverse range of alternative compliance options to better support operator diversity.*
  - *Introduce a better compliance regime, including a national audit standard, to help to reduce the need for multiple audits requested by customers to meet their chain of responsibility obligations.*

### 5.3.3 Future work

This RIS establishes a framework for an improved NHVAS as part of the tiered assurance environment. It analyses the impacts of restructuring the scheme around a core safety management system requirement and a new national audit standard.

Further work will be carried out on developing policy detail around SMS requirements for HVNL regulations. Other subordinate instruments, such as guidelines for detailed SMS criteria, will need to be developed.

The new regulatory framework will allow the regulator to develop and issue alternative compliance options. It is anticipated that existing ACOs will be adapted into the new regulatory framework, ready for the commencement of the future law. It is also envisaged that the regulator will develop a limited set of additional, more flexible ACOs for the commencement of the new law.

To facilitate this, future regulatory impact analysis processes will focus on establishing outer limits for ACOs (to be specified in regulations) and risk-area standards, which will also set the foundations for developing modules and associated ACOs.

Further work is needed to develop the NAS to be approved by ministers. The regulator will develop the NAS in consultation with industry and jurisdictions to guide audits of varying scope and scale, including those conducted by large audit teams. The NAS will be underpinned by an SMS approach and adopt the international standard ISO 19011 Guidelines for auditing management systems.

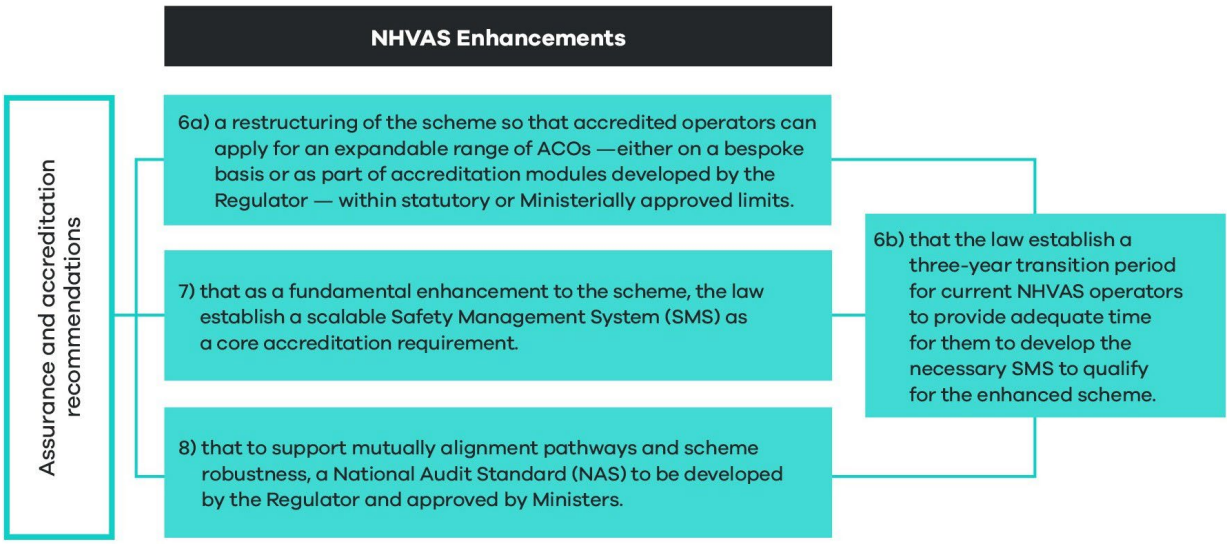
### 5.3.4 Assessment of policy recommendations

This section of the RIS provides information and analysis of recommendations to increase confidence, trust and robustness in the current NHVAS.

The enhanced NHVAS is a foundational feature of the Alternative Compliance Tier within the tiered safety assurance environment outlined in recommendation 1b. To gain access to ACOs, an operator must be accredited under the new NHVAS.

Figure 16 provides an overview of recommendations, emphasising the most fundamental enhancements to the NHVAS and the transition process for current NHVAS operators.

**Figure 16. Overview of recommendations for assurance and accreditation**




Like the current NHVAS, the future scheme will be a single opt-in scheme administered by the NHVR. It will retain the strengths of the current scheme.

The long-term objectives of the NHVAS are linked to the object of the HVNL (section 3). They include:

- Improving public safety.
- Increasing the productivity of the transport industry through the adoption of sound risk management practices by participants.
- Improving efficiency for participants.
- Managing the impact of heavy vehicles on the environment, road infrastructure and public amenity.

Recommendations 6a, 7 and 8 set out key enhancements to the scheme, including:

- Recommendation 6a: a new alternative compliance environment.

  The future law will create a more flexible alternative compliance environment, enabling development of a diverse range of ACOs.

  This environment will enable development of modest ACOs for less complex operators to enter the scheme. It will also enable development of more flexible ACOs for more sophisticated operators.
- Recommendation 7: a safety management system core requirement.

  The future law will require an operator to demonstrate implementation of an effective SMS as a gateway requirement for accreditation under the NHVAS. A risk-based and scalable SMS approach to operator assurance that offers flexibility for industry.
- Recommendation 8: a national audit standard.

  The future law will allow ministers to approve a NAS, designed to improve audit outcomes.

  The NAS will be designed to be applied by non-HVNL schemes and also third parties as part of meeting primary duty obligations. This in turn should help drive down instances of duplicate auditing.

**Implementation, transition, and evaluation arrangements**

Future regulatory impact assessment processes will focus on:

- Developing outer limits for ACOs, to be specified in regulations.
- Developing risk area standards for accreditation modules, also to be specified in regulations.
- Revising existing ACOs and, where appropriate, adapting them to the new regulatory environment.

During this phase the regulator will also develop and consult on the NAS, to be approved by ministers. It is also envisaged that an initial suite of additional ACOs (offering increased flexibility) will also be developed, ready for commencement of the future law.

Recommendation 6a outlines that a three-year transition period will apply to current NHVAS participants to provide adequate time for operators to qualify for the enhanced NHVAS. This will allow NHVAS operators to develop and implement an SMS that complies with the SMS gateway requirement.

**Recommendation 6a**

That as part of the new alternative compliance tier (recommendation 1b), the future law restructure the National Heavy Vehicle Accreditation Scheme so that accredited operators can apply for an expandable range of alternative compliance options – either on a bespoke basis or as part of accreditation modules developed by the regulator, within the ministerially approved limits.

**Recommendation 6b**

That the law ensures a three-year transition period for current NHVAS operators to provide operators adequate time for them to develop the necessary safety management system to qualify for the enhanced scheme.

### What is proposed?

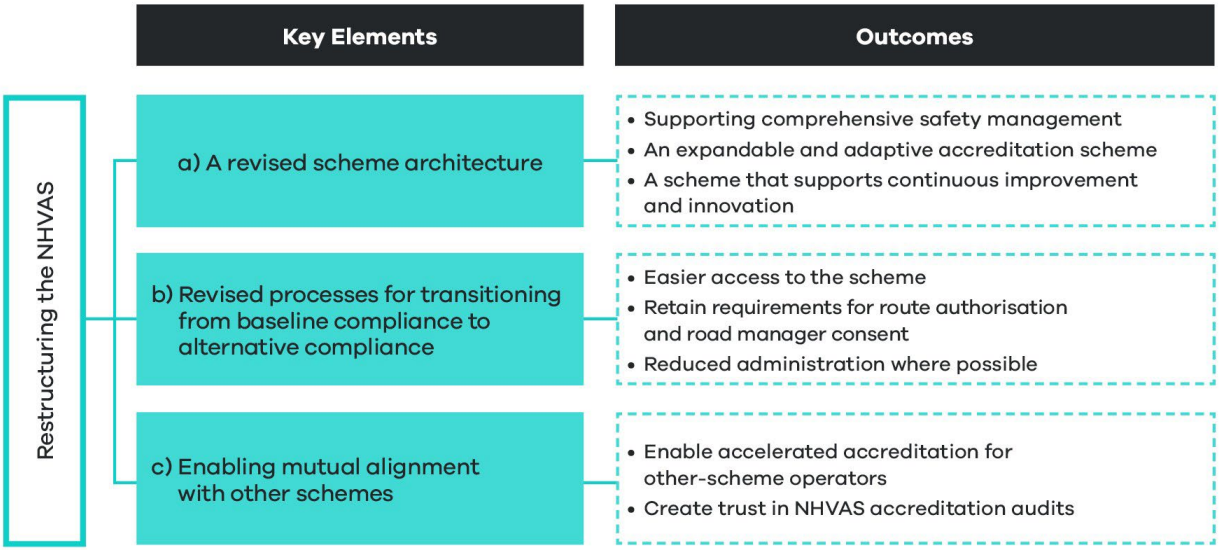
Recommendation 1b of this decision RIS provided information about and analysed the impacts of new legislative mechanisms for alternative compliance under the future law. Fundamentally, this will involve transitioning from the approach of hardwiring ACOs into regulation to allowing the regulator to issue ACOs within set limits determined by ministers and parliament.

Recommendation 6a expands on recommendation 1b and provides information about how a new and enhanced NHVAS will work in practice. Figure 17 provides an overview of the key elements of this recommendation.

Under recommendation 6b, transitional arrangements for NHVAS participants will allow existing NHVAS operators to have their accreditation and associated regulatory concessions recognised until the operator's first scheduled audit, three years from the commencement of the new accreditation scheme.

The regulatory framework will enable the continuation of current ACOs and introduce several new and more flexible options.

### Figure 17. Key elements of restructured NHVAS



The role of the NHVAS in the tiered safety assurance environment

As outlined, instead of hardwiring ACOs into law and regulation, the future law will empower the NHVR to issue ACOs to accredited operators either:

- in relation to an accreditation module
- on an individual, bespoke basis where a safety case and unique business need can be demonstrated.

To become accredited an operator will first need to demonstrate that they have implemented an effective SMS in line with certain requirements (detailed under recommendation 7). This new SMS requirement forms a fundamental pillar of the scheme, designed to improve safety performance indicators for accredited operators and fundamentally generate trust in the scheme for governments, industry and the community.

It is against this backdrop of increased safety performance and scheme robustness that the new tiered safety assurance environment will offer increased discretion to the regulator to develop and issue ACOs. Over time, this new environment will allow the regulator to gradually expand available ACOs, in line with changing business practices, advancing technology, and increasing sophistication of heavy vehicle operations. Similarly, this new regulatory environment will also allow the retirement of certain ACOs if they become obsolete or if they cease to deliver value to industry, governments and the community.

6a A revised scheme architecture

New arrangements for alternative compliance, coupled with SMS and auditing enhancements, will result in a fundamental restructuring of the scheme that will change the architecture of risk-based modules and tools available to the regulator to use accreditation as a tool for encouraging continuous improvement. An overview of fundamental roles and responsibilities for parties interacting with the scheme is summarised below.

**Figure 18.**

**Roles and responsibilities for parties interacting with alternative compliance options under the enhanced NHVAS**

Regulatory framework: will establish mechanisms to ensure that ACOs do not result in a lower standard of safety, or breach particular outer limits. The framework will also set out high level standards that must be met as part of issuing an ACO (risk area standards).

Ministers: Will be able to provide additional directions about the issuing of ACOs, or the cancellation of ACOs.

The regulator: Will be able to develop modules that align with high level risk area standards specified in regulation and issue ACOs within the parameters specified in primary law, regulations, and any ministerial direction. These modules may specify more detailed standards, and conditions that need to be satisfied in order to be issued an ACO as part of the module. The regulator will also continue to administer an NHVAS audit program that applies the NAS. It will also continue to provide operational guidance to scheme participants.

Road managers: Will still provide route authorisation and consent in relation to any relevant mass ACO.

Operators: Will need to demonstrate implementation of an effective SMS as part of their application for accreditation. As part of this application, they may also apply for ACOs. Confirmation that a NAS audit has been carried out will be required to demonstrate they have been audited against the SMS requirements and any specific module requirements for ACOs.

Third parties: Will be able to draw on the NAS as an indicator that an operator has an effective SMS and gain assurance that the operator has effective systems in place to meet requirements under the primary duty.

Non-HVNL accreditation schemes: Will be able to align scheme requirements with NHVAS SMS and module requirements, in turn allowing the regulator to develop accelerated accreditation pathways for these operators, including access to ACOs.

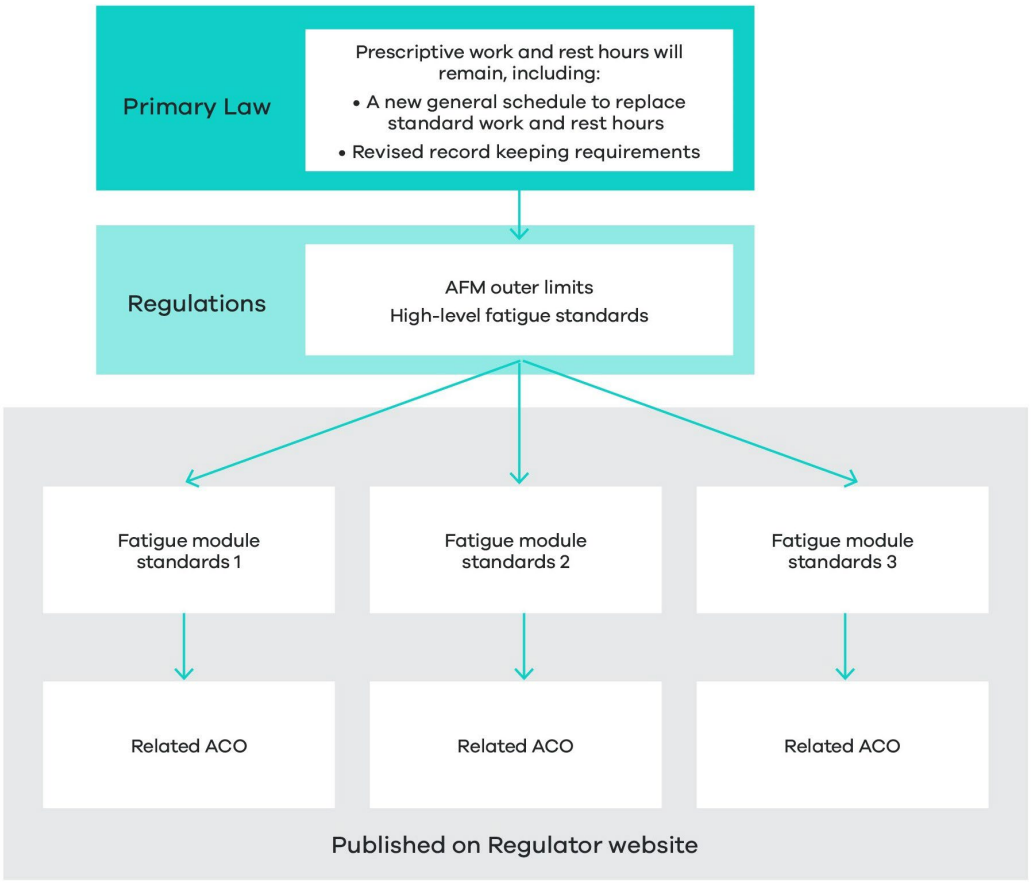
*How modules will work as part of the new National Heavy Vehicle Accreditation Scheme*

The SMS gateway requirement and new arrangements for ACOs will fundamentally change how modules work under the scheme.

As outlined, instead of hardwiring ACOs and their associated modules into law and regulation, the future law will empower the NHVR to issue ACOs to accredited operators in relation to accreditation module.

As part of this power, the regulator will be able to create modules. These modules must align with sets of risk area standards set out in regulation. The law will not restrict the regulator regarding the architecture of modules. Feasibly, the regulator may establish a library of modules related to risk area standards. Figure 19 provides a worked example of how fatigue-based modules and associated ACOs may be developed by the regulator as part of the future law.

**Figure 19. Arrangements for developing accreditation modules, supported by law (fatigue example)**




As flagged under recommendation 1b, the new regulatory environment will also allow the regulator to develop modules that do not lead to ACOs. For example, modules around driver competency, driver health and fitness, environment and sustainability may be developed at the regulator's discretion. The development of these modules would not be constrained by risk area standards or by outer limits set in regulation, because they would not give rise to an ACO.

There is potential for the regulator to use this mechanism to establish 'highest standard' risk management practices in certain areas. Operators may see value in becoming certified in a non-ACO module, particularly if customers specify that an operator should be accredited under such a module as part of procurement arrangements.

*The relationship between the safety management system gateway requirement and risk-based modules*

As discussed under recommendation 7, an SMS (by definition) represents a comprehensive and systematic approach to managing safety. An effective SMS should address all risks relevant to a particular heavy vehicle operation. As such, if an operator applies to access certain ACOs as part of a risk area module, the module standards and relevant conditions will need to be embedded into an operator's overall SMS.

Recommendation 7 explains that the SMS gateway requirement will be constructed around five SMS standards and a non-exhaustive list of risks to be managed that align with what is

required to be managed under the primary duty. The SMS requirement will be designed so that it is scalable to suit a range of operators of varying size and complexity. By contrast, risk area modules will set out standards and conditions required to access certain ACOs.

Critically, an operator will not need to be assessed twice in relation to the SMS and module-specific requirements. Rather, the regulator will assess the SMS holistically, embedding the module-specific requirements into the overall assessment.

*Accreditation as a tool to support innovation and continuous improvement*

The new regulatory environment will be designed to allow the regulator to deploy accreditation as a tool to support innovation and continuous improvement.

Accreditation modules and associated ACOs will be expandable and contractable over time. With technological advances and associated reforms to better recognise certified technology under the HVNL, the regulator can develop ACOs with associated conditions that specify and therefore incentivise the use of particular technologies.

The legal mechanics of the new regulatory environment will also allow the regulator to suspend or cancel certain ACOs for particular operators without also cancelling their accreditation. This is a change from the current HVNL which, as a result of hardwiring modules and ACOs into the law, requires the regulator to cancel an operator's accreditation in order to remove that operator's access to the 'alternative compliance arrangement' or the regulatory concession associated with an accreditation module (or both). This can result in perverse compliance or safety outcomes, as accreditation allows the regulator to maintain visibility of an operator and partner with them to improve safety management outcomes.

6b Revised processes for transitioning from baseline compliance to alternative compliance

While this RIS provides information about and analyses the impact of legislative mechanisms to enable the development of ACOs in the future, further regulatory impact processes will consider specific ACOs in mass and fatigue. Noting ministers' commitment to progressing a more flexible suite of ACOs to reflect increasing sophistication and advancement of the sector, it is intended that an initial set of ACOs will be ready for the commencement of the future law.

In addition to setting outer limits, developing an initial set of ACOs will also depend upon policy changes to existing baseline requirements under standard work and rest hours (to be recast as the general schedule) and general mass limits (GML). However, in order to develop these ACOs it will be necessary to assess the degree of flexibility provided against the baseline compliance option.

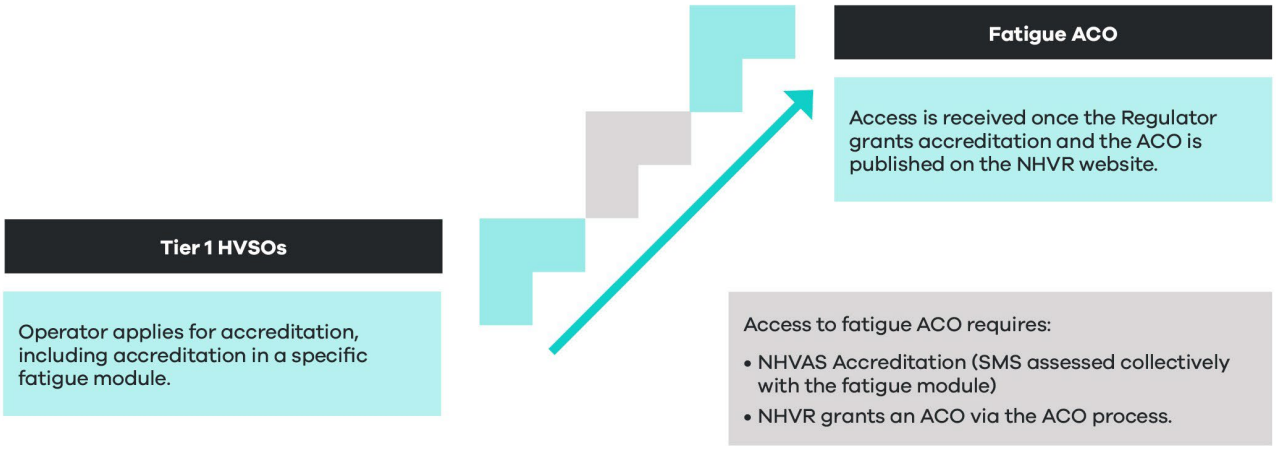
Notwithstanding the above, it is worth noting the differences in processes to be applied when operators transition from baseline compliance to alternative compliance under fatigue and mass modules, respectively (see Figure 20).

**Figure 20. Transitioning from baseline mass requirements to alternative compliance mass requirements**


Details around the process of transitioning from baseline mass requirements to alternative mass requirements will be dependent upon further work on existing categories of general mass limits (GML), concessional mass limits (CML), and higher mass limits (HML), as well as work on a new vehicle classification system for restricted access vehicles (RAVs). Currently under the HVNL, mass-accredited operators may access CML. Operating at HML involves additional conditions, such as road-friendly suspension, and compliance with approved routes. Route access for RAVs is dependent on a permit or notice, with relevant road manager consent, being in effect.

While further policy work may result in changes to or realignment of mass-related vehicle categories, principles around the requirement for route authorisation or road manager consent will be preserved under the future law.

**Figure 21. Transitioning from baseline fatigue requirements to alternative fatigue requirements**




Details around the process for transitioning from baseline fatigue requirements to alternative fatigue requirements, will be dependent upon further work to adjust standard work and rest hours and create a new general schedule (see Figure 21). New work will ensure mass and ACO limits are preserved.

*Enabling mutual alignment with other schemes*

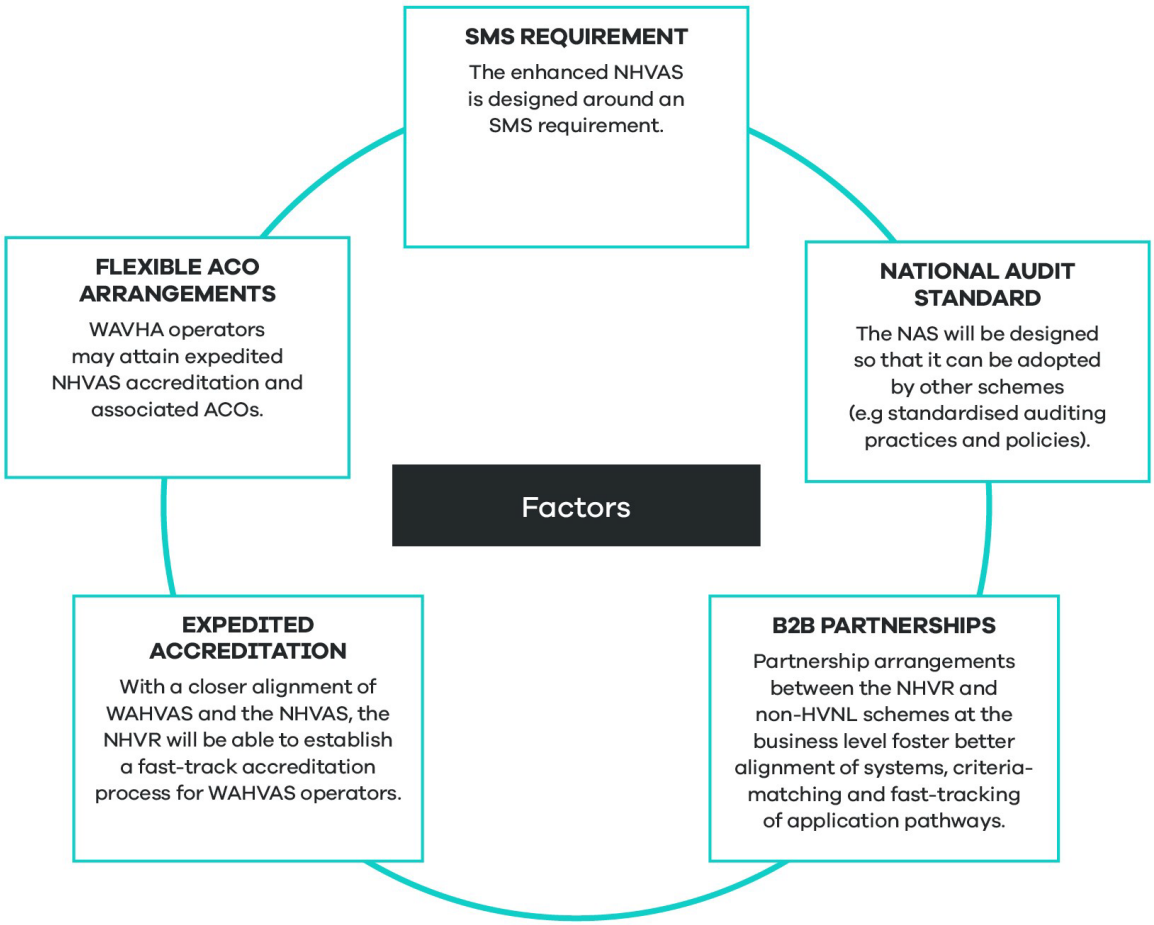
The regulatory environment for the enhanced scheme is designed to enable mutual alignment with non-HVNL schemes and accelerated pathways for NHVAS accreditation and issuing of ACOs to these operators.

To a large extent, opportunities for mutual alignment will depend upon the extent to which non-HVNL schemes adopt an SMS approach. The Western Australian Heavy Vehicle Accreditation (WAHVA) scheme currently integrates SMS principles, and further work is underway under partnership arrangements between the NHVR and the Western Australian Department of Main Roads to increase areas of alignment.

The NAS will be a fundamental feature of the regulatory environment enabling mutual alignment with non-HVNL schemes. The NAS will be designed agnostically so that it can applied by any SMS-based heavy vehicle accreditation scheme.

Noting the future HVNL will not specifically provide an option for mutual recognition, Figure 22 provides an overview of factors that will drive an increase in mutual alignment of NHVAS and non-HVNL schemes.

**Figure 22. Factors influencing mutual alignment of NHVAS and non-HVNL schemes**




**What are the objectives?**

The fundamental objective of developing an enhanced NHVAS is to increase the value of the scheme for industry, governments, regulators and the community. For this to occur, the

NHVAS should deliver improved safety performance outcomes from the heavy vehicle sector and increased flexibility to operators who can manage safety effectively with alternative systems in place. Recommendations 7 and 8 discuss key objectives around improving safety performance and robustness of the scheme. This recommendation centres on enhancing the value of the scheme for operators, with key objectives including:

- Creating an alternative compliance environment that truly supports industry diversity, with a greater range of ACOs to match varied levels of sophistication and types of operation.
- Creating a more adaptive alternative compliance environment that can keep pace with the increasing sophistication of industry and technology advances.
- Enabling the development of ACOs that deliver the flexibility required to incentivise operators to become accredited and advance through higher levels of accreditation as safety management practices improve.
- Allowing the regulator to use accreditation to support and encourage continuous improvement.
- Creating pathways for mutual alignment of non-HVNL schemes, including accelerated accreditation and access to ACOs.

**How will the law change?**

Current law (the base case)

The HVNL establishes the NHVAS, which gives accredited operators some flexibility to operate outside of certain prescribed regulations within the context of accreditation modules, as follows:

- NHVAS Mass Management: accredited operators can operate above general mass limits, specifically CML and HML.
- NHVAS Basic Fatigue Management (BFM) and Advanced Fatigue Management (AFM): accredited operators receive access to longer working hours and more flexibility in scheduling.
- NHVAS Maintenance Management: accredited operators receive exemptions from annual inspection requirements.[59]

To a large extent, ACOs are hardwired into the law and regulation. This is particularly true for CML, HML, and BFM, which offer alternative schedules of prescriptive requirements.

AFM represents a more flexible approach, whereby the regulator can approve bespoke work and rest hour schedules. However, the process for gaining AFM accreditation is cumbersome and resource intensive and generally not available to smaller or less complex operations, which may still be able to manage safety with the benefit of minor adjustments to the general schedule.

Accreditation and ACOs are also ‘tethered’ together under the current HVNL. For the regulator to take enforcement action to remove an ACO, it must cancel an operator’s accreditation.

[59] This exemption is mechanised operationally and is only available to operators in New South Wales and Queensland.

The HVNL also does not enable the regulator to expand and adapt ACOs for accredited operators.

Future law

The future law will change from the current HVNL by:

- Allowing operators to apply for an expandable range of ACOs as part of their accreditation.
- Allowing the regulator to develop an expandable range of modules with associated ACOs.
- Decoupling the accreditation process from alternative compliance, such that the regulator can suspend an ACO, without suspending an operator's accreditation.

**What are the impacts?**

An enabling environment

As already highlighted, the proposal to restructure the NHVAS involves a series of structural reforms to the HVNL which have no direct regulatory impact.

The proposal in this section outlines how the new regulatory environment will affect the overall architecture of the NHVAS, how modules are developed, how operators may transition between tiers, and how mutual alignment pathways may be created. Specific ACOs are not considered in this RIS.

In addition, ACOs are by nature 'opt-in', and, as such, this recommendation can be described as having no direct regulatory impact.

Many of the impacts cited in this section are similar to the impacts highlighted under recommendation 1b.

Potential impacts

While noting the enabling characteristics of this proposal, some longer-term improvements can be projected across assessment criteria categories, particularly in road safety, operational efficiency, and flexibility and responsiveness.

Potential improvements

The proposed changes are projected to deliver benefits including:

- A law that better reflects the diversity of heavy vehicle operators, in turn:
  - Allowing operators to realise productivity gains when more flexible or appropriate ACOs are offered to suit their business (assessment criteria 2d).
  - Enabling a reduction in risk to overall safety, risk to infrastructure, and overall crash risk by allowing operators to adopt the most appropriate risk management approach for their business (assessment criteria 1e).
- A law that can keep pace with rapid advances in technology and changes across the heavy vehicle transport sector and support innovation, in turn:
  - Increasing operational efficiency and productivity gains where operators adopt the most cutting-edge safety management technology (assessment criteria 2d and 6b).

  - Supporting an overall reduction in risk to safety and infrastructure, and overall crash risk by ensuring operators are not locked into old and ineffective risk management approaches (assessment criteria 1e).
- A law that will enable the NHVR to expand and adapt the accreditation scheme to encourage operators to take increased responsibility for managing risk (assessment criteria 6b).
- The offer of more attractive and appropriate ACOs should also result in an increased uptake of accreditation. This in turn, should support:
  - Improvements in the overall safety of the heavy vehicle fleet and reduction in risk to safety and infrastructure, and overall crash risk, noting that accredited operators will be required to demonstrate they have a safety management system (assessment criteria 1e).
  - Increased regulatory visibility of the heavy vehicle fleet, with associated benefits relating to risk profiling and more efficient concentration of regulatory effort on higher risk operators.
- Approved ACOs will enable industry to develop and deploy innovative technology and practices that lower costs. Further enhancement can be realised by introducing the proposed technology and data framework (as outlined in section 5.4).
- ACOs will enable the management of new risks in emergent areas, such as environmental protection. The NHVR will have flexibility under the enhanced scheme to support new environmentally friendly technology and other environmental initiatives.
- A restructured NHVAS improves flexibility and responsiveness for the NHVR to issue ACOs with conditions allowing elasticity for industry by focusing on safety outcomes and minimising prescriptive requirements. Additionally, it provides responsiveness for government to address emerging safety risks, as ACOs offer flexibility against the current rigid module framework.

Potential negative impacts

- While the new regulatory environment gives the regulator more discretion to develop and administer ACOs, this inevitably will involve increased administrative costs and a realignment of regulator resources (assessment criteria 3a and 4a).These costs may be passed onto industry in the form of increased regulatory charges (assessment criteria 3a).
- A more diverse alternative compliance environment is also likely to make enforcement more complex, although it should be noted that there are existing problems around the interaction of authorised officers (including police) and accredited operators (assessment criteria 3b). As discussed previously, accredited operators report that, in some cases, enforcement officers have a limited understanding of ACOs for fatigue available under the NHVAS. Complexities around the enforcement of bespoke AFM schedules will likely continue under the new environment. Nonetheless, the new environment will also enable the regulator to streamline AFM schedules, reducing enforcement complexity (assessment criteria 4b). Enhancements to operator risk profiling systems may counterbalance the negative impacts of complexity of enforcement.

The assessment considers impacts at a national level. The costs and benefits will be broadly similar across different states and territories. The specific costs and benefits in each state or territory will depend in part on the nature of the heavy vehicle fleet and its use in each state or territory.

**Implementation, transition, and evaluation arrangements**

To ensure continuity for accredited operators, the regulator will adapt existing ACOs to be applied as part of the new regulatory environment.

To deliver on the overall objectives of the new legislative environment, the regulator will also be expected to develop a limited suite of other ACOs, ready for commencement of the new law. The NHVR will evaluate and consult on proposed new ACOs as part of the subsequent RIS process.

**Recommendation 7**

That, as a fundamental enhancement to the scheme, the law establishes a scalable safety management system as a core accreditation requirement.

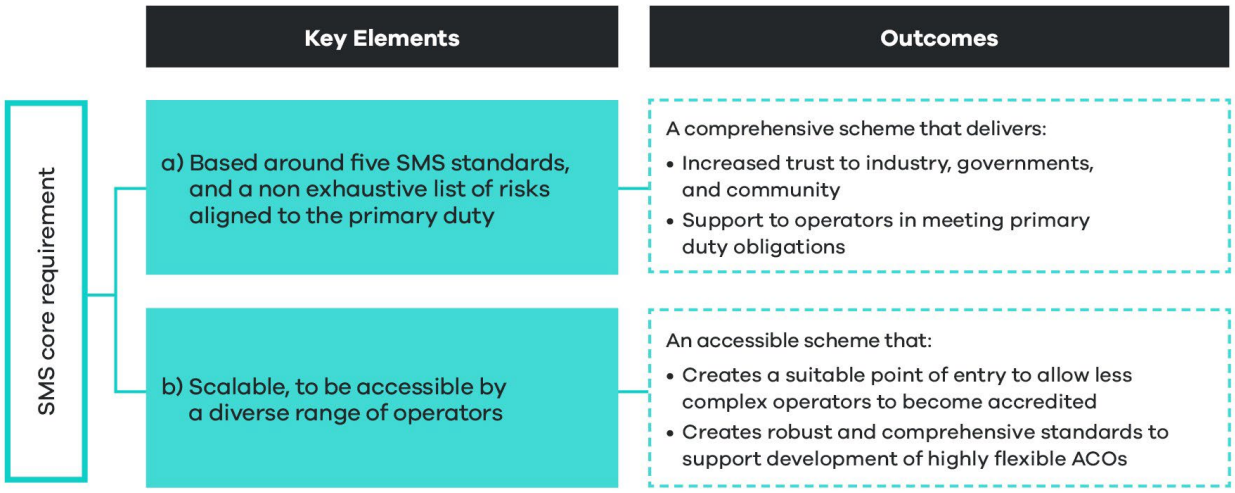
### What is proposed?

The future HVNL will restructure the new NHVAS around a core SMS requirement. This fundamentally enhances and increases trust in the scheme by ensuring accredited operators implement a comprehensive approach to managing safety.

Research has shown that a well-implemented SMS, predominantly where the organisation invests effort, is associated with enhanced safety performance and improved safety culture and awareness (ATSB, 2011, p 27).

Figure 23 provides an overview of key elements of the SMS core requirement.

**Figure 23. Key elements and outcomes for the SMS core requirement**




Consistent with international literature, the law will broadly define a ‘safety management system’ as encompassing a systematic approach to managing safety, including the necessary organisational structures, accountabilities, policies and procedures. This is consistent with the NHVR’s current guidance to operators, outlined in Figure 24.

**Figure 24. Safety management system (NHVR, 2021)**


Key foundations: Are based on five safety management system standards, and a non-exhaustive list of risks aligned to the primary duty

The SMS core requirement will be constructed around five SMS standards (SMS core elements) and a list of non-exhaustive risks to be managed in line with each SMS standard. The SMS risk areas will be designed to achieve alignment with the primary duty. At a minimum, these will include:

- fatigue
- mass
- maintenance
- health
- loading
- speed
- competency
- distraction
- any other relevant risk.

Under the enhanced scheme, the regulator cannot grant accreditation to an operator unless it is satisfied that the operator meets the SMS accreditation standards, is managing prescribed risk areas and complies with any other requirements, as set out in regulations, guidelines or the NHVAS business rules.

The law will define an SMS based on five core elements in Figure 25. Core elements were initially proposed by the Medlock Review (2020) and further refined by the NTC and stakeholders via consultation in 2022.

SMS core elements include leadership commitment, risk management, people, safety systems and assurance. These elements will be further tested with industry.

The SMS accreditation elements and a non-exhaustive list of risks to be managed per SMS accreditation standards will be established in regulation and are subject to expansion or change over time.

High-level SMS scheme architecture will include a scalable core SMS requirement where the NHVR assesses an operator's SMS to determine whether all identified risks are managed comprehensively, commensurate to the operation's size complexity and nature of the freight task.

It is important to note that while the SMS aligns with the risks identified under the primary duty, NHVAS accreditation does not equate to compliance with the primary duty. Primary duty compliance and upkeep of a well-functioning and non-deteriorating SMS is the ongoing responsibility of the operator and driver.

**Figure 25. Proposed five safety management system core elements as recommended by the Medlock Review – example only**


- **Leadership and commitment**. Demonstrated commitment to the highest safety outcomes based on strong leadership and clear safety responsibilities.
- **Risk management**. A proactive, outcomes-focused approach to managing the risks associated with transport activities. The adequacy of risk management should be continuously reviewed and revised to ensure that the risks of transport activities are effectively identified and controlled.

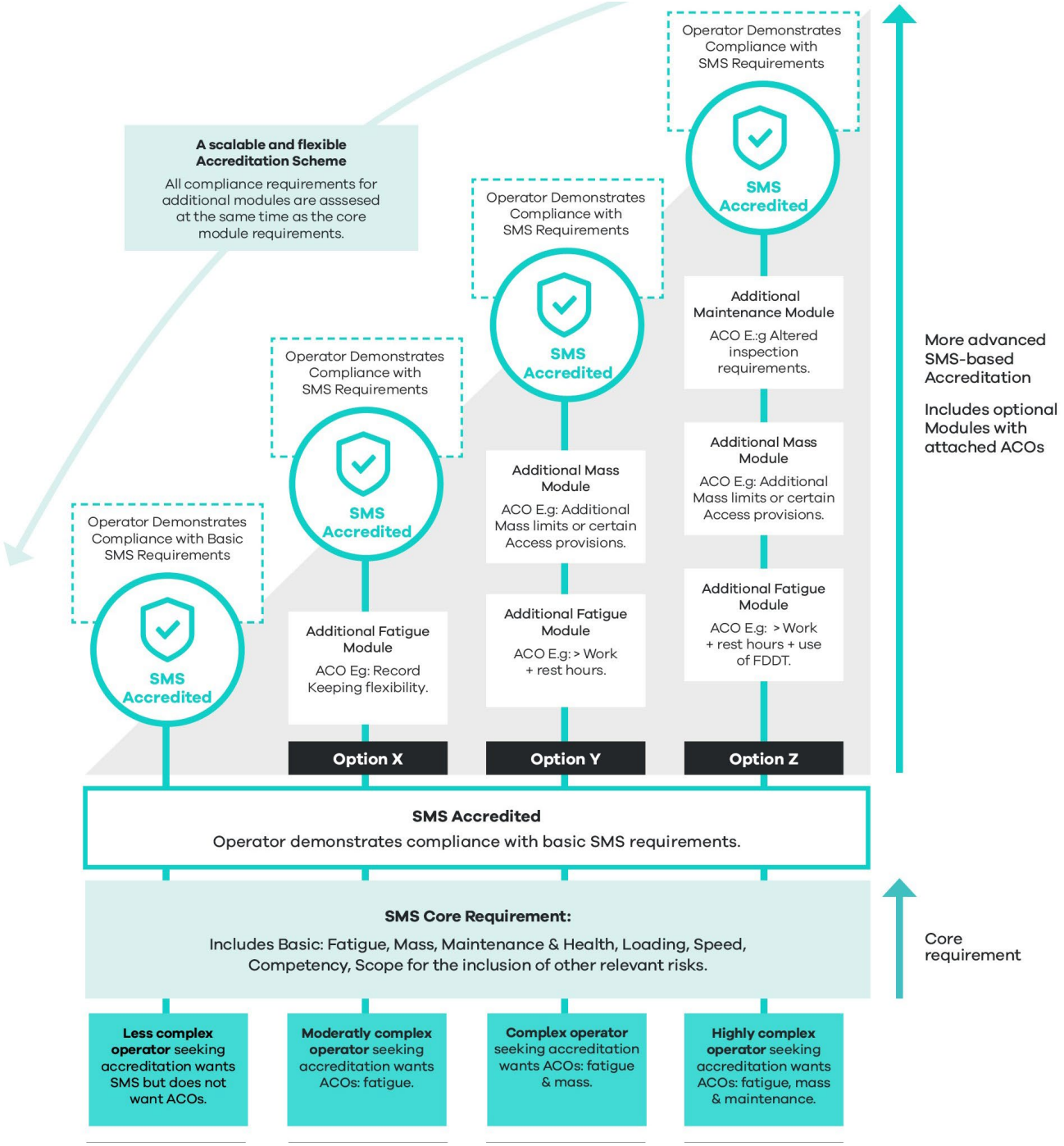
- **People**. Appropriate resourcing is available, and people at all levels of the organisation are fit for duty and have the knowledge, competence and attitude to operate safely and efficiently.
- **Safety systems**. Appropriate systems are implemented effectively to ensure safe and efficient operations.
- **Assurance**. Demonstrated competency and capacity of operators to meet their safety duties.

Key element: scalable, to be accessible by a diverse range of operators

The law will ensure that the SMS core requirement is scalable so that operators can develop their SMS relative to their operation's size, complexity and specific business needs. To achieve this, the SMS standards and specified risks will be drafted with the brevity required to contemplate a diverse range of operators.

As discussed under recommendation 6, the SMS core requirement will be designed so that risk area modules can be embedded into an overall assessment of an operator's SMS. Figure 26 provides an overview of how the SMS core requirement will interact with risk area modules under the new regulatory environment.

**Figure 26. Overview of scalable safety management system and interaction with modules**




Note – ACOs listed in the above chart are an example only.

### What are the objectives?

The SMS core requirement will be designed to achieve:

- A comprehensive scheme that supports operators in meeting their primary duty obligations.
- Increased safety assurance to operators, regulators, governments and the community. Under an enhanced SMS-based scheme, compliant operators will be accredited as

having an effective, documented SMS. An NHVAS SMS will provide some assurance that accredited operators are effectively managing their safety risks.

- Scalability, such that a diverse range of operators, from less complex to highly sophisticated, can access the scheme. A risk-based SMS approach to operator assurance offers a clear and coherent compliance regime for operators who prefer the simplicity and certainty of prescriptive regulation. This approach also provides more complex operations with the flexibility to develop a highly sophisticated or bespoke SMS commensurate with the operation's scale and specific to the freight task.
- Achieving an improved safety culture and improved safety outcomes for industry participants and the community.

**How will the law change?**

Current law (the base case)

The NHVAS is based on separate risk-based fatigue, mass and maintenance management modules. While NHVAS business rules draw on and integrate several SMS principles, the scheme does not require operators to demonstrate an effective SMS.

A key criticism of the NHVAS is that accredited operators cannot draw on their accreditation management practices to manage their obligations under the primary duty. While the primary duty does not explicitly require the implementation of an effective SMS, it nonetheless requires operators to manage the safety of transport activities so far as is reasonably practicable. In this context, an SMS can be used to indicate that an operator adequately manages primary duty obligations.

The long-term objective of the NHVAS is to improve compliance and road safety. The NHVAS is a formal process for recognising operators with robust safety and other management systems and is also increasingly used to show compliance with general duty requirements under the HVNL.

In addition to requiring certain SMS elements under the NHVAS, the NHVR has developed a suite of guidance tools to assist operators in developing their SMS. These include the following instruments:

- Nine-step SMS roadmap (NHVR, 2022)
- SMS checklist (NHVR, 2018).
- SMS factsheet (NHVR, 2021)
- Introduction to SMS in the heavy vehicle industry guide (NHVR, 2021).

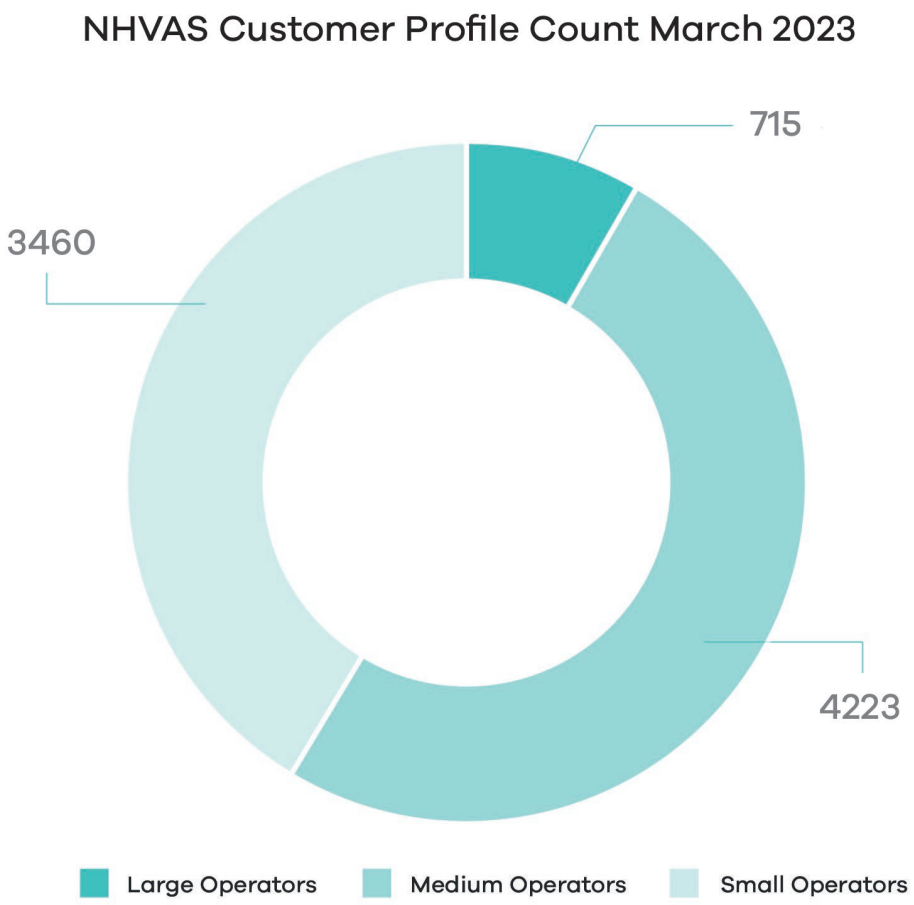
Future law

The law will enshrine the core requirement for an NHVAS-accredited operator to have in place an effective SMS. Consistent with international literature and regulatory approaches in Australian rail, maritime, bus and aviation industries, the law will broadly define SMS as a systematic approach to managing safety, including the necessary organisational structures, accountabilities, policies and procedures. The SMS core module may otherwise be described as a gateway requirement for all other modules in the scheme. Subordinate instruments will detail the industry's requirements and guidance concerning NHVAS SMS compliance.

**What are the impacts?**

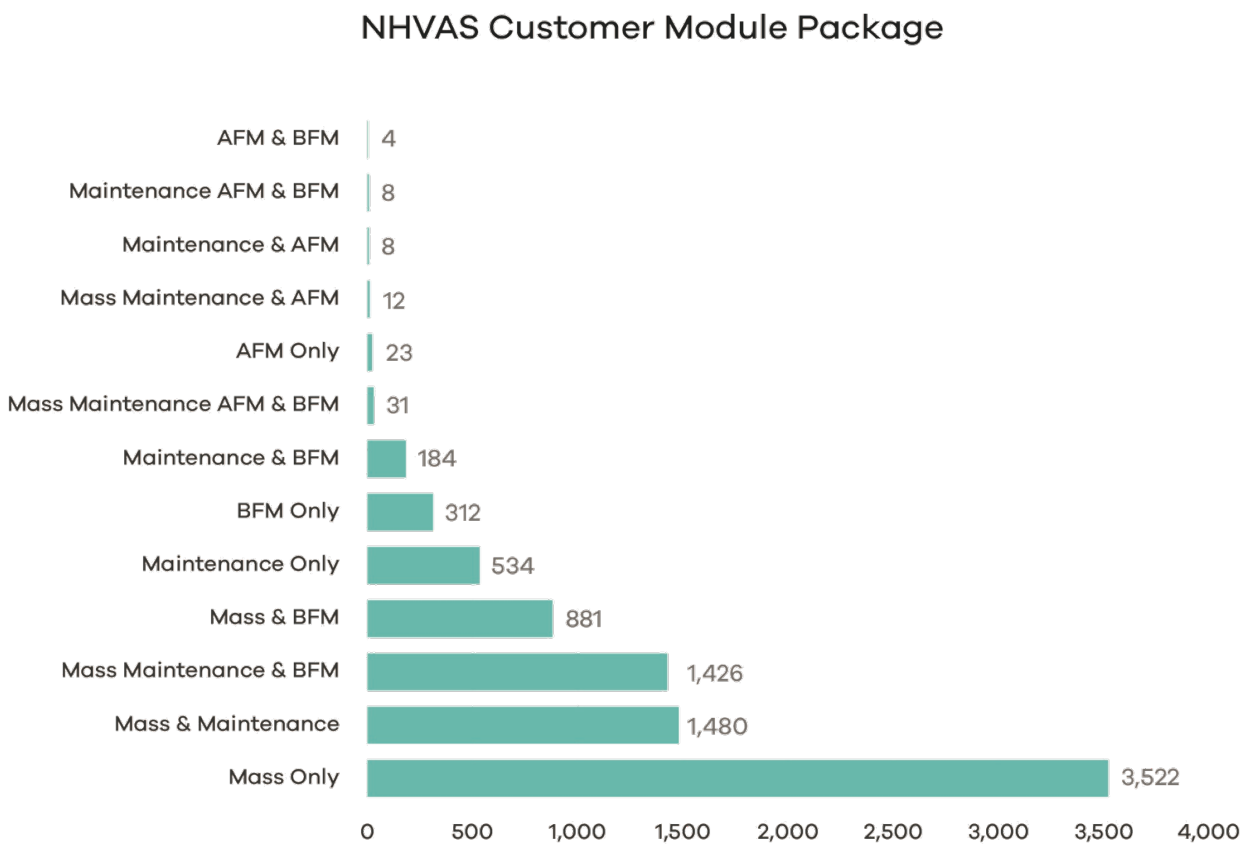
The following section outlines aggregate summary statistics about the existing NHVAS customer profile and broader industry cohorts.

**Figure 27. Current NHVAS customer profile count as of March 2023**




- Existing NHVAS customers as of March 2023 totalled 8,399. Customers are segmented into three groups. As of January 2023, there were approximately 266,000 operators in Australia's heavy vehicle road transport industry. The 8,399 NHVAS-accredited operators currently represent 3.16 per cent of this profile (approximately). As of March 2023, NHVAS was experiencing an annualised customer growth rate of 3.86 per cent (NHVR, 2023).

**Figure 28. NHVAS customer module packages by customer count as of March 2023**




- Mass only and mass and maintenance modules comprise 3,522 (41.81 per cent) and 1,480 (17.57 per cent) of all NHVAS customers respectively.
- Mass, maintenance and BFM represent the third highest package preference with 1,426 (16.93 per cent) of all NHVAS customers.
- Conversely, four out of 8,399 NHVAS-accredited customers hold AFM and BFM modules. This indicates that, overwhelmingly, customer preference is to have AFM or BFM singularly.

**Figure 29. Number of NHVAS-accredited operators by state as of February 2023**

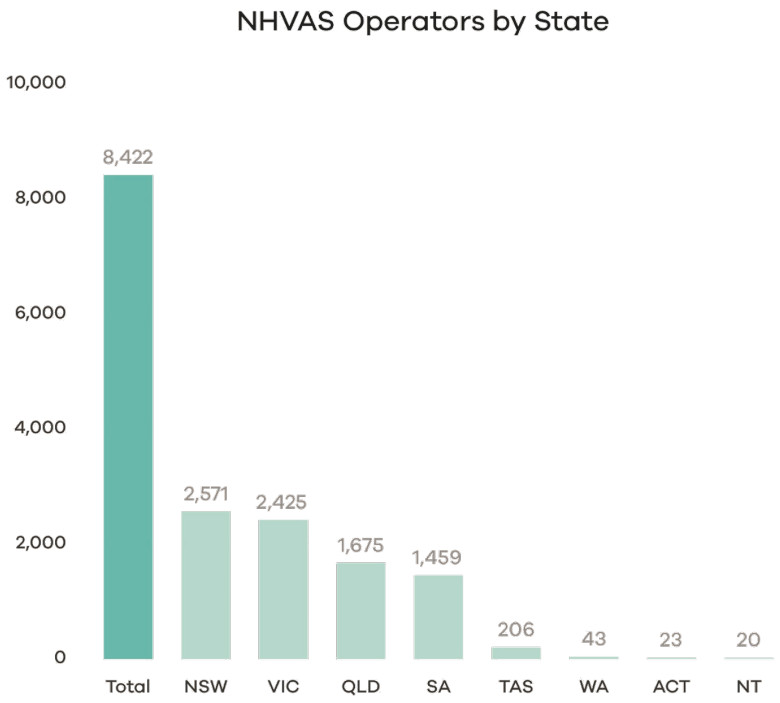



**Figure 30. Number of NHVAS-accredited operators by state and module as of February 2023**

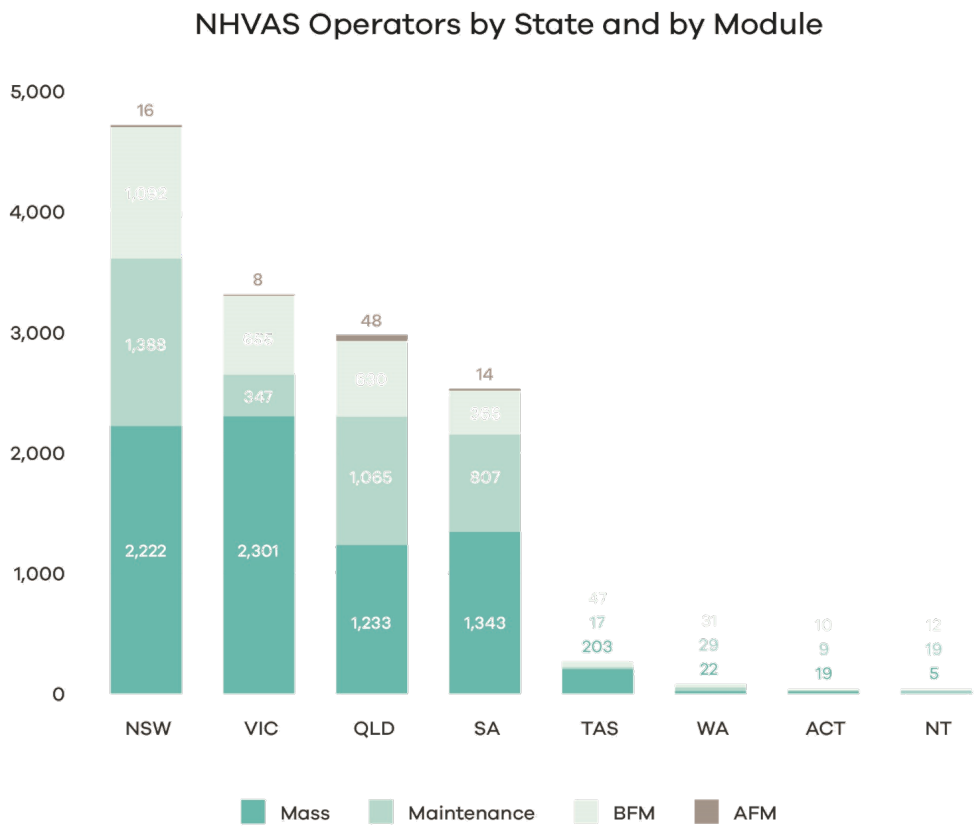
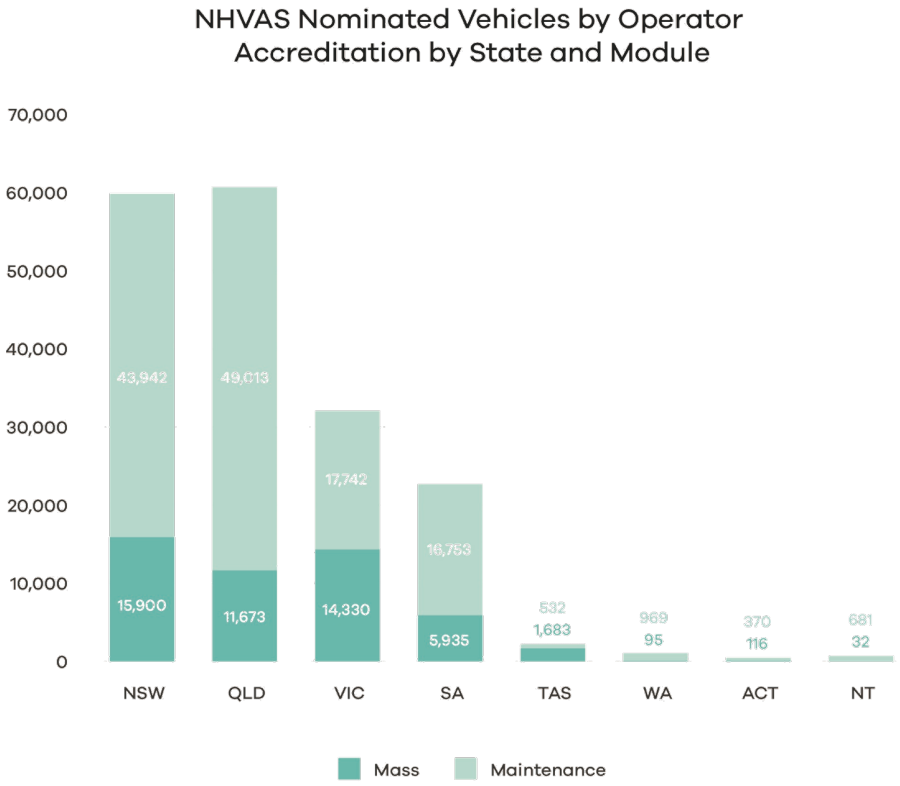
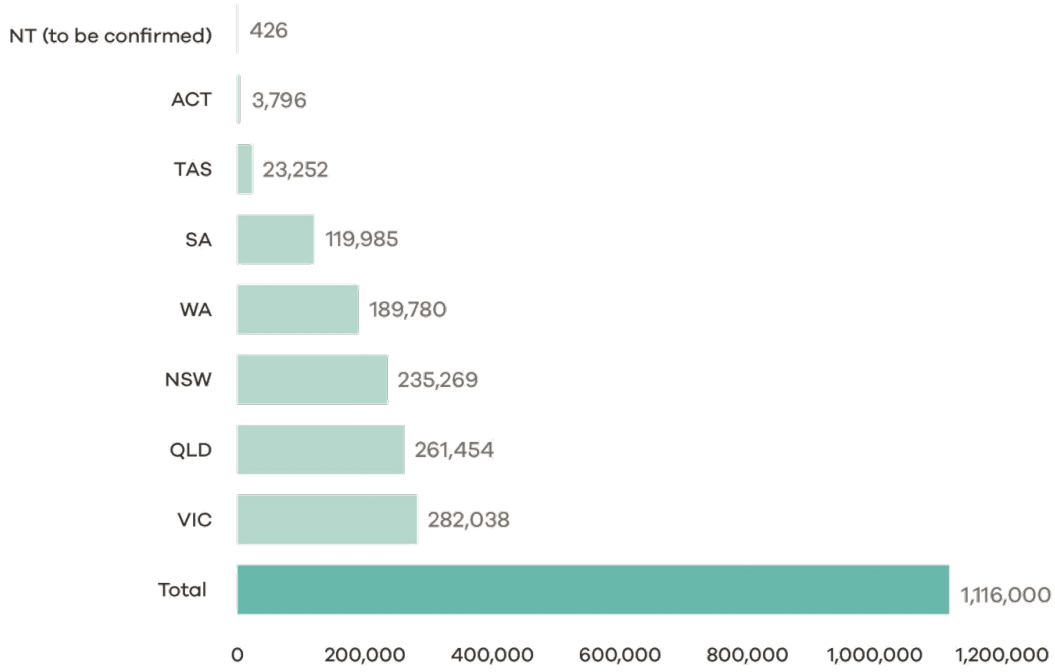


**Figure 31. Number of NHVAS-nominated vehicles by accreditation by state and module as of February 2023**




- Fatigue is not represented in the above chart, as vehicles are only accredited for mass and maintenance.

**Figure 32. Total number of NHVAS-registered vehicles as of February 2023**




- Figures are based on the number of registered heavy vehicles rather than the number of operators (noting the operator is not always the registered owner).

Conducting a cost-benefit analysis for an SMS core requirement presents certain challenges. While the up-front costs of implementing an SMS are quantifiable, many SMS benefits are intangible. Benefits associated with improved safety culture, effective regulatory compliance, and increased public confidence are difficult to quantify and may take time to manifest (Safety Management International Collaboration Group, 2016). An effective SMS may incorporate many elements of an organisation's complex business operations and processes, making it difficult to isolate the effects of individual components of an SMS for cost-benefit analysis.

Measuring the impact of safety management systems is complex. However, research indicates a strong relationship between having an SMS and an effective safety culture and safety awareness in an organisation, which creates a more positive, safe working environment for employees, resulting in better productivity and morale (Thornwaite and O'Neill, 2016, p31). Research literature that attempts to quantify the effects of safety management systems and effective safety culture is limited, though existing work supports a positive impact on safety outcomes as indicated by insurance claims and safety, infrastructure and overall crash risks (Mooren, 2017).

Impacts of introducing an enhanced National Heavy Vehicle Accreditation Scheme with a safety management system as a core accreditation requirement

Improved safety, productivity and recognition of industry diversity:

- Improves safety and productivity outcomes for the NHVAS by aligning NHVAS accreditation and SMS requirements with the primary safety duty in the law.
- Supports uptake of the number of heavy vehicle operators with accreditation and an effective SMS in place. Evidence from a range of published reports suggests accredited operators are safer.
- Reflects and supports industry diversity through a scalable approach that supports operators to develop an SMS suitable to meet their level of complexity (of freight tasks and operations), unique organisational risk profile and individual business needs.
- Provides a scalable solution in supporting the diversity of the heavy vehicle industry by allowing the NHVR to offer a range of specific ACOs to address specific safety risks for different freight tasks and operations.

Promoting new technologies, improved audit outcomes and better alignment with WAHVA:

- Incentivises investment in new technologies and safety management practices for better safety and productivity outcomes through enhanced accreditation standards (and corresponding ACOs).
- The NHVR will be able to operationalise mutual alignment arrangements through a more seamless accreditation process for WAHVA operators and potentially other SMS-based schemes in the future.

Effective risk management:

- Operators can manage risks associated with their operations.
- Operators and the regulator will be better equipped to address emergent safety risks that may not have been previously identified or considered.
- SMS accreditation allows operators to demonstrate to customers, suppliers and the community that they have robust safety systems and processes checked by the regulator and confirmed to meet a defined standard.

Greater flexibility and improved options for operators:

- An SMS core requirement provides a pathway for operators to access alternative compliance under the updated scheme.
- A decoupling of accreditation and alternative compliance, such that an operator may be accredited without applying for or being granted an ACO.

Reduced compliance costs:

- Reduced costs for industry by eliminating paper carrying requirements.
- Reduced compliance costs are expected for operators by establishing a NAS and NHVAS audit regime to minimise multiple third-party audit requests where possible.
- A moderate cost burden exists for operators concerning upfront costs to transition to the enhanced NHVAS. Changes to standards, module design, and NHVAS business rules will impact operators' initial costs relative to their size, complexity and specific business needs.
- The proposal may involve minimal regulatory costs for the NHVR to establish the changes to the NHVAS systems.

Improved capacity to regulate higher-risk operators:

- The NHVR will be able to allocate better distribution of regulatory efforts as an increasing level of confidence in accredited operators through improved safety outcomes will unlock additional resource capacity for regulating higher-risk operators.

Business benefits of an SMS may include:

- A reduction in indirect costs, for example, lower insurance premiums and reduced legal fees.
- Some operating costs are reduced by exposing inefficiencies in existing processes and systems.
- A positive work environment and staff engagement and retention.
- A more holistic view of the organisation, safety decision-making and long-term planning.
- Contribution to a competitive advantage, better business reputation and increase in public (and shareholder) confidence in the organisation's ability to manage risks.
- Increased confidence by the regulator in an organisation's safety management capabilities, decreased regulatory involvement and reduced direct and indirect oversight costs.

Safety management system costs

It is recognised that there may be additional costs for existing and new NHVAS operators without a basic SMS. Costs may be relative to the scale and complexity of an operation. Estimates of costs to industry to establish an SMS as a new requirement for the enhanced NHVAS are considered in this RIS, noting that a more detailed analysis will be possible as the precise SMS requirements are further tested, approved and developed. The diversity of the heavy vehicle industry in terms of complexity and size of business operations and individual needs means that the cost to establish an SMS will vary between individual operators.

A recent NHVR Industry Safety Survey of approximately 6,000 participants indicated that most heavy vehicle operators have at least a basic SMS in place:

- Sixty-five per cent of industry respondents indicated they have at least a basic SMS in their business (NHVR, 2022).
- Organisations of all sizes are consistent in SMS implementation. Businesses with 11 to 20 staff have the highest implementation rate at 70 per cent.
- Sixty-nine per cent of those in an accreditation scheme indicated they had at least a basic SMS in their business. Some respondents were unsure.

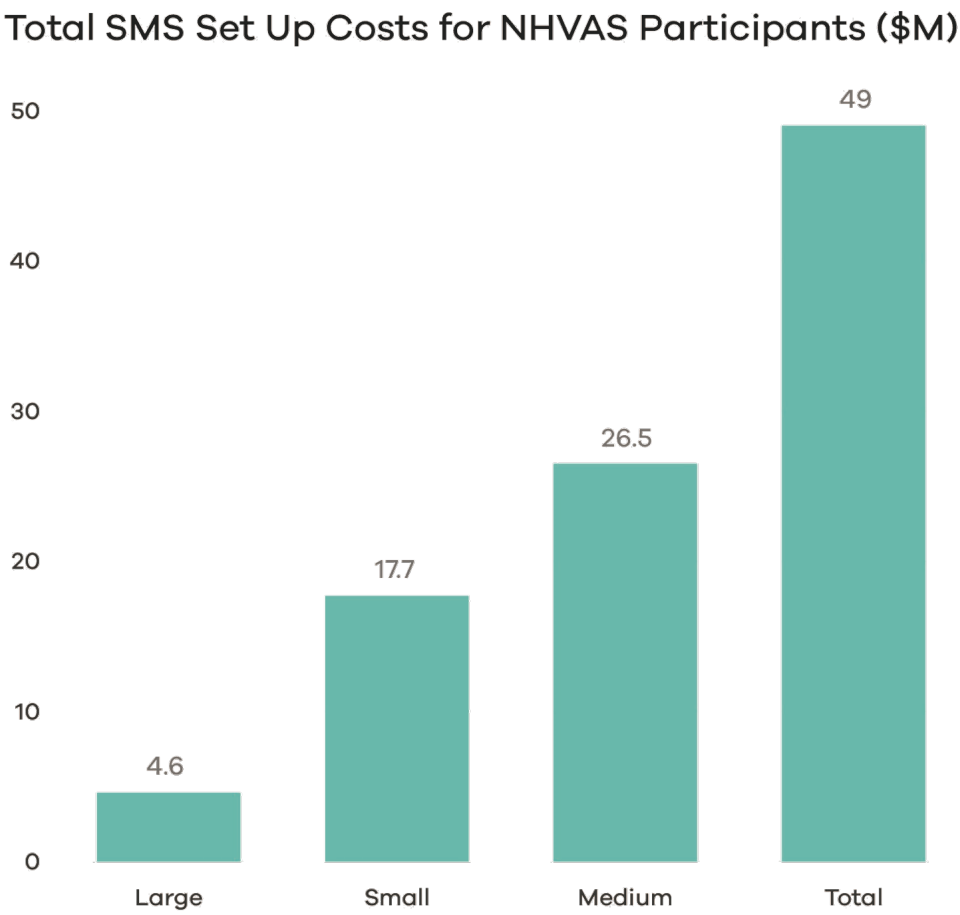
Costs are directly related to the scale of operations and other factors, including whether existing non-SMS modules have been achieved, the degree to which an SMS has already been implemented, and individual operator transition capacity and capability**.** Accreditation in existing NHVAS modules (for example, mass, maintenance and fatigue) could reduce SMS start-up costs by 20 to 60 per cent. For instance, over half of NHVAS customers are accredited in mass only or combined mass and maintenance modules. It is, therefore, reasonable to expect that an operator with mass accreditation would, in most cases, meet basic SMS mass requirements with minimal or no mass-related system changes required.

Conversely, with an accredited SMS, meeting safety-related compliance requirements specific to additional modules or ACOs will be easier for new entrants and could result in significant downstream cost savings.

Considering the above, indicative costs for NHVAS module development were developed based on the following input fields:

- accreditation establishment fee
- estimated 40 hours of establishment work
- two corrective action requests (CARS) for rectification, average 32 hours
- audit costs
- consultancy fees.

**Figure 33. Total safety management system set-up costs across the NHVAS. Total NHVAS aggregate industry costs are $48.8 million[60]**




- The average SMS set-up costs for all NHVAS operators are $5,800.

Small operators

As of March 2023, there were 3,460 small-sized operators in the NHVAS, representing 41.08 per cent of all NHVAS customers. Small-sized operators are classified as businesses with 10 or less vehicles.

NHVR-estimated SMS start-up costs were based on the following cost inputs:

- a $95 Accreditation establishment fee
- development cost (average $1,500)
- estimated 20 hours of establishment work at $55 per hour
- Two CARS for rectification at 32 hours at $55 per hour
- audit cost (average $1,000)
- establishment fee 15 per cent operational on-cost.

Total SMS start-up costs:

[60] All SMS costings are derived at 10 per cent confidence (NHVR, 2023).

- Total SMS costs for small NHVAS operators is $17.73 million comprising 36 per cent of total NHVAS customer costs.

Average range of SMS cost for a single operator:

- The NHVR estimates an average SMS start-up cost of $5,800 per operator (NHVR,2023).
- Deloitte Access Economics estimates an average SMS start-up cost of $10,000 per operator (Deloitte Access Economics, 2020, p19), a report commissioned by the Australian Trucking Association and NatRoad.

Medium operators

As of March 2023, there were 4,223 medium-sized operators in NHVAS, representing 50.14 per cent of all NHVAS customers. Medium-sized operators are classified as businesses with more than 10 but less than 100 vehicles.

NHVR-estimated SMS start-up costs were based on the following cost inputs:

- a $95 accreditation establishment fee
- development cost (average $2,500)
- estimated 20 hours of establishment work at $55 per hour
- Two CARS for rectification at 32 hours at $55 per hour
- audit cost (average $1,000)
- establishment fee 15 per cent operational on-cost.

Total SMS start-up costs:

- Total SMS costs for medium NHVAS operators is $26.5 million comprising 54 per cent of total NHVAS customer costs.

Average range of SMS cost for single operator:

- The NHVR estimates an average SMS start-up cost of $6,273.
- Deloitte Access Economics estimates an average SMS start-up cost of $15,000 per operator.

Large operators

- As of March 2023, there were 715 large-sized operators in NHVAS, representing 8.5 per cent of all NHVAS customers.
- Large-sized operators are classified as businesses with over 100 vehicles.

NHVR-estimated SMS start-up costs were based on the following cost inputs:

- a $95 accreditation establishment fee
- development cost (average $1,500)
- estimated 40 hours of establishment work at $55 per hour
- Two CARS for rectification at 32 hours at $55 per hour
- audit cost (average $1,500)
- establishment fee 15 per cent operational on-cost.

Total SMS start-up costs:

- Total SMS costs for large NHVAS operators is $4.57 million, comprising 9 per cent of total NHVAS customer costs.

Average range of SMS cost for a single operator:

- The NHVR estimates an average SMS start-up cost of $6,400.
- Deloitte Access Economics estimates an average SMS start-up cost of $25,000 per operator.

NHVAS cost support structures

The NHVAS will provide direct support, consultation, education, tools, templates and other resources to support all NHVAS operators in minimising their initial and ongoing SMS costs.

This impact analysis indicates that the proposal to have an assurance framework that is underpinned by an SMS is expected to deliver moderate improvement to road safety (impact category 1). Some efficiency improvements are likely due to changes resulting from a more holistic focus on business operations (impact category 2).

Given the analysis of benefits and costs, the proposal is expected to have moderate impacts on the regulatory burden faced by heavy vehicle industry operators currently in the scheme (impact category 3), as there is a high level of existing SMS uptake and moderate to low transition costs.

There are potential impacts on the regulatory costs for the government (impact category 4), such as costs to the NHVR (as scheme administrator) to establish the SMS compliance requirements.

This proposal to provide for an SMS under the NHVAS also is expected to contribute a moderate improvement to flexibility and responsiveness (impact category 6). It allows flexibility for industry to focus on safety outcomes under the SMS performance-based requirements. It allows flexibility for government to address emerging safety risks (assessment criteria 6c), and the scalability of SMS requirements reflects and supports industry diversity (assessment criteria 6d).

**Implementation, transition and evaluation arrangements**

Transition arrangements

From a design perspective, understanding the transition arrangements of the existing NHVR SMS module to the enhanced scheme's SMS core module is a priority.

Ongoing consultation with the NHVR is critical to understanding the practical transition arrangements and overall suitability of modules for adaption or part adaption into the new SMS core module. The NTC is working closely with the NHVR to ensure a smooth transition.

The NTC will initially work with the NHVR, which will lead the transfer and updating of existing modules by streamlining existing safety elements across other modules into the SMS core module and developing new criteria where relevant.

The NHVR will support NHVAS operators in transitioning to the enhanced scheme. While operators will have up to three years to transition to the new scheme, the NHVR will encourage operators to transition earlier.

**Recommendation 8**

That, to support mutual alignment pathways and scheme robustness, a national audit standard be developed by the regulator and approved by ministers.

**What is proposed?**

A national audit standard for the enhanced NHVAS

A NAS will be developed by the regulator and approved by ministers, to be applied as part of the regulator's existing function to implement and manage an audit program for the NHVAS.[61] The standard will be outcomes based, and designed so that other assurance schemes can adopt it. The NAS will also be designed to be used for non-accreditation audits intended to establish adherence to or compliance with the primary duty. As discussed under recommendation 2, the law will also specify that a court may consider an audit conducted under the standard as part of determining whether the primary duty has been met.

The NAS will follow the principles of ISO 19011 Guidelines for Auditing Management Systems (as amended occasionally).

The NAS will be applied to guide audits of varying scopes and scales, including those conducted by large audit teams. It is intended to apply to various potential users, including auditors and organisations implementing management systems or organisations conducting management system audits for contractual or regulatory reasons. The NAS will be flexible enough for users to apply the guidance in developing their own audit-related requirements or regimes.

The NAS will address how audits are undertaken for accreditation within a regulatory framework. It will include guidance on the purpose of audits, how they should be undertaken and who should conduct them. Additionally, it will outline specific requirements relating to oversight of the audit standard.

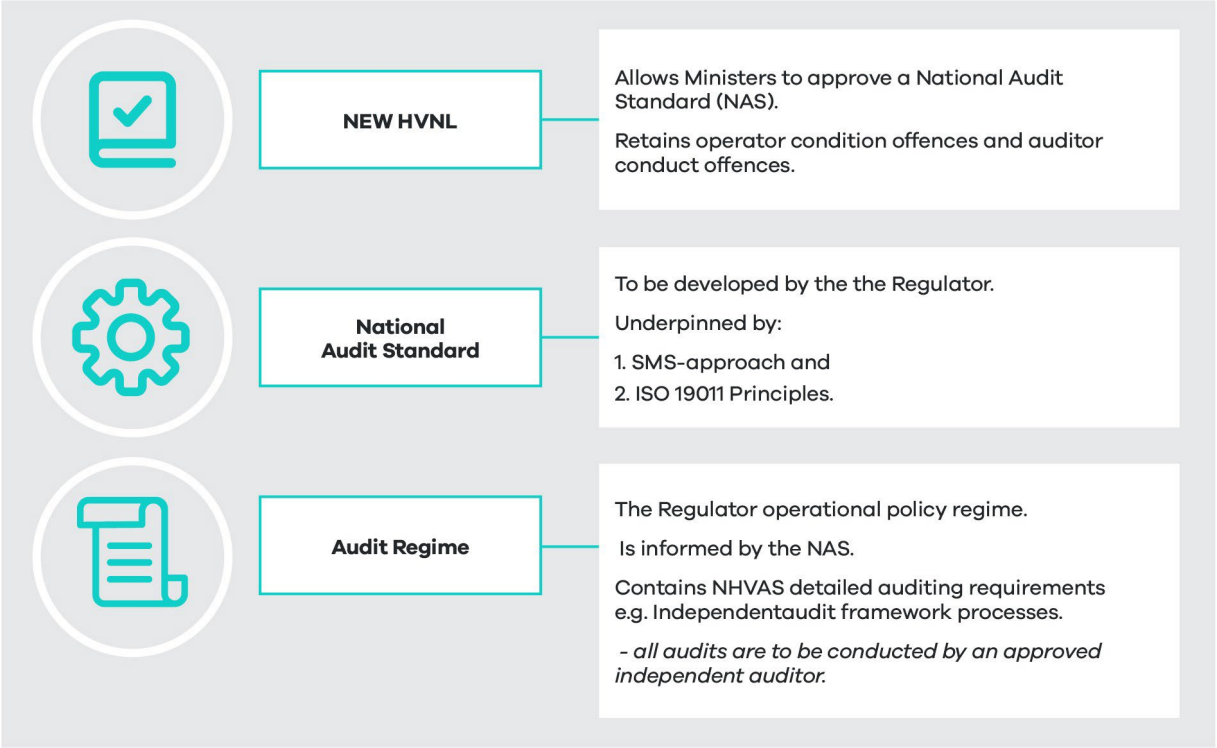
The standard will not include detailed instructions or workflows regarding which elements of an accredited operator's system should be assessed, such as:

- the sharing of audit information between the auditor, accredited operator and oversight body
- auditor training requirements
- operator requirements
- fee-paying arrangements
- any potential regulator reporting requirements.

The regulator will develop detailed instructions and workflows above under the NHVAS auditing regime. Instructions and workflows will include guidance material to complement the NAS.

[61] Currently specified under section 659H of the HVNL.

**Figure 34. National audit standard and audit regime overview**




The new law will allow ministers to approve a NAS to build a more robust auditing regime for the new NHVAS (see recommendation 2).

The NAS will establish the requirements for developing an auditing regime to support heavy vehicle accreditation under a risk-based SMS approach established in law.

The regulator's audit regime will adopt the NAS approach as outlined under ISO19011 – Guidelines for Auditing Management Systems, which includes:

- An audit program consisting of the arrangements to complete all the individual audits needed to achieve a specific purpose.
- Proactive risk management and a 360-degree wrap-around model that provides continuous improvement for operators at all levels. This approach differs from the current compliance-based approach to auditing, which focuses only on assessing an operator's capacity to meet minimum compliance standards.

Audits will include measures to assess the operator's system's effectiveness in achieving the accreditation scheme's desired outcomes.

Appendix G provides an overview of the relationship between the primary duty, SMS, accreditation requirements, and the application of the NAS in this regulatory environment.

**What are the objectives?**

In late 2017, ITMM commissioned the NHVR to review heavy vehicle accreditation schemes throughout Australia, where it identified issues around the quality and robustness of audits and a lack of trust in the current process. The review noted that a NAS could improve industry safety, efficiency and productivity outcomes by implementing an outcome-based

approach to auditing. In 2021, ministers agreed that a revised accreditation scheme would establish a NAS and a new auditing regime under a future law.

A NAS will be used to confirm that accredited operators or operators applying for accreditation have an appropriate SMS that meets the SMS module requirements and standards. Moreover, it will ensure that audits of accredited operators are undertaken to determine the effectiveness of their SMS in achieving the outcomes sought in the SMS core module. The NAS will be the instrument against which NHVAS module standards will be assessed.

The NAS will:

- Utilise measures to assess the effectiveness of the operator's system in achieving NHVAS accreditation standards.
- Ensure audits align with the relevant principles and processes.

This approach focuses on proactive risk management and continuous improvement of an operator's management systems over time, as opposed to the current process, which essentially assesses audits based on an operator meeting the minimum compliance standards.

The NAS may also reduce the reliance on separate audits by customers to meet their chain of responsibility obligations by offering a standardised approach to audits, establishing a basis for consistency.

The NHVR will be responsible for administering the auditing regime with a focus on delivering increased confidence in the robustness of NHVAS to governments, third parties and the community. The regime under the enhanced NHVAS will emphasise the competence of auditors, regularly assessing vehicle roadworthiness, driver competence and fitness for duty. Incident reporting and investigation will also be essential in the regime's ability to identify potential safety systems and performance weaknesses.

**How will the law change?**

Current law (the base case)

Regarding existing auditing requirements, an approved auditor is of a class approved by the responsible ministers under section 654 of the HVNL. The law requires that a statement from an approved auditor must accompany applications for heavy vehicle accreditation. The regulator may decide on an application for heavy vehicle accreditation based on the results of any audits carried out on the applicant's relevant management system (and anything else it deems appropriate). The regulator may consider it appropriate to require additional records to be kept and audits to be performed to ensure practices applying under the accreditation (for example, driver fatigue management practices) are followed consistently and effectively. Offences relating to auditors include maximum penalties of $10,000 for false representation of auditors and audits.

Future law

The future law will change from the current HVNL by enabling ministers to approve a NAS recognised in law as part of the scheme. The NAS will specify outcomes-based auditing requirements that align with the SMS risk-based principles and relevant national or international standards (for example, ISO19011 is a standard that sets out guidelines for auditing management systems and contains guidance on managing an audit program,

principles of auditing and evaluating individuals responsible for managing the audit programs).

A NAS provides a framework for consistent and standardised auditing practices that other SMS-based assurance schemes can adapt. The standard could also be used for non-accreditation audits to establish adherence to or compliance with the primary duty. In this context, the law will specify that a court may consider an audit conducted under the standard as part of determining whether the primary duty has been met.

The future law will also ensure that:

- An operator of a heavy vehicle may apply to the regulator for heavy vehicle accreditation under the HVNL in the approved form and accompanied by a statement that the applicant is compliant.
- A statement from an approved auditor that the auditor has considered the applicant's relevant SMS may be required to ensure compliance with the applicable standards and business rules.
- In deciding on an application for heavy vehicle accreditation, the regulator may have regard to anything it considers relevant, including the results of any audits or audit certificates.
- Offences relating to auditors include false representation or misrepresentation, and associated penalties will remain.

The regulatory environment will:

- Outline the detail of the NAS that can be utilised by non-HVNL parties, including other SMS-based assurance schemes, and as part of audits carried out by upstream chain of responsibility parties (particularly customers).
- Set forth outcomes-based performance standards for the SMS and associated modules. For the SMS module, the performance-based standards will cover the five SMS elements – leadership commitment, risk management, people, safety systems and assurance – that safety management systems will be audited against under the NAS approach.
- Include explanatory memoranda that will clarify that chain of responsibility parties must adopt a practical approach to managing risks under the primary duty and that an audit process will not (on its own) demonstrate that obligations have been met.
- Set out procedural matters and common conditions, for example, critical incident reporting, auditing process requirements and requirements to ensure the electronic documentation system is current.

**What are the impacts?**

Potential impacts

The proposal for outcomes-based auditing standards and practices is expected to provide a moderate improvement in public safety (impact catagory 1). The NAS will form an effective and reliable tool supporting management policies and controls, providing information on how an organisation can improve its safety performance. The proposal supports targeted, risk-based enforcement options for the NHVR (assessment criteria 1c). The NAS will be designed to confirm that accredited operators or operators applying for accreditation have an appropriate SMS that meets the SMS core requirements and ensures audits of accredited operators are undertaken to determine the effectiveness of their SMS in achieving safety outcomes.

Potential improvements

The proposal uses a risk-based outcomes approach to auditing to assess the effectiveness of the operator's system in achieving NHVAS standards. The risk-based approach should substantively influence the planning, conducting and reporting of audits to ensure that audits are focused on matters that are significant for the audit client and for achieving the audit programme objectives. This proposal is aimed at community assurance that heavy vehicle safety risks have been comprehensively addressed (assessment criteria 1d) and is expected to deliver a moderate improvement in operational efficiency or productivity (impact catagory 2).

The proposal has the potential to increase customer and supplier confidence which may lead to reduced duplicative (non-NHVAS) audits conducted by third parties, or more efficient business practices (assessment criteria 2c). The regulator will aim to use the NAS as guidance to streamline its audit regime processes and administration arrangements to resolve persisting fee structure, payment and audit cost issues.

Potential negative impacts

Limited regulatory costs for government (assessment criteria 4a) may result from this proposal as a new audit regime requires reviewing existing systems, processes, and people. For industry, it is estimated that costs will be primarily associated with increased SMS entry requirements (for example, shifting from managing the risks associated with accreditation to managing all risks to support primary duty compliance).

The assessment considers impacts at a national level. The costs and benefits will be broadly similar across different states and territories. The specific costs and benefits in each state or territory will depend in part on the nature of the heavy vehicle fleet and its use in each state or territory.

**Implementation and transition arrangements**

Under the NHVAS Business Rules and Standards and independent audit framework, all audits will continue to be conducted by an approved independent auditor. These auditors must be registered or recognised by the NHVR as NHVAS-approved auditors. The NAS is likely to require a staffing increase for the regulator. The implementation of the NHVAS audit programme will be monitored and measured continuously to ensure its objectives have been achieved.

### 5.3.5 Summary impact analysis

Table 13 summarises the impact analysis for the assurance and accreditation recommendations.

**Table 13. Assurance and accreditation recommendations – summary impact analysis, including impact category**

| RECOMMENDATION | Overall impact | Public safety | Improvements to operational efficiency or productivity | Regulatory burden for industry | Regulatory costs for government | Asset Management | Flexibility and responsiveness |
|---|---|---|---|---|---|---|---|
| **6a** That as part of the new alternative compliance tier (recommendation 1b), the future law restructure the **National Heavy Vehicle Accreditation Scheme** so that accredited operators can apply for an expandable range of alternative compliance options – either on a bespoke basis or as part of accreditation modules developed by the regulator, within the ministerially approved limits.<br><br>**6b** That the law ensures a **three-year transition period** for current NHVAS operators to provide operators adequate time for them to | **Improvement**<br><br>The expanded range of ACOs is expected to improve flexibility and responsiveness and contribute to safety and operational efficiency outcomes.<br><br>A three-year transition period is proposed to assist operators and the regulator by allowing time to cover potential costs, particularly for operators to set up an SMS, auditors and external assistance, | See recommendation 1 | See recommendation 1 | **Neutral**<br><br>Operators will incur initial and additional ongoing costs. However, over time, long-run safety benefits can offset costs. | **Neutral**<br><br>The environment will be more complex to administer. However, overtime costs can be offset by more targeted, risk-based enforcement. | See recommendation 1 | See recommendation 1 |

| RECOMMENDATION | Overall impact | Public safety | Improvements to operational efficiency or productivity | Regulatory burden for industry | Regulatory costs for government | Asset Management | Flexibility and responsiveness |
|---|---|---|---|---|---|---|---|
| develop the necessary safety management system to qualify for the enhanced scheme. | and regulator resourcing. | | | | | | |
| **7** That, as a fundamental enhancement to the scheme, the law establishes a **scalable safety management system** as a core accreditation requirement. | **Improvement**<br><br>Safety benefits across the industry from greater focus on SMS and safety culture are difficult to quantify but are expected to have a positive impact over time which will outweigh the initial upfront costs.<br><br>Note: There are challenges in determining a cost-benefit analysis for an SMS as an SMS creates immediate, direct and ongoing costs, while benefits are mostly intangible, difficult to quantify and | **Large improvement**<br><br>For accredited operators an SMS is expected to lead to a reduction in crashes, and associated indirect costs, for example, lower insurance premiums.<br><br>Improves operators' ability to continuously identify hazards and manage safety risks. | **Large improvement**<br><br>Contribution to competitive advantage, better business reputation, and a more holistic focus on business operations.<br><br>Operators will benefit from improved health and safety performance.<br><br>Operators have greater assurance that accreditation is supporting them to comply with the primary duty. | **Neutral**<br><br>Costs for some parts of industry to develop an SMS where there is not currently one (or where it does not meet the new standard). Note that the requirements will be scalable, businesses are already required to have an SMS under work health and safety laws. A NHVR survey of around 6,000 operators found uptake is high: around 65% of all operators report having at least a | **Improvement**<br><br>Costs to the regulator to establish the SMS compliance requirements and to carry out consultation, direct support, education, training and staff resources.<br><br>Increased confidence in an organisation's safety management capabilities may help the regulator to better target resources to areas of greater safety risk. | **Neutral** | **Large improvement**<br><br>Allows flexibility for industry to focus on safety outcomes under the SMS performance-based requirements.<br><br>Allows flexibility for government to address emerging safety risks.<br><br>Scalability of the SMS requirement reflects and supports industry diversity. |

| RECOMMENDATION | Overall impact | Public safety | Improvements to operational efficiency or productivity | Regulatory burden for industry | Regulatory costs for government | Asset Management | Flexibility and responsiveness |
|---|---|---|---|---|---|---|---|
| | emerge over time (for example, improved safety culture, effective regulatory compliance, public confidence). | | | basic existing SMS, (around 69% for accredited operators.)<br><br>As of March 2023 there were 8,399 operators in the scheme, an estimated 3.16% of the total heavy vehicle industry.<br><br>Total estimated SMS start-up costs for current NHVAS operators at the aggregate industry level is $48.78m. For each segment of industry:<br><br>Small $17.71m<br><br>Medium $ 26.5m<br><br>Large $4.57m | | | |

| RECOMMENDATION | Overall impact | Public safety | Improvements to operational efficiency or productivity | Regulatory burden for industry | Regulatory costs for government | Asset Management | Flexibility and responsiveness |
|---|---|---|---|---|---|---|---|
| | | | | Average estimated costs per operator:<br><br>Small operators $5,000 to $10,000<br><br>Medium operators $,6,200 to $15,000<br><br>Large operators $6,400 to $25,000.<br><br>Initial set-up requirements may impose a moderate burden, expected to be offset by longer term safety benefits. | | | |
| **8** That, to support mutual alignment pathways and scheme robustness, a **national audit standard** be developed by the regulator and approved by ministers. | **Improvement**<br><br>More robust auditing standards may improve community confidence in heavy vehicle regulation, | **Large improvement**<br><br>Improved auditing environment for industry as they have access to an effective and reliable tool | **Large improvement**<br><br>Industry may benefit as the NAS has the potential to increase customer and supplier | **Neutral**<br><br>Industry impacts may be limited as accredited operators are already subject to the existing | **Improvement**<br><br>Some regulatory costs for the regulator to establish the new approach and review systems, | **Neutral** | **Neutral** |

| RECOMMENDATION | Overall impact | Public safety | Improvements to operational efficiency or productivity | Regulatory burden for industry | Regulatory costs for government | Asset Management | Flexibility and responsiveness |
|---|---|---|---|---|---|---|---|
| | leading to safety improvements.<br><br>Industry may gain productivity benefits from the potential to drive down requirements for multiple audits from customers and across schemes.<br><br>These benefits are expected to outweigh the costs to the regulator to establish the new audit standard. | supporting management policies and controls, providing information on how they can improve safety performance.<br><br>An improvement for the regulator by supporting targeted, risk-based enforcement options.<br><br>Provides community assurance that heavy vehicle safety risks are managed through a robust assurance standard. | confidence, which may lead to reduced duplicative (non-NHVAS) audits conducted by third parties which negatively impact day-to-day operations. | scheme audit regime.<br><br>Industry benefits for operators in multiple schemes by more streamlined application processes, reducing administrative burden and overall costs as the NAS may lead to mutual recognition with other schemes over time. | processes, and people. | | |

## 5.4 Technology and data

### 5.4.1 Overview

Experience with fatigue and distraction detection technology and consultation during the HVNL Review has identified numerous opportunities where technologies, including systems and data services, could be used to achieve improved safety, productivity and compliance outcomes. With the increasing reliance on data across the broader transport sector, there is also a growing need for heavy vehicle technology that can interface with other transport modes and agencies to support the progression and development of safety- and productivity-related initiatives, including transport infrastructure planning and management. However, the current HVNL has no overarching process to readily recognise and enable such technologies and as a result these opportunities are either being missed or not optimised.

Specific limitations with the HVNL include:

- The HVNL only recognises two technology and data sharing schemes that support heavy vehicle safety and productivity – the Intelligent Access Program (IAP) and electronic work diaries (EWDs). These are both hardwired into the HVNL.
- To recognise a new technology, the HVNL primary law must be amended, which can be time consuming and complex.
- To change how data from an existing technology (that is, IAP or EWD) is used or shared, the relevant provisions in the HVNL require amendment.

As a result, industry, the regulator and road managers cannot readily leverage new technologies to provide safer and more efficient heavy vehicle services or to support infrastructure planning and network management, and the ability of the transport industry to innovate or expand its use of technology is constrained.

### 5.4.2 Policy deliberations

#### Consultation RIS

The consultation RIS considered the following two options for improving technology and data provisions in the HVNL:

- **Establish an overarching technology and data certifier under the HVNL (consultation RIS Option 6.1)**. Under this option, the future HVNL would recognise technology and data assurers. This will provide a clear and consistent approach to managing technology and data under the law and enable technology to be used and recognised for risk management and assurance under the HVNL in a way it cannot presently. This option has been **supported** and is considered further below (see recommendation 10).
- **Ability to carry and produce electronic documentation (consultation RIS Option 6.2a).** This option involved the HVNL permitting all documents to be carried and produced electronically. There would also be the option to access documents via a reference to the NHVR system. As such, this option would provide flexibility to stakeholders in how they carry and produce any required documentation. The law would require the electronic document to be accessible by relevant parties (for example, drivers, operators, the NHVR and enforcement at the roadside).

Allowing regulated parties to carry and produce electronic documentation has been **supported in principle**. Work to allow documents to be carried electronically will be progressed in consultation with industry and enforcement stakeholders before implementing the future HVNL.

A sub-option **'Documentation must be produced in a specified period' (consultation RIS Option 6.2b)** was also considered, under which certain documentation would not be required to be accessible immediately when requested. Instead, operators and drivers would be required to produce it to the NHVR or police within a specified period.

This option was **not supported** as it was considered administratively burdensome and would also unnecessarily increase the complexity of the HVNL.

**ITMM reform package**

In May 2021, ITMM agreed a set of policy goals for a future technology and data framework as part of the HVNL Safety and Productivity Program. These goals were:

- A technology, data and information assurance and data sharing framework, including the roles of relevant parties.
- Legislative amendments to establish the framework and its operation.

Following further consultation, the ITMM reform package included two recommendations relating to technology and data:

*6.1. The new law must enable provisions to provide for the following:*

*a. developing technology standards or adopting international standards*

*b. the protection of on-board data*

*c. ensuring that privacy is protected*

*d. a process for certifying technologies as being compliant, including recognition of technologies approved internationally*

*e. new specific provisions to clarify the legal status of data generated by certified technologies*

*f. a specific provision to clarify that a person can present to court evidence of complying with the HVNL based on a non-certified technology system. It would be up to the court to decide what weight to place on that evidence*

*6.2. The law should enable but not require that Ministers can, by regulation, establish a Technology and Data Framework/s and a Technology and Data Framework Administrator/s (one or more appointed by ITMM from time to time or for specific regulatory purposes).*

### 5.4.3 Future work

The ITMM reform package recommended creating the enabling mechanisms for a technology and data framework but **did not recommend** activating the framework or making recommendations concerning what entity or entities should be appointed as framework administrator(s).

To enable the framework, work needs to be undertaken to:

- Confirm the requirements for key elements of the framework, including the functions and responsibilities of a framework administrator and the content of data and technology applications (DTAs).
- Define other key roles and activities that may be required for the framework to be operationalised (for example, definitions for data steward and data aggregator roles).
- Develop appropriate offences for misconduct under the framework, noting that these are likely to be based upon offence provisions currently specified in the HVNL for the IAP under Chapter 7 and for EWD in Part 6.4, Requirements about record keeping.
- Confirm whether existing technologies, such as the IAP and EWD, are to be transitioned to the framework.
- Confirm the high-level requirements for data sharing under the framework.

### 5.4.4 Assessment of policy recommendations

**Recommendation 9**

That the future HVNL enables technologies to be recognised under the HVNL by establishing a technology and data framework that includes powers, functions, duties and obligations for specified roles in the framework, and appropriate rules in relation to technologies recognised under the HVNL for data protection, stewardship and assurance, and access and use.

**What is proposed?**

The HVNL will include a framework to enable technology and data sharing schemes to be recognised for regulatory and non-regulatory purposes.

A regulatory purpose could include a requirement for a heavy vehicle to use a particular technology and share certain data as a result of one or more of the following:

- prescribed under a heavy vehicle obligation
- imposed as a condition of an alternative compliance option
- required as part of an access permit or gazette notice
- another purpose prescribed by regulation that does not fit into the above categories.

Any new requirement for a DTA to be used for a regulatory purpose under the framework would typically require a regulatory impact assessment.

A non-regulatory purpose could have a broader range of purposes, including:

- A mandatory requirement for a heavy vehicle to have a system that generates data for a non-regulatory purpose. For example, a vehicle must provide data, and that data is used for infrastructure monitoring, not compliance with the law (this kind of requirement may require a regulatory impact assessment).
- A voluntary data sharing scheme, whereby operators may elect to share identified, or de-identified data with jurisdictions (or other parties).

The framework will not prevent voluntary data sharing schemes from being made outside the auspices of the HVNL. However, data sharing outside the framework would not enjoy the data assurance and data protections afforded by the provisions of the framework.

Technology and data sharing schemes governed by the framework would be subject to rules relating to system approval requirements, data access, data formats and data use. This would include high-level rules about the kind of data that a person can be compelled to share or provide under the HVNL, and to whom (for example, the regulator, police and other government agencies).

The framework will comprise the core functions, controls components and rules required for creating technology and data sharing standards. These integrated assurance and approval mechanisms safeguard the framework's integrity to ensure industry has confidence that investments in new technology meet relevant standards.

The framework will aim to facilitate data sharing and to complement (not replace) existing programs or schemes that currently provide data sharing services or outcomes within or about the heavy vehicle industry.

**What are the objectives?**

Establishing the framework will support the following objectives proposed in the ITMM reform package:

- Simplify the HVNL by allowing new technologies to be incorporated into regulatory functions without changing primary legislation.
- Provide opportunities for more flexible compliance options by enabling technology to be used as part of an alternative compliance option.
- Support innovation by enabling new technologies to be part of operators' productivity and safety approaches.
- Provide clear and consistent approval requirements and processes for technologies.
- Provide common standards in data formats across the HVNL to encourage standardisation and interoperability (for example, easier collation and analysis of data from multiple systems and better enabling a single technology product to provide data for various purposes).
- Facilitate appropriate and controlled sharing of data from operators to other parties.
- Standardise protocols for de-identifying data where required.
- Standardise requirements for advising parties about data collection.
- Standardise requirements for providing parties information about what data is being held about them.

**How will the law change?**

<u>Current law (the base case)</u>

The current HVNL explicitly recognises two types of technology that can be used for regulatory purposes. Chapter 6 of the HVNL provides for electronic work diaries and contains usage and record-keeping requirements and obligations. Division 7 of Chapter 6 also includes provisions for approving electronic recording systems and explicitly provides for the NHVR to approve EWD systems and suppliers.

Chapter 7 of the HVNL outlines the Intelligent Access Program and contains roles, responsibilities and data protection provisions, as well as provisions for the collecting, keeping and handling of IAP information. Transport Certification Australia has legislated functions and powers under Part 7.5 of the HVNL that include:

- Certifying and cancelling the certification of IAP service providers.
- Auditing IAP service providers.
- Approving and cancelling the approval of intelligent transport systems for use by IAP service providers to monitor the relevant monitoring matters for an IAP vehicle.
- Engaging individuals, consultants and contractors to assist Transport Certification Australia in its auditing activities.

The current HVNL is limited because it provides for a fixed range of recognised technologies that are hardwired into the law and regulation. Moreover, the party or entity assessing and approving systems for those technologies is also hardwired.

Should there be a need or desire for the HVNL to recognise a new technology or change the data sharing requirements of an existing technology, the law must be amended; a complex and often slow process. This limits the ability for emerging technology to be used to support safety, productivity and meet regulatory obligations, and is inconsistent with an agile regulatory approach.

Future law

The future HVNL will incorporate the enabling mechanisms for a technology and data framework so that new technology and data sharing opportunities, with appropriate protections in place, can be implemented more quickly.

Key components of the framework will include:

- Establishing the roles, functions and obligations of a framework administrator, including the provisions for appointing a framework administrator (see recommendation 10).
- Establishing data and technology applications, an administrative instrument that describes technical, functional, process and approval requirements for technologies, and the rights to access and use data, recognised under the HVNL (see recommendation 11).
- Provide appropriate powers for ministers to prescribe requirements for DTAs, including high-level requirements and restrictions on data sharing.
- Definitions of key activities and roles relevant to the framework so that they can be appropriately referenced in a DTA and be used to impose responsibilities. These key activities and roles will be primarily functional in nature, for example, data storers, data transmitter, data receiver.
- Provide appropriate powers for ministers to make high-level technology and data sharing rules under the HVNL. This would include rules in relation to consultation, publication, sharing of data, and so on.

Typically, the framework will be used where it is desirable for a technology, and the data that the technology produces, to be used to meet a heavy vehicle obligation, enable an alternative compliance option, or as a condition of an access permit or gazette notice.

**What are the impacts?**

Potential impacts

Establishing the technology and data framework is an enabling mechanism that will not have any direct practical impact on industry. This proposal does not consider any substantive proposals to enact the framework.

The framework will impact industry when it is called upon and used to enable certain technologies and data sharing arrangements. This impact will vary depending upon:

- the type of technology being used
- who is required to utilise that technology (for example, all operators or a specific subset of operators)
- how that technology and data is intended to be used
- the benefits the technology provides the user
- the costs of implementing and using that technology.

The selected framework administrator's business model will also influence the framework's impact, and the impacted parties, once operationalised.

In the event the framework is used to replicate the existing requirements of IAP and EWD on a no-policy change basis, there would be no impact on operators or other stakeholders.

Potential improvements

Industry, governments and road managers may benefit from the framework over time as additional technologies and data sharing arrangements are developed and operationalised. For example, industry may benefit from more flexible alternative compliance options under the enhanced NHVAS see section 5.2.4), while governments or road managers may be able to use data shared under the framework to improve understanding of infrastructure utilisation. Data generated under the framework may also provide the regulator with better data for undertaking risk-based compliance and understanding industry trends and behaviours.

The framework will also provide transparent processes for developing, implementing and approving technologies intended to be recognised under the HVNL. Framework administrators (see recommendation 10) will support the adoption of standards and consistency in technology and data formats.

Overall, it is expected that the framework will positively impact both government and industry. It is difficult to quantify such impacts, as the technologies to be recognised under a framework are unknown, as are the extent of the utilisation and types of benefits such technologies might afford.

The assessment considers impacts at a national level. The costs and benefits will be broadly similar across different states and territories. The specific costs and benefits in each state or territory will depend in part on the nature of the heavy vehicle fleet and its use in each state or territory.

**Implementation, transition and evaluation arrangements**

The ITMM reform package recommended creating the enabling mechanisms for a technology and data framework but **did not recommend** activating the framework or making

recommendations concerning what entity or entities should be appointed as framework administrator(s).

To implement the framework, ministers will need to confirm that intent. Following that decision, additional work and consultation will be required to establish key elements of the framework, and one or more framework administrators will need to be appointed. Ministers may also wish to determine whether IAP and EWD should be transitioned to the framework.

In addition, it may be appropriate to incorporate two other heavy vehicle-focussed telematics applications, which are currently in use, into the framework. These are the Road Infrastructure Management and the Telematics Monitoring Application , which road managers are currently using as a condition for heavy vehicle access in some jurisdictions.

If the framework is implemented, it is expected that the range of technologies recognised by the HVNL should expand well beyond the existing IAP and EWD (for example, fatigue and distraction detection technology).

**Recommendation 10**

That the technology and data framework will include the role, powers and functions of a framework administrator and include provisions for ministers to appoint one or more framework administrators.

**What is proposed?**

A framework administrator will be responsible for developing data and technology applications (see below), approving or otherwise validating that technology products developed for the framework meet required standards (that is, comply with the relevant DTA) and supporting the framework's general operation. A framework administrator will also work to promote consistency and commonality in data and data formats where possible so that the value and benefits from using data are maximised across heavy vehicle-related initiatives and reforms.

The key functions of a framework administrator will be to:

- create, consult on and approve DTAs, based upon the policy intent of ministers
- approve or validate that systems, service providers and data services comply with a DTA to the relevant level of assurance
- create, publish and maintain a registry of DTAs within its responsibility, along with approved systems and key entities that may be involved in performing functions under that DTA.

Ministers will be able to appoint one or more framework administrators. The instrument of appointment will indicate the start and end dates for the appointment, along with any specific limitations imposed on the administrator in the exercise of its functions. Examples of such limitations could include limiting a framework administrator to a specific DTA or set of DTAs, particularly if more than one administrator is appointed.

Ministers would also be given the power to cancel or amend a framework administrator appointment.

**What are the objectives?**

The appointment of a framework administrator is necessary to operationalise the technology and data framework and achieve the following objectives:

- realise the policy intent of ministers through the development and maintenance of one or more DTAs
- provide a mechanism to approve or validate that technology products and the data produced by those products are compliant with relevant DTAs to the relevant level of assurance
- ensure consistency in technology and data requirements across technologies used under the HVNL
- ensure approved DTAs, along with approved providers of technology and key functions in a DTA, are published.

**How will the law change?**

Current law (the base case)

The current HVNL explicitly recognises two types of technology that can be used for regulatory purposes, IAP and EWD. Transport Certification Australia performs the equivalent role of framework administrator for IAP. For EWD, the NHVR performs the equivalent function of framework administrator. If ministers wished to incorporate either of these technologies under the framework provisions, or change the framework administrator, the HVNL would need to be amended.

Future law

In the future HVNL, ministers could appoint one or more framework administrators and assign them responsibility for specific technologies and data sharing schemes. Ministers could change administrators or select other administrators according to the changing requirements of new technologies and the capability of framework administrators.

Ministers would also be able to collectively prescribe requirements and obligations to framework administrators to ensure that administrator functions are carried out as consistently and transparently as possible.

Nothing in the law will prevent administrators from working with third parties to perform their functions (for example, contracting a third party to test or evaluate systems) or relying on approvals or certification issues by other entities when performing its functions (for example, using international standards and certifying bodies).

It should be noted that ministers may choose a single framework administrator and assign that administrator responsibility for all DTAs created under the framework.

**What are the impacts?**

Potential impacts

The framework administrator function is an enabling mechanism that will not directly impact industry.

Positive improvements

By specifying the functions of a framework administrator in law, and the requirement for administrators to publish a register of DTAs containing relevant information about approved systems, the heavy vehicle operators and technology suppliers will have greater transparency concerning technology recognised under the HVNL.

Potential negative impacts

Framework administrators will impact industry when they are called upon to develop and administer DTAs. The selected funding or cost recovery model will influence the costs and cost distribution associated with HVNL-recognised technology. These factors will need to be considered by ministers when appointing administrators.

The assessment considers impacts at a national level. The costs and benefits will be broadly similar across different states and territories. The specific costs and benefits in each state or territory will depend in part on the nature of the heavy vehicle fleet and its use in each state or territory.

**Implementation, transition, and evaluation arrangements**

Implementing this recommendation requires ministers to enact the framework and consider if and when existing HVNL technologies (IAP and EWD) will be transitioned.

Framework administrator effectiveness should be monitored continuously, with their performance expectations being set by ministers as part of the appointment process. Administrator evaluation should be informed by factors such as the responsiveness of administrators to requests for developing or amending DTAs; responsiveness concerning approving technologies; quality of consultation; the degree to which DTAs meet the requirements of users and other key stakeholders; along with the economic efficiency of the administrator in performing its functions.

**Recommendation 11**

That the future HVNL enables the creation of data and technology applications by a framework administrator to outline the technical, data sharing, assurance and governance requirements for technologies recognised by the HVNL in line with ministerial requirements.

**What is proposed?**

Framework administrators will be able to develop data and technology applications outlining the technical and approval requirements for technologies to be recognised under the HVNL. DTAs will describe a specific technology and the data produced by that technology, along with technical standards that a technology must meet (which can reference national or international standards), as well as testing and evaluation requirements for system approval, which can include references to approval or certification by other bodies.

DTAs will be able to describe the technical requirements for technologies to be used for multiple purposes. For example, a particular DTA might set out multiple levels of assurance and provide various data sharing formats for compliance purposes (for example, demonstrate compliance as part of an alternative compliance option) and non-compliance purposes (for example, de-identified data being used for infrastructure monitoring).

Information contained in a DTA will include:

- A unique identifier.
- Description of the DTA purpose.
- Description of the data that a system must be able to produce, store or transmit, and rights to access and use data. This can include multiple descriptions of different data formats where the DTA will be used for multiple purposes.
- Technical requirements for the systems generating the data (described in a manner that is results focused).
- Descriptions of roles and functions required for the DTA to function effectively. For example, a DTA might require that all data is provided to a single entity that transforms that data into specific data feeds for different end users.
- Requirements for system approval and assurance.

The future HVNL will provide mechanisms for ministers to specify requirements common to all DTAs and standard requirements for framework administrators to adhere to when developing DTAs. This will include conditions for administrators to consult with the NHVR, police, industry and jurisdictions before a DTA is approved to ensure it is fit for purpose.

A DTA will be required to comply with state, territory and Commonwealth law in relation to privacy, and also be consistent with relevant jurisdictional privacy principles and data protection arrangements.

A DTA has no practical effect until it is enlivened under the law. This will most commonly occur where a DTA is called up by a heavy vehicle obligation, an alternative compliance option or an access notice or permit.

**What are the objectives?**

That the HVNL provides a clear and transparent means for:

- developing, approving and publishing technical requirements for technology and data sharing schemes recognised under the law
- setting out requirements for technology systems to be approved or assured to the required standard for recognition under the HVNL
- technical and data requirements that are updated as technologies and technology use cases evolve.

**How will the law change?**

Current law (the base case)

The current law only provides for technical and approval requirements for two technologies – the Intelligent Access Program and electronic work diaries.

Future law

The future HVNL will allow for creating, amending and approving an administrative instrument called a data and technology application to outline the technical and approval requirements for technology and data sharing schemes to be used under the HVNL. The law will include provisions for:

- Specifying the core requirements of a DTA and permitting ministers to adjust these requirements over time.

- Defining parties and functions that can be called up or referenced in a DTA so that the DTA can adequately describe the functioning of a DTA.
- Specifying consultation requirements that a framework administrator must follow when developing a DTA. This would include requirements to consult with the NHVR, industry and other relevant parties when making or amending a DTA.
- At a high level, define the levels of assurance that can be incorporated into a DTA and make it clear the level of assurance required for DTAs that are relevant to compliance and enforcement with the law; and activities that require lower levels of assurance.

**What are the impacts?**

Potential impacts

The DTA is one of the mechanisms that will be used to enable the technology and data framework in the HVNL. As an enabling mechanism, it does not directly impact industry or other stakeholders, and this proposal does not consider any substantive suggestions for DTAs to be created and called up in the future HVNL.

Potential negative impacts

Individual DTAs will impact industry participants when operationalised. Costs incurred by technology providers when developing DTA complaint systems and obtaining system approval are likely to be passed on to industry participants purchasing or leasing those products or services. Other costs may be associated with using DTA-compliant systems, such as data storage costs, service fees or internet connectivity.

In a circumstance where it is proposed that a DTA is to be mandatory for the heavy vehicle industry, or a defined subset of the heavy vehicle industry (for example, by prescribing a new heavy vehicle obligation), the costs associated with operationalising DTA-compliant systems would need to be tested via regulatory impact assessments.

Other DTAs may be voluntary for industry, and in those circumstances, operators will be able to make business decisions as to whether the benefits of the DTA outweigh the associated costs.

The assessment considers impacts at a national level. The costs and benefits will be broadly similar across different states and territories. The specific costs and benefits in each state or territory will depend in part on the nature of the heavy vehicle fleet and its use in each state or territory.

**Implementation, transition, and evaluation arrangements**

Implementing this recommendation requires a decision by ministers to enact the technology and data framework and considerations about what technologies should be recognised under it. Consideration should be given to whether the following applications should be remade under the framework using a DTA:

- Intelligent Access Program
- electronic work diaries
- Road Infrastructure Management
- Telematics Monitoring Application
- existing onboard mass applications.

**Recommendation 12**

That the future HVNL prohibits the access and use of data produced by recognised technologies under the HVNL (other than by its owner), except as allowed by the HVNL and regulations, other applicable Acts, and as specified in the relevant data and technology application.

**What is proposed?**

Technologies that monitor drivers, vehicle movements and operational characteristics of vehicles, and that share collected data, have the potential to significantly improve compliance with the requirements of the HVNL and improve road safety and productivity. However, such monitoring technologies can be intrusive, and data sharing can have privacy and commercial confidentiality considerations. It is, therefore, essential that data sharing provisions in the HVNL are accompanied by appropriate controls limiting data access and use and ensuring that individuals are aware of data being collected about them and their activities.

Addressing the access and use of data, and ensuring only those parties who require data can access and use it, will facilitate the adoption of technologies and reduce the likelihood of tampering with data. De-identifying data, where attributable data is not required, will address privacy and confidentiality concerns of parties being monitored.

There are a variety of state and national acts and regulations providing legal structures for data access, protection and privacy, including acts that enable access to sensitive data for law enforcement and national security issues. Data protection and privacy principles in the HVNL are not intended to replace or affect the operation of these legal structures but rather focus on specific protections relating to the collection and use of data under the HVNL.

**What are the objectives?**

Establishing restrictions on the access and use of data for HVNL purposes by prohibiting its use except as allowed under a DTA, and ensuring an assurance regime is implemented, will achieve the following objectives:

- Ensure that parties identified in a DTA have legal access to use, share or receive data in accordance with the DTA.
- The access, use and sharing of data is conducted in accordance with the requirements and constraints specified in the relevant DTA.
- Approved technology operates as required under the relevant DTA, and data access, use and sharing meets the standards required in the relevant DTA.
- Specified data privacy and confidentiality requirements are met, in accordance with the DTA and any relevant legislation.
- Persons about whom data is being collected are appropriately informed about the data collecting activities and systems.

**How will the law change?**

<u>Current law (the base case)</u>

The current law has provisions related to application-specific data protection and privacy requirements for the IAP and EWD. Whilst other provisions exist, they generally concern powers for authorised officers and allowable actions. Unless captured by the IAP or EWD definition, any new technology would not benefit from data protection under the HVNL unless specific provisions were made in the law.

The current HVNL also provides for the *Information Privacy Act 2009* of Queensland to apply for the purpose of the HVNL, enabling privacy matters arising from the HVNL to fall under the jurisdiction of the Office of the Information Commissioner Queensland.

Future law

The future law will have overarching provisions that enable a data and technology application to specify data that will be collected, how that data will be collected, what roles within the DTA have access to data, and in what form. The technology and data framework provisions would ensure that all relevant parties have clear roles and responsibilities, including around access and sharing of data, privacy and data protection.

Provisions will also be included to clarify that data access and usage are restricted unless otherwise enabled by an approved DTA as part of implementing an approved application.

The scope of data sharing enabled by a DTA will be constrained by the law that will specify the allowable data sharing arrangements that can be facilitated by a DTA and the purpose of that data sharing. As such, a framework administrator cannot authorise jurisdictions access to data via a DTA, unless there are appropriate authorising provisions.

It is not intended for these HVNL provisions to prevent a person (for example, an operator) sharing their own data with third parties for non-HVNL purposes. These types of voluntary or commercial data sharing arrangements would be governed by relevant state, territory or Commonwealth legislation.

Rules relating to the treatment of personal information and personal privacy will be modelled on existing provisions in Part 7.4 of the current HVNL.

It is not intended for the current application of the *Information Privacy Act 2009* of Queensland to change.

**What are the impacts?**

The inclusion of provisions relating to privacy and limitations on the use and sharing of data is not expected to have a practical impact on stakeholders. The law already contains these kinds of protections and the effect of these provisions to enable them to apply generally across HVNL recognised technologies.

Potential improvements

Including general data and privacy protections into the law will ensure that all HVNL-recognised technologies and data sharing schemes are operating consistently, reducing the need for parties collecting, sharing or using data under the HVNL to have different rules for each data type. Clear legal protections for data use and sharing may provide operators with additional confidence that they can invest in HVNL-recognised technologies and know how data generated by those systems will be used.

Potential negative impacts

Data sharing and privacy rules may lead to circumstances where the potential benefits of data are not realised.

The assessment considers impacts at a national level. The costs and benefits will be broadly similar across different states and territories. The specific costs and benefits in each state or territory will depend in part on the nature of the heavy vehicle fleet and its use in each state or territory.

**Implementation, transition and evaluation arrangements**

Overarching provisions for data protection, privacy, access and usage will take effect when the technology and data framework is enlivened and data and technology applications are created. In the event ministers decide that the Intelligent Access Program and electronic work diaries should transition to the framework, the specific data protection provisions for these technologies will be replaced by the overarching protections in the HVNL.

**Recommendation 13**

That the future HVNL ensures that a person can present to a court data from a non-certified application as evidence of complying with the HVNL and it will be up to the court to decide what weight to place on that evidence.

**What is proposed?**

During consultation on the technology and data framework, concerns were raised that operators would be unable to present evidence from non-certified systems (that is, systems not approved under the framework) as evidence of complying with the HVNL, or otherwise as part of a defence against a charge under the HVNL. An agreement was reached that the future HVNL should expressly permit the admissibility of evidence from non-certified systems and that it would fall on a court decision to determine what weight to give to that evidence.

**What are the objectives?**

That data from non-certified applications is not disallowed explicitly or implicitly under the HVNL from being presented as evidence in a court.

**How will the law change?**

Current law (the base case)

The current law does not explicitly permit or disallow data from ‘non-certifying applications’.

Future law

The future law will contain an explicit provision confirming that the HVNL does not prevent a person from tendering data from a non-certified application as evidence and that it will be up to the court to determine what weight to place on evidence.

**What are the impacts?**

This recommendation reinforces existing arrangements and therefore has no regulatory impact.

**Implementation, transition and evaluation arrangements**

There are no transition or implementation arrangements required for this recommendation.

### 5.4.5 Summary impact analysis

Table 14 summarises the impact analysis for the technology and data recommendations.

**Table 14. Technology and data recommendations – summary impact analysis, including impact category**

| RECOMMENDATION | Overall impact | Public safety | Improvements to operational efficiency or productivity | Regulatory burden for industry | Regulatory costs for government | Asset Management | Flexibility and responsiveness |
|---|---|---|---|---|---|---|---|
| **9** That the future HVNL enables technologies to be recognised under the HVNL by establishing a **technology and data framework** that includes powers, functions, duties and obligations for specified roles in the framework, and appropriate rules in relation to technologies recognised under the HVNL for data protection, stewardship and assurance, and access and use. | **Improvement**<br><br>The framework will create greater flexibility for industry and the regulator and will provide improvements to safety and productivity to benefit the community.<br><br>The law will be better able to keep pace with advances in technologies and practices, which benefits the heavy vehicle industry, vehicle and safety technology suppliers, the | **Improvement**<br><br>Improvement in road safety from advancing safety technologies to address emergent risks. Improved safety technology may support reducing the number and severity of crashes and deliver safety benefits for the community.<br><br>Improvement for industry as operators can adopt more effective safety technologies to support safety management | **Improvement**<br><br>The framework is expected to provide more flexible compliance options for industry by enabling new technologies to be used as part of an alternative compliance option under the enhanced NHVAS.<br><br>Gives operators more choice on how to manage compliance obligations to achieve productivity gains. Reduced cost of moving goods provides | **Improvement**<br><br>Industry may benefit from clear and consistent approval requirements for technologies.<br><br>Industry may experience some savings depending on the flexibility and diversity of alternative compliance options and enabled technologies. | **Negative Impact**<br><br>Potential costs to government to establish the framework.<br><br>Data generated under the framework may provide the regulator with better data for undertaking risk-based compliance and understanding industry trends and behaviours. | **Improvement**<br><br>Road managers and the regulator may be able to use data generated under the framework to provide new insights into infrastructure use, improving asset management. | **Improvement**<br><br>Greater flexibility to recognise new technology and provide for data sharing and use in the HVNL without changing primary legislation. |

| RECOMMENDATION | Overall impact | Public safety | Improvements to operational efficiency or productivity | Regulatory burden for industry | Regulatory costs for government | Asset Management | Flexibility and responsiveness |
|---|---|---|---|---|---|---|---|
| | regulator and governments.<br><br>Note: Assumes that the framework is enlivened and implemented as per the policy intent. Direct impacts are difficult to quantify and are dependent on the efficacy of the framework in practice. | strategies for their business. | benefits to off-road chain of responsibility parties, customers, and the public.<br><br>Supports innovation for industry by enabling new technologies to be part of productivity and safety approaches. | | | | |
| **10** That the technology and data framework will include the role, powers and functions of a **framework administrator** and include provisions for ministers to appoint one or more framework administrators. | **Neutral**<br><br>Governance arrangements are essential for reforms but will not in themselves have a direct impact. | **Neutral** | **Improvement**<br><br>Standardised requirements for technology and data systems required for regulatory purposes expected to result in | **Neutral** | **Negative Impact**<br><br>Potential costs to government will depend upon the funding or cost recovery model that is adopted. | **Neutral** | **Neutral** |

| RECOMMENDATION | Overall impact | Public safety | Improvements to operational efficiency or productivity | Regulatory burden for industry | Regulatory costs for government | Asset Management | Flexibility and responsiveness |
|---|---|---|---|---|---|---|---|
| | | | increased productivity. | | | | |
| **11** That the future HVNL enables the creation of **data and technology applications** by a framework administrator to outline the technical, data sharing, assurance and governance requirements for technologies recognised by the HVNL in line with ministerial requirements. | **Neutral**<br><br>Enabling mechanism. The benefits of DTA will be specific to the forms of technology they enable. | **Neutral** | **Neutral** | **Improvement**<br><br>Improved clarity and certainty for industry in the required level(s) of assurance for DTAs that are relevant to compliance and enforcement.<br><br>Individual DTAs may incur varying costs and benefits to technology providers and operators. The creation of DTAs may potentially add time and cost to operators seeking to use new technology. | **Negative impact**<br><br>Potential costs to government and the framework administrator to create DTAs. | **Neutral** | **Improvement**<br><br>Greater flexibility via creating a standardised process to enable new data and technology applications, rather than hardwired specifications in law. |
| **12** That the future HVNL prohibits the access and | **Neutral** | **Neutral** | **Neutral** | **Neutral** | **Neutral** | **Neutral** | **Neutral** |

| RECOMMENDATION | Overall impact | Public safety | Improvements to operational efficiency or productivity | Regulatory burden for industry | Regulatory costs for government | Asset Management | Flexibility and responsiveness |
|---|---|---|---|---|---|---|---|
| use of data produced by recognised technologies under the HVNL (other than by its owner), except as allowed by the HVNL and regulations, other applicable Acts, and as specified in the relevant data and technology application. | Reinforces data restrictions and protections. | | | | | | |
| **13** That the future HVNL ensures that a person can present to a court data from a non-certified application as evidence of complying with the HVNL and it will be up to the court to decide what weight to place on that evidence. | **Neutral**<br><br>Reinforces existing arrangements. | **Neutral** | **Neutral** | **Neutral** | **Neutral** | **Neutral** | **Neutral** |

## 5.5 Primary duties and responsibility

### 5.5.1 Overview

The current HVNL imposes a primary duty on a defined list of parties in the chain of responsibility to ensure, so far as is reasonably practicable, the safety of transport activities relating to a heavy vehicle.

The current primary duty requires specified parties to take steps to ensure that drivers behave safely and that vehicles used on the road network are safe for drivers and other road users. Instead of prescribing what parties must not do, it sets a standard that parties should work to achieve, requiring them to apply a proactive and preventative approach to managing safety.

The NTC has considered judicial interpretations of the current law and the effectiveness of similar regulatory instruments (including WHS and rail safety laws) in considering changes to the HVNL duties. As the current approach is largely consistent with similar regulatory frameworks and is being applied as intended by courts, reform options considered as part of the HNVL Review focused on refining and clarifying the primary duty approach rather than making holistic changes to the structure of the duties regime.

### 5.5.2 Policy deliberations

**Primary duties**

The key problem identified in the consultation RIS was some parties not having defined duties and responsibilities under the HVNL, limiting the extent to which they can be subject to enforcement action, and therefore the extent to which they are incentivised to manage risks within their control. Additionally, some stakeholders suggested that the current primary duty in the HVNL was very general and could be ambiguous, making it difficult for chain of responsibility parties to understand the precise nature of their obligations.

The consultation RIS examined two options as potential improvements the application and clarity of the HVNL primary duty, these were:

- **Expand application of the primary duty to parties who influence the safety of transport activities (consultation RIS Option 4.1)**. This option would amend the HVNL to expand the application of the primary duty to parties who influence the safety of heavy vehicle transport activities. The current list of chain of responsibility parties (as defined in section 5 of the HVNL) would remain to ensure that the primary duty includes these parties.
- A sub-option was also considered (consultation RIS Option 4.1b), through which the future HVNL would add specific parties to the definition of party in the chain of responsibility (section 5 of the HVNL), making them subject to the primary duty under section 26C of the HVNL.

  Options 4.1 and 4.1b are **not supported** at this time. A range of potential parties were examined and suggested, however insufficient evidence was found to justify the inclusion of additional parties at this time.
- **Amend primary duty to clarify requirements relating to driver competency and driver fitness to work (Option 4.4)**. This option was not intended to alter or change to whom the primary duty applies or what the primary duty requires chain of responsibility

parties to do. Instead, this option would amend the HVNL to clarify that the primary duty covers driver competency and driver fitness for work.

This option was **not supported** as case law has established that courts already consider that the existing duty covers driver competency and fitness for work. Instead, a new code of practice power (see section 5.2.4) will improve the ability of the NHVR to provide guidance and clarity for industry.

**Driver duties and health**

Specifically concerning drivers, the key problem identified in the consultation RIS was that the regulation of duties and responsibilities for drivers is fragmented, with the HVNL acting in combination with WHS law, state and territory licensing legislation, road rules and industry codes. As a result, drivers have poorly defined duties and responsibilities under the HVNL, particularly in relation to their fitness to drive.

The consultation RIS also examined several options relating to driver duties and a driver's health and fitness for duty, including:

- **Establish a separate driver duty that substantially replicates the duty of workers under section 18 of the model Work Health and Safety Law (consultation RIS Option 4.2)**. This option would amend the HVNL to establish a duty on drivers to take reasonable care of their own safety and reasonable care that their acts or omissions do not adversely affect the health and safety of other persons. Drivers already have this duty under sections 28(a) and (b) of the model WHS laws, but authorised officers under the HVNL do not have the power to enforce it. While the work health and safety duty applies broadly to all behaviour in the workplace, this duty would be confined to the context of transport activities relating to the heavy vehicle.

  Consultation RIS Option 4.2 is **not supported** as the consensus agreement of stakeholders was that duplicating existing obligations from work health and safety legislation is not efficient regulatory practice. However, **section 5.5.3 includes a recommendation that the duty to not drive while fatigued be expanded to include a duty not to drive while not fit to do so**. This will clarify the driver duty without the need to replicate work health and safety legislation as considered in consultation RIS Option 4.2.

- **Applying the primary duty (section 26C of the HVNL) to drivers (consultation RIS Option 4.3)**. This option would amend the HVNL to apply the primary duty to drivers. This would mean drivers would have a duty to ensure, so far as is reasonably practicable, the safety of transport activities relating to the heavy vehicle they are driving. They would be subject to the same offence categories and penalty framework as chain of responsibility parties who breach the primary duty.

  Consultation RIS Option 4.3 was **not supported** as stakeholders broadly agreed that the intent of the primary duty is to assist drivers in complying with extensive prescriptive requirements through shared accountability along the chain of responsibility.

- **National health assessment standard (consultation RIS Option 8.6).** This option would establish a heavy vehicle driver national standard and includes a requirement for all heavy vehicle drivers to undertake periodic and triggered health assessments against the standard.

- **Right to stop if deemed not fit for duty (consultation RIS Option 8.7).** This option would establish a right for drivers to stop driving at the soonest safe opportunity if they are deemed not fit for duty and would link with primary duty obligations on the chain of

responsibility parties not to prevent a driver from stopping if they are deemed not fit for duty.

- **Driver self-assessment and declaration of fitness to work (consultation RIS Option 8.8).** This option would establish a requirement for drivers to self-assess and declare their fitness to work at the start of a shift, with an obligation to ensure they do not continue driving if their fitness deteriorates to an unacceptable level during the course of a shift.

  There was **support** for options to manage driver health and fitness, but some stakeholders (government and industry) questioned the value of a driver self-assessment option (consultation RIS Option 8.8).

  During the consultation by Mr Kanofski, there was extensive discussion about the most appropriate regulatory mechanism to support risk-based screening tests for health and fitness conditions associated with road safety risks, and issues with mandating regular medicals. Stakeholders supported applying national driver medical standards as a mechanism rather than creating a separate standard:

  > *The commercial standards in Assessing Fitness to Drive (AFTD) Guidelines should be upgraded to include risk-based screening tests for diabetes, sleep apnoea and cardiovascular issues.*

  The Kanofski Report also proposed that, 'All heavy vehicle drivers should be required to have regular medicals against the standards as part of the driver licensing process'.

### 5.5.3 Assessment of policy recommendations

**Recommendation 14**

That the future law expands the driver duty not to drive while fatigued to also include not driving if unfit for other reasons.

**What is proposed?**

While the specific consultation RIS options for driver duties and health were not supported, the importance of a driver's fitness for duty on the safety of transport activities was widely recognised. To this end, there is broad support for encouraging drivers to take responsibility for managing this risk by including a positive mechanism in the new law for drivers to take a proactive approach to managing their fitness to drive.

The future law should place obligations on drivers to take a proactive and preventative approach to managing their health and fitness because they have a shared responsibility to ensure they are fit to drive.

To this end, the future law will expand the current duty to not drive if impaired by fatigue to also include not driving a heavy vehicle if they are not fit to safely do so for other reasons.

**What are the objectives?**

Heavy vehicle drivers are at higher risk of poor physical and mental health,[62] which may affect driving performance and increase risk to safety and infrastructure and overall crash risk.

A driver's fitness to drive is an essential part of ensuring the safety of transport activities. Drivers have a shared responsibility to ensure they are fit to drive a heavy vehicle which is not reflected in the current HVNL.

The future law should place obligations on drivers to take a proactive and preventative approach to managing their health and fitness and to not drive a heavy vehicle if they are not fit to do so safely.

This policy position is consistent with Kanofski Report recommendation 3.7(c) and is included in the ITMM reform package.

**How will the law change?**

Current law (the base case)

Under current arrangements the regulation of the duties and responsibilities for drivers is fragmented, with the HVNL acting in combination with WHS laws, state and territory licensing legislation, road rules and industry codes. There is no positive mechanism in the HVNL to encourage drivers to apply a proactive approach to managing their health and fitness.

While drivers do have a duty under WHS legislation to take reasonable care of their own safety and the safety of others, the NHVR has no power to enforce this duty. Crossovers in regulatory responsibilities like this create a risk that some hazards will not be managed at all. By way of example, police and the NHVR have limited ability to penalise or prosecute a driver who is not fit to drive for reasons other than fatigue. In the absence of consequences or penalties, there is a risk drivers may not adequately manage their health and fitness.

The duty on drivers in the current HVNL (section 228) is to not drive a heavy vehicle if impaired by fatigue. It does not cover driving a heavy vehicle if not fit to safely do so for other reasons.

There is also no obligation on the driver to be fit. The obligation to be fit is only applied to authorised drivers moving a heavy vehicle (section 518 of the HVNL) and to AFM and BFM drivers through the fatigue management system obligations for accredited operators (section 457 of the HVNL).

Future law

The future HVNL will extend the existing driver duty not to drive if they are impaired by fatigue (section 228 of the HVNL) to also cover not driving a heavy vehicle if they are not fit to safely do so for other reasons.

Expanding the driver's duty under the HVNL not to drive if they are not fit to safely do so for other reasons will also give legal protection to drivers to stop driving if needed, as chain of

[62] National Heavy Vehicle Regulator, Regulatory Advice – Fitness to drive: Physical Health

responsibility parties must ensure their conduct does not directly or indirectly cause or encourage the driver to contravene the HVNL.

As outlined in detail at section 5.2.4, the new law will empower the NHVR to develop codes of practice, allowing the NHVR to develop a code of practice that provides more detailed information to drivers about how to manage their obligation under this duty.

Any law changes should ensure that the provision in the law is practical, enforceable and does not overlap with jurisdictional driver licensing and drink and drug driving laws. To this end, the definition of 'fit' will be revised to ensure it delivers the intended policy outcome.

**What are the impacts?**

There are no impacts expected for drivers because they already have a duty under work health and safety legislation to take reasonable care of their own safety and the safety of others.

There are potential benefits in the regulator having active oversight of this safety risk and providing guidance to drivers, operators and other parties in the chain to clarify their responsibilities in relation to a driver's fitness to drive. This is expected to result in a moderate improvement to public safety.

By including the expanded driver duty in the HNVL, the policy proposal ensures responsibility sits with the party best able to manage the risk. It also provides community assurance that heavy vehicle risks have been comprehensively addressed.

The assessment considers impacts at a national level. The costs and benefits will be broadly similar across different states and territories. The specific costs and benefits in each state or territory will depend in part on the nature of the heavy vehicle fleet and its use in each state or territory.

**Implementation, transition and evaluation arrangements**

The changes to the HVNL will need to be supported by guidance material and clear standards for operators and drivers to understand how to meet their obligations.

### 5.5.4 Summary impact analysis

Table 15 summarises the impact analysis for the primary duties and responsibility recommendations.

**Table 15. Primary duties and responsibility recommendations – summary impact analysis, including impact category**

| RECOMMENDATION | Overall impact | Public safety | Improvements to operational efficiency or productivity | Regulatory burden for industry | Regulatory costs for government | Asset Management | Flexibility and responsiveness |
|---|---|---|---|---|---|---|---|
| **14** That the future law expands the **driver duty** not to drive while fatigued to also include not driving if unfit for other reasons. | **Improvement**<br><br>Benefits due to increased public safety. | **Improvement**<br><br>Ensures responsibility sits with the party best able to manage the risk. It also provides community assurance that heavy vehicle risks are being appropriately managed. | **Neutral**<br><br>Drivers already have an obligation to take reasonable care of their own safety and the safety of others under WHS. | **Neutral**<br><br>Operators already have a duty to manage drivers' fitness to driver under the primary duty. | **Neutral**<br><br>There may be minor costs associated with developing guidance materials to clarify what is expected of drivers, operators and other chain of responsibility parties.<br><br>There would also be costs for the regulator to enforce this extended duty as it is a serious offence and must be dealt with by the court. | **Neutral** | **Neutral** |

# 6 Proposed implementation pathway

**Key points**

- All policies recommended by this RIS should be implemented through a single reform package which also includes new HVNL regulations. This will require completion of subsequent RIS processes and associated consultation but will enable consideration of a single package by the Queensland Parliament and simplify reform implementation and communication of the reform scope to industry and governments.

## 6.1 Preferred implementation pathway – a single legislative package

There is a consensus view among consulted stakeholders that recommended policies in this decision RIS should be implemented simultaneously through one legislative package rather than though an incremental approach.

Implementing these reforms as a single legislative package will require the supporting regulations and other subordinate instruments to be developed and completed so they can be considered by ministers.

The benefits of implementing all recommendations as part of a single legislative package are:

- Allows implementation of structural changes that are dependent and complementary. This is particularly important for the foundational reforms being assessed in this RIS. For example, accreditation changes recommended at section 5.3 are dependent upon the implementation of structural reforms to the regulatory framework that are considered in section 5.2.
- A single, legislative package provides certainty for industry that changes will not be ongoing or piecemeal and that any modifications to business practice required to comply with the new law will be once off.
- Enables consideration of the legislation once by the Queensland Parliament.
- Will simplify communication to industry and other stakeholders in relation to the reform scope and action required by impacted parties.
- Allows a coordinated evaluation approach which will enable a better understanding of the success of the reforms as a package.

While all legislation would be implemented as a single reform package, this approach would still allow for flexibility in application of any new industry requirements. For example, the proposed three-year transition arrangements for those with existing NHVAS accreditation.

Some industry stakeholders have requested that HVNL policies outside the scope of this decision RIS be implemented as a matter of urgency through a HVNL maintenance package. While this may be possible, it is outside the scope of this RIS.

## 6.2 Alternative option – multiple legislative amendments

The alternative to implementation of this reform as a single package would be to implement the approved policy changes through a number of 'maintenance-style' amendment packages.

Prior to the establishment of the HVNL Review, a series of amendments to the HVNL were progressed on an as-needs basis. The development of these amendment packages was managed by the NTC and progressed through a cross-jurisdiction NTC Maintenance Advisory Group.

While this process was successful in remedying drafting errors and implementing some improvements to the HVNL, changes were incremental and the Maintenance Advisory Group process was unable to address structural issues in the current HVNL. In addition, industry stakeholders at the time advised that the ongoing modifications to the law were hard to keep track of and led to constantly shifting compliance requirements.

To provide clarity for impacted stakeholders and to minimise uncertainty and disruption in implementation, it is recommended that all approved policies be implemented concurrently through a single legislative package.

# 7 Monitoring and evaluation

**Key points**

- A detailed HVNL reform evaluation plan for the monitoring and evaluation of policies considered by this RIS should be developed in the context of the full package of changes to the HVNL. This will enable success metrics to be targeted and prevent unnecessary duplication.

The purpose of monitoring and evaluation is to determine whether the reform objectives are being achieved and whether the problems with the current HVNL have been successfully addressed.

Under the preferred implementation approach, the timing for implementation of recommendations from this RIS will be contingent upon the completion of future HVNL regulations and other subordinate instruments. For this reason, the NTC recommends that a detailed HVNL reform evaluation plan be developed and enacted in the context of the full package of legislative changes.

The benefits of detailing an evaluation approach in the context of broader reforms include:

- Ensures that timelines for evaluation are set appropriately in the context of the implementation timeline.
- Ensures that responsibility for collecting data needed to evaluate success sits with the most appropriate parties.
- Ensures that the collection of evidence that could be used to evaluate multiple policies is undertaken efficiently and without unnecessary duplication.

The NTC will develop a HVNL reform evaluation plan for consideration by ministers as part of a subsequent RIS process prior to implementation of HVNL reforms. This plan will include evaluation of changes to the HVNL against the stated objectives of the HVNL, as well as analysis against the impact categories and assessment criteria detailed in section 4.3.2.

It will also include detailed stakeholder consultation processes to ensure that changes are working as intended for industry and the NHVR and for other stakeholders.

The reform implementation plan will require full visibility of the regulatory and other changes tested in the subsequent RIS and consultation processes before being finalised.

# 8 Conclusion

**Key points**

- Impact analysis indicates that all recommended policies will have an overall positive benefit as intended.
- The NTC considers that all policy recommendations should be agreed for adoption in the future HVNL. It is recommended that they be implemented as a package to deliver a modern foundation for ongoing improvements to the regulatory framework.
- If the recommendations of this RIS are supported, the NTC will commence drafting instructions for an amended HVNL concurrent with policy work to develop subordinate instruments.

## 8.1 Analysis of options

Analysis of the policy options in chapter 5 shows that, on balance, all proposed reforms will result in improvements and that they will complement the objectives of the HVNL. This can be partially attributed to the key recommendations being enabling reforms that provide for potential future benefits.

While the direct impact of implementing the reform recommendations will be minimal, structural changes to the HVNL will create a more efficient, flexible and responsive regulatory framework that will have long-term benefits for an evolving heavy vehicle industry.

Where additional costs will be borne by industry or regulators, these costs will not be excessive and are expected to be offset by safety improvements.

Reforms to the structure of duties and obligations will increase the capability of the National Heavy Vehicle Regulator to take a common sense approach to regulation, making it easier for risks to be managed outside of prescriptive requirements with appropriate oversight by ministers.

Changes to the regulatory framework will be supported by an enhanced National Heavy Vehicle Accreditation Scheme that enables the regulator to issue a broader range of accreditation options to operators who can demonstrate that their business practices are mitigating safety risks.

If implemented, new arrangements for technology and data will ensure that the HNVL is future focused and can be receptive to new and emerging technologies that will make the heavy vehicle industry safer and more efficient.

The assessments in this RIS have been carried out at a national level. The costs and benefits will be broadly similar across different states and territories. The specific costs and benefits in each state or territory will depend in part on the nature of the heavy vehicle fleet and its use in each state or territory.

Crucially, the recommended changes to the HVNL will support implementing changes to the subordinate components of the law that will be considered in detail through subsequent RIS and consultation processes. This will include changes to fatigue and mass, dimension and

loading arrangements included in the Infrastructure and Transport Ministers' Meeting (ITMM) reform package.

Surveys undertaken during the consultation by Mr Ken Kanofski suggest that the recommended policies will have a high level of support from government and industry stakeholders.

# Appendix A Ken Kanofski Reform Propositions – August 2023

**Table 1 Overall Reform Propositions**[63]

| Proposition | NTC Leg Reforms | Cost Benefit Analysis | Additional Work Streams[64] |
|---|---|---|---|
| **1.1. Retain current objects of the law.**<br>***Comment*: The suitability of productivity improvement as an object of the law has been tested with RAC+ and while some stakeholders would like to see the objective removed with the law becoming a safety focused law like the National Maritime and Rail laws and others would like to see the objective strengthened, the pragmatic position is to leave it as it is.** | No Policy Change | - | - |
| **1.2. Participating jurisdictions should be required to report every three years on improvements made to heavy vehicle productivity, including infrastructure and regulatory settings, based on metrics and templates set by Ministers. Participating jurisdictions should also produce a three-year forward program for future access improvements; and these plans are to include information for local government bodies within their jurisdiction.**<br>***Comment*: The 2020 Productivity Commission report acknowledged that road managers hold the most government levers in terms of heavy vehicle productivity. If Road Managers have the levers to improve road access, then they should also be accountable and subject to reporting obligations, including details and evidence of improvements to access. The Productivity Commission report acknowledges that road managers have the most government levers in terms of heavy vehicle productivity.** | - | - | ✓ |

[63] https://www.infrastructure.gov.au/infrastructure-transport-vehicles/transport-strategy-policy/infrastructure-and-transport-ministers-meetings

[64] Additional Work Streams are initiatives that are outside the NTC Review program of work.

| Proposition | NTC Leg Reforms | Cost Benefit Analysis | Additional Work Streams[64] |
|---|---|---|---|
| **1.3. The law and/or other relevant supporting documents should make clear the roles of the respective government parties with respect to heavy vehicle productivity.**<br>***Comment*: A description of the roles of the various parties will be developed (other than NHVR which is described in 1.4 below).** | - | - | ✓ |
| **1.4. The NHVR's role in productivity is specific to:**<br>**a. Facilitating productivity improvements without compromising safety**<br>**b. Creating and maintaining a national integrated access decision making process and system, including the production of statistics**<br>**c. Support and encourage the uptake of safer and higher productivity vehicles**<br>**d. Collaborating with road managers and industry to proactively drive national harmonisation of vehicle access and operating conditions to enable safe and seamless movement of goods and passengers by heavy vehicles across state and territory borders.** | No Policy Change | - | ✓ |
| **1.5. To the maximum extent possible the new law be outcome based while also allowing for a prescriptive approach.** | ✓ | - | - |
| **1.6. To the maximum extent possible, the new law should place detail into regulations and subordinate instruments as set out in several better regulation guidance documents** | ✓ | - | - |

## Table 2 Access

| Proposition | NTC Leg Reforms | Cost Benefit Analysis | Additional Work Streams[65] |
|---|---|---|---|
| **Key points**<br>• **The message for improving heavy vehicle network access is clear – we need a positive game changer to improve the efficiency and transparency of the decision-making system and improve network access.**<br>• **To progress, parties need to treat roads as an economic asset, recognising that road mangers are the asset owner and ultimately responsible for access decision-making and performance of the road asset.**<br>• **A step change to improve productivity and safety can be achieved by investing in a new system to automate access decision-making (to the maximum extent possible) akin to the Tasmanian model, which appears to be well regarded by all parties.**<br>• **It is acknowledged that this is an ambitious national reform that will require strong partnership with and significant support for local councils.**<br>• **The key proposals include:**<br>  ○ **Establishing a Steering Committee of road managers, Australian Local Government Association and the Regulator to advance the new system:**<br>  ▪ **Advise on what system can be implemented and how it should be delivered for a successful national rollout**<br>  ▪ **Assess the benefits, costs and risks of the new IT system**<br>  ▪ **Detailed Implementation plan developed within 6 months for consideration by Ministers**<br>  ○ **Set a target that a new automated access system will be in place within 3 years and the number of access permits required is reduced by 50% within 3 years and 90% within 5 years for all classes of heavy vehicles.**<br>  ○ **Conduct a cost benefit and safety risk analysis (as part of the HVNL impact assessment) of expanding general access from GML to CML and vehicle length from 19m to 20m.** | | | |

[65] Additional Work Streams are initiatives that are outside the NTC Review program of work.

| Proposition | NTC Leg Reforms | Cost Benefit Analysis | Additional Work Streams[65] |
|---|---|---|---|
| • It is recommended that a proposal put forward by the ATA to open up as-of-right-access along specific routes on a National Road Transport Network (connecting major cities) be subject to a rapid economic assessment.<br>• A major barrier to the growth of new safer and more efficient PBS vehicles in the fleet is the lack of certainty on access, which could be addressed with the automated access system. | | | |
| **2.1. Re-affirm that road managers are the ultimate access decision makers in their role as road asset owners and managers but need to make those decisions in an efficient, transparent, and accountable way.** | No Policy Change | - | - |
| **2.2. Retain the existing decision-making criteria for access, however, update ministerial guidelines on access decisions to consider the productivity benefits of the application and require decision makers when considering rejecting an access application to consider the impact of alternative means of moving the freight which is the subject of the application.** | - | - | ✓ |
| **2.3. That a target be set for all jurisdictions to implement upgraded access arrangements within 3-5 years including:**<br>**a. Automated real time decision making within 3 years**<br>**b. Implementation of automated access assessment supported by access under notice such that the number of access permits required is reduced by 50% within 3 years and 90% within 5 years for all classes of heavy vehicles (including PBS).**<br>***Comment*: While the specific numbers may be debated (e.g. at RAC+ industry suggested 95% within 5 years target), setting targets will help to focus efforts to achieve reform.** | - | - | ✓ |
| **2.4. That within the next 6 months a national implementation plan for upgraded access arrangements be prepared for ITMM endorsement by independent consultants and overseen by a small independently chaired jurisdictional/regulator Steering committee which should include all jurisdictions and must include Local Government representation (e.g. ALGA). The implementation plan includes:**<br>**a. The most effective operating model and systems arrangements to address access requirements and jurisdictional asset data requirements. Options may include one national system incorporating all relevant assessment tools and data or a federated system with a seamless front end.**<br>**b. Ensuring that whatever systems architecture is chosen it is accessible via the NHVR portal.**<br>**c. Appropriate mechanisms for incorporating risk appetite for road managers (consistent with asset management plans into the system.** | - | ✓ | ✓ |

| Proposition | NTC Leg Reforms | Cost Benefit Analysis | Additional Work Streams[65] |
|---|---|---|---|
| d. The costs, benefits, and risks of the full implementation.<br>e. Methodology for data gathering and asset assessments in a time and cost and time efficient manner.<br>f. Leveraging existing investments in initiatives, platforms, databases and data collection processes.<br>g. Any required legislative or regulatory change to support the implementation<br>*Comment*: A small oversight group, supported by independent experts, is needed to drive this reform agenda. The implementation plan will enable clarity on what system can be implemented and how, and the costs, benefits, and risks. The outcome will be to expedite a proposed detailed implementation plan to Ministers on the reform needed to achieve a step change in access. | | | |
| 2.5. The National Heavy Vehicle Access Policy Framework (being led by NSW), be expedited, and be brought to the next ITMM for approval. The Framework should:<br>• Include the proposal approved by ministers in 2020 that comprises strategic policy principles to improve access and deliver national harmonised arrangements<br>• Include identifiable and tangible policies and principles as solutions<br>• Include a working group comprised of industry and jurisdictions to oversee implementation of the policies. | - | - | ✓ |
| 2.6. As part of the final RIS economic analysis for the HVNL (and/or supporting regulations) that a cost benefit analysis and safety risk analysis be prepared on the merits of making any or all the following changes to mass and dimension:<br>a. GML increase to CML<br>b. Overall Length increase from 19 to 20 metres (note: thus, removing many approvals required)<br>c. Overall height to increase from 4.3m to 4.6m.<br>d. Ensure general access width automatically reflects relevant changes in Australian Design Rules | - | ✓ | - |

| Proposition | NTC Leg Reforms | Cost Benefit Analysis | Additional Work Streams[65] |
|---|---|---|---|
| *Comment*: CML is available to all operators now if they are part of the mass module of NHVAS, there is no logic that says being in the accreditation scheme means the truck does less damage to the road. Vehicles up to 20 metres are commonplace now on the network, what is proposed here is that they should not need a special permit (i.e. this is red tape reduction). | | | |
| 2.7. That a rapid economic appraisal be conducted on the costs and benefits of an ambitious reform agenda of opening up as-of-right access to specific routes along the National Road Transport Network and that subsequent business cases be prepared where benefits outweigh costs. The routes proposed for appraisal are the Hume Highway productivity upgrade (NSW, VIC & ACT), Queensland Inland Freight Route, Port Wakefield-Adelaide Duplication (SA), Great Northern Highway upgrade (WA), Northern Tasmanian Road Freight upgrade, Stuart Highway Flood Immunity. | - | ✓ | ✓ |
| 2.8. That Performance Based Standards (PBS) approvals be better linked with access to networks:<br>a. Provide certainty of access for PBS Design Approvals.<br>b. Provide transparent and certain access for PBS vehicles (real and/or design concepts) by providing a similar approach to the Tasmanian HVAMS approach which has been successfully applied to SPV's and OSOM.<br>c. Recognise common and proven PBS combinations under gazette or in regulations and provide certainty of access through designated networks (i.e., take them out of the PBS process).<br>d. Improve effectiveness and efficiency of the PBS design review process by requiring applicants to submit PBS approvals in digital form (not PDF) to the Regulator (to share with road managers). | - | ✓ | ✓ |
| 2.9. Provide corresponding access networks for PBS vehicles to a standard vehicle, general access (up to 50.5t GCM) for PBS Level 1 vehicles, and B-double access for PBS Level 2 vehicles.<br>*Comment*: An original intention of the PBS scheme was for certain types of PBS vehicles to have corresponding access to a standard vehicle. In practice, the way access has evolved, the B-double network is different to the PBS Level 2 network. This issue would be addressed under an automated access system. | - | - | ✓ |

| Proposition | NTC Leg Reforms | Cost Benefit Analysis | Additional Work Streams[65] |
|---|---|---|---|
| **2.10. Proposed improvements to the PBS Scheme:**<br>**a. Enable manufacturers of PBS vehicles to self-certify that the build is as per the design. *Comment*: Technically, there are different interpretations involved in certifying that the design is the same as the build (e.g. actual masses) which create challenges for access approvals. Acceptance of\agreed tolerances should be considered.**<br>**b. Type approval of component vehicles for the PBS Scheme.**<br>***Comment*: The purpose of this proposition is to enable approval of individual PBS vehicle units and encourage fleet interchangeability in some circumstances.**<br>**c. Update PBS standards to reflect learnings over the last 20 years and recognise technologies where appropriate (NHVR has started this work – it should accelerate if possible).**<br>**d. Streamline governance of PBS scheme (Nearer term) and continue to gazette networks for PBS vehicles, until online notices are developed**<br>**e. Allow transfer of approvals with sale of a PBS combination.**<br>***Comment*: Approval is associated with access to a network which is a potential constraint as the new owner may have different access needs. NHVR is examining certification of individual units and fleet interchangeability.** | - | - | ✓ |
| **2.11. Enable businesses to rely on official network maps and automated approvals, instead of needing to refer to gazette notices for legal certainty.** | ✓ | - | - |
| **2.12. Empower the Regulator to amend gazette notices to reflect changes to the ADRs or vehicle standards HVSOs/Regulations, without needing the consent of road managers.** | ✓ | | - |
| **2.13. Regulatory instruments and decisions on access issues e.g., mass, dimension and PBS requirements should always be tested for the impact on buses.**<br>***Comment:* The specialised characteristics and requirements of buses would be addressed under an automated access system.** | - | ✓ | - |

**Table 3 Fatigue Management**

| Proposition | NTC Leg Reforms | Cost Benefit Analysis | Additional Work Streams[66] |
|---|---|---|---|
| **Key points**<br>• **All vehicles over 4.5 tonne are by default considered fatigue regulated heavy vehicles, however, regulations would allow for categories/classes/types of vehicles to be excluded from certain provisions (e.g., record-keeping). This proposal should be tested by a consultation regulatory impact assessment. The default exclusions should mirror the present exclusion, with any changes to be validated through the regulatory impact assessment process.**<br>• **There is recognition that until technology allows for roadside detection of fatigue, work and rest rules will need to be applied as a proxy for managing fatigue. Continue to pursue technology as a mechanism for managing fatigue and distraction.**<br>• **While there is industry support to move to EWDs (digital record keeping), the views on mandating EWDs currently are mixed. Industry is of the view that the current fatigue regulatory framework is a barrier to voluntary uptake of digital record keeping, which can be overcome by removing prescriptive rest breaks and administrative work diary offences and penalties.**<br>• **A two-tiered regulatory regime for fatigue is proposed:**<br>  ○ **General schedule of prescriptive rules is maintained with the option of some flexibility on rest breaks for all operators and some further flexibility for those with EWDs.**<br>  ○ **A second tier Fatigue Certification Scheme with greater flexibility, alternative compliance options and regulatory concessions for certified operators, starting with SMS as a minimum, will be further developed by the NHVR.**<br>• **Fatigue enforcement and compliance should focus on patterns of behaviour, risk profiles, systemic issues, and serious deliberate breaches.**<br>• **That the number and type of penalty offences and the level of penalty that attaches to them be streamlined and reviewed to ensure that they are risk based and proportionate. Administrative offences should be minimised in the design of the law and a formal warning system be developed and adopted for administrative offences.** | | | |

[66] Additional Work Streams are initiatives that are outside the NTC Review program of work.

| Proposition | NTC Leg Reforms | Cost Benefit Analysis | Additional Work Streams[66] |
|---|---|---|---|
| **The new fatigue regime should be tested through pilots in real world conditions.** | | | |
| **3.1. That fatigue detection and distraction technology should be pursued as a mechanism for actively managing fatigue.** | - | - | ✓ |
| **3.2. Enable the scope of Fatigue-regulated heavy vehicle (FRHV) to be expanded in the law, such that all vehicles over 4.5 tonne are by default considered fatigue-related heavy vehicles. Conduct a Regulatory Impact Assessment which would include testing exemption options for classes of vehicles or areas of operation from being covered by fatigue regulations (e.g., removing the exemption for vehicles between 4.5 and 12 tonnes and/or removing the 100km exclusion).**<br><br>*Comment*: This proposition would make a law change so that administratively the expanded scope of FRHV could be implemented.<br><br>This proposal is likely to impact on new industry sectors and other impacts e.g., enforcement, so detailed consideration through a consultation regulatory impact assessment process is required. This includes developing and testing exclusions to FRHV to be placed in regulation e.g., present 100-kilometre exclusion; recreational vehicles; vehicles below 12 tonne GVM. The benefit of placing exclusions in regulation, rather than incorporated into the FRHV definition in primary law, is that they can be changed more easily over time, with those changes being subject to consultation requirements.<br><br>Issues with implementation will require detailed consideration of the process of consultation and a transition pathway to support industry. Exemptions would need to be prescribed by regulation, so they would require Ministerial endorsement. | ✓ | ✓ | - |
| **3.3. Introduce a two-tiered Fatigue management regime consisting of:**<br>**Tier 1 Fatigue General Schedule.**<br>• **Outer driver hour limits per 24 hours, per week and per fortnight will remain as per the existing General Schedule.**<br>• **Work and rest rules for fatigue management for drivers, which are an improvement to the current General Schedule with a simpler set of rules.**<br>• **More flexible rest break requirements. Drivers should take a one-hour break (may consist of multiple short rest breaks) over a 12-hour period and should not work for more than 5 ¼ hours without a break.** | ✓ | ✓ | - |

| Proposition | NTC Leg Reforms | Cost Benefit Analysis | Additional Work Streams[66] |
|---|---|---|---|
| • **The 15 minute "blocks" of rest time be replaced by minute-by-minute counting rest time for those using EWDs, with no 15-minute minimum.**<br>• **The issue of overlapping 24-hour periods is addressed by initial testing and, if suitable, progressing the permitting the 24-hour period to reset after 10 hours of continuous break.**<br>**Tier 2 Fatigue Certification Scheme.**<br>• **That additional flexibility be provided to drivers working through operators who can demonstrate active safety management in their business (have a certified SMS) and, where appropriate, to use EWDs to record driver work and rest hours digitally. [It is noted that document management for business operations may vary (e.g., paper-based systems, a mix of digital/paper-based systems) and there are no requirements for these systems to be electronic.]**<br>• **The NHVR will work with operators to set up flexible scalable certification options/levels within the scheme and corresponding business rules. Operators will present the tools and technology solutions to manage fatigue based on risk.**<br>• **Outer legislated limits should be prescribed, aligned with the current AFM outer limits.**<br><br>*Comment*: Most of the flexibility required by operators (e.g., an additional one hours' work in exceptional circumstances, split shifts etc) will be able to be accommodated in the graduated second tier that will ensure that flexibility is achieved in a safe way. Long transition arrangements will be made available to current BFM and AFM certified operators. | | | |
| **3.4. Record Keeping**<br>**a. Adequate records are needed to ensure the HVNL is enforceable and provides safety and fairness for the heavy vehicle industry. However, record keeping requirements should not exceed what is necessary to ensure the law is enforceable.**<br>**b. The new HVNL should allow for (but not require) record keeping requirements to be prescribed by regulation. This would allow for the form and format of fatigue records to be changed over time, or for the regulations to prescribe different record keeping formats to suit different operations.**<br>**c. The regulatory system should where possible incentivise the uptake of electronic fatigue records e.g., Electronic Work Diaries (EWDs).** | ✓ | ✓ | - |

| Proposition | NTC Leg Reforms | Cost Benefit Analysis | Additional Work Streams[66] |
|---|---|---|---|
| **3.5. Fatigue Enforcement**<br>**A review of offences and fines should be undertaken in consultation with jurisdictions, the NHVR, Police and industry. The review should consider the following:**<br>**a. Roadside enforcement and issuing of infringement notices for fatigue should focus on the immediacy of fatigue risks, rather than historical breaches; historical breaches should be considered through the lens of other regulatory tools (e.g., improvement notices).**<br>**b. The time frame for issuing infringements for fatigue breaches should be amended to 14 days (except where the timeframe for the fatigue measure exceeds 14 days).**<br>c. **Infringements for work/rest breaches should shift from focusing on specific incidents to focussing on overall breach risk profiles. A fatigue breach risk profile would consider both the number and severity of individual work/rest breaches.**<br>**d. The fines for administrative offences should be proportionate with the risk.**<br>**e. Administrative offences should focus on deceptive conduct e.g., providing false, misleading, or omitting information where that omission is misleading. It should not be an offence to omit information if it does not result in ambiguity.**<br>**The rectification of administrative oversight at the roadside should be the primary mechanism for addressing administrative errors. If a driver does not rectify administrative errors at the roadside this should lead to issuing a penalty infringement notice.** | ✓ | - | - |
| **3.6. The new Fatigue Regime proposed in 3.2, 3.3., 3.4, and 3.5 should be tested against existing industry operations and piloted under real world conditions, and subject to expert safety advice as required, to ensure it delivers reduced complexity without affecting safety.** | ✓ | - | - |
| **3.7. Duties and Driver Health.**<br>**a. The commercial standards in Australian Fitness to Drive (AFTD) Guidelines should be upgraded to include risk-based screening tests for diabetes, sleep apnoea and cardiovascular issues.**<br>*Comment*: Note that this project should be pursued outside the HVNL process as part of the new AFTD. Expect that a benefit cost analysis will be conducted on the impacts of mandatory health screening prior to implementation. There are | ✓ (For c.) | ✓ (For a. & b.) | ✓ (For a. & b.) |

| Proposition | NTC Leg Reforms | Cost Benefit Analysis | Additional Work Streams[66] |
|---|---|---|---|
| some concerns about waiting times for access to health services for rural and remote operators that would need to be considered. It should be noted that this proposition is presently being actioned by the NTC at the request of ITMM.<br>**b. All heavy vehicle drivers should be required to have regular medicals against the standards as part of the driver licensing process,**<br>*Comment*: Expect that a benefit cost analysis will be conducted on the impacts of mandatory medicals if the requirement will apply to all drivers (assume a similar approach to current commercial passenger vehicle licensing/accreditation requirements).<br>**c. Extend the duty to avoid driving while fatigued (s 228) to include a duty not to drive a HV if not fit to do so for other reasons. Amend the primary duty to clarify requirements relating to driver competency and fitness to work.** | | | |

**Table 4 Enforcement, Penalties and Offences**

| Proposition | NTC Leg Reforms | Cost Benefit Analysis | Additional Work Streams[67] |
|---|---|---|---|
| **4.1. That the shift to risk-based safety-focused law (while maintaining some prescription), needs to be supported by requisite skills and resourcing for effective and appropriate enforcement and compliance. On road enforcement action requires training and resources. NHVR risk-based profiling and chain of responsibility investigations and prosecutions should also be supported as appropriate.** | - | - | ✓ |
| **4.2. That Road Managers in participating jurisdictions need assurance that there is adequate enforcement and compliance for restricted access vehicles across the national network. As part of the Implementation Plan for the new access arrangements outlined in recommendation 2.3 and 2.4, a review of compliance and the enforcement of access permission should be conducted.** | - | - | ✓ |
| **4.3. That record keeping systems be overhauled so that the number and type of penalties being issued by each enforcement body can be readily ascertained and collated at a national level.** | - | - | ✓ |
| **4.4. A national regulatory forum be convened once per year by the NHVR to for all enforcement agencies to discuss with industry strategies for ensuring enforcement is more consistent.** | - | - | ✓ |

[67] Additional Work Streams are initiatives that are outside the NTC Review program of work.

**Table 5 Accreditation**

| Proposition | NTC Leg Reforms | Cost Benefit Analysis | Additional Work Streams[68] |
|---|---|---|---|
| **Key Points:**<br>• **A single voluntary certification scheme will give operators flexibility to meet compliance obligations, administered by the NHVR.**<br>• **The new certification scheme will be an improvement on the current NHVAS:**<br>○ **create a base level which includes a Safety Management System (SMS) requirement**<br>○ **allow development of a more diverse range of alternative compliance options to better support operator diversity**<br>○ **introduce a better compliance regime including a National Auditing Standard to help to reduce the need for multiple audits requested by customers to meet their chain of responsibility obligations.** | | | |
| **5.1. That improvements are made to the existing NHVAS for a single, modular, opt-in (voluntary) certification scheme, administered by the NHVR.[69]** | ✓ | - | - |
| **5.2. The overall aim of this reform is to improve safety and productivity outcomes for the NHVAS:**<br>**a. Align NHVAS accreditation with the primary safety duty in the law.**<br>**b. Recognising operator diversity, increase the flexibility for operators to meet compliance obligations to run their businesses now and into the future.**<br>**c. Reduce compliance costs for operators to achieve and demonstrate compliance, including reducing the need for multiple audits requested by customers to meet their chain of responsibility obligations.**<br>**Suggest leave out these propositions as key focus is on the proposed scheme** | ✓ | ✓ | - |
| **5.3. Key elements of the improved voluntary NHVAS are:**<br>**a. Safety Management System (SMS) Core Module. The compulsory module will be scalable and specifically designed to support compliance with the primary duty.** | ✓ | ✓ | - |

[68] Additional Work Streams are initiatives that are outside the NTC Review program of work.

[69] As such, the scheme most closely resembles 7.3.3 *Enhanced opt-in regulatory certification scheme,* canvassed in the Consultation Regulation Impact Statement (C-RIS).

| Proposition | NTC Leg Reforms | Cost Benefit Analysis | Additional Work Streams[68] |
|---|---|---|---|
| b. More flexible and diverse alternative compliance. The regulatory framework supporting the improved NHVAS will also enable a greater range of alternative compliance options, underpinned by Ministerial Directions[70]. The framework should be scalable to support different levels of sophistication of operations. Operators with less sophisticated business operations who enter the scheme would be eligible for relatively small concessions and operators with more sophisticated operations would be eligible for highly flexible alternative compliance options.<br>c. Electronic documentation will replace NHVAS paper-based requirements, with operators retaining the option to carry paper copies of documents.<br>d. Less administratively burdensome.<br>e. Reduce the reliance on audits by customers to meet their chain of responsibility obligations.<br>f. National Audit Standard. A National Auditing Standard will be recognised in law as part of the scheme. The standard will be outcomes-based, designed so that it can be adopted by other assurance schemes. The National Auditing Standard could also be used for non-certification audits intended to establish adherence/compliance with the primary duty. The law will also specify that a Court may consider an audit conducted under the Standard as part of determining whether the Primary Duty has been met. | | | |
| **5.4. Transitional arrangements for NHVAS participants will allow operators accredited under the current NHVAS to have their accreditation and associated regulatory concessions recognised until the operator's first scheduled audit three years from commencement of the new certification scheme.** | ✓ | - | - |

[70] Currently ministerial guidelines can be made. Ministerial Directions will be used as there is no ambiguity about the requirement to adhere to them. In general terms ministerial directions will be preferred wherever they relate to matters that ministers have authority to control.

**Table 6 Technology and Data**

| Proposition | NTC Leg Reforms | Cost Benefit Analysis | Additional Work Streams[71] |
|---|---|---|---|
| **Key Points:**<br>• **Technology and data provisions are currently hard-wired into the law.**<br>• **Heavy vehicle operators who invest in data-generating technology are not able to use those systems as a way of demonstrating compliance with prescriptive obligations.**<br>• **Current compliance and enforcement provisions enable authorized officers to access heavy vehicle generated data (from operators or third parties) for enforcement purposes (e.g., data mining for offences). This is acting as an impediment to industry investing in technology to improve safety and productivity.**<br>• **The new law could facilitate a flexible and responsive legal mechanism for adopting technology and data sharing.** | | | |
| **6.1. The new law to have enabling provisions to provide for:**<br>**a. developing technology standards or adopting international standards**<br>**b. the protection of on-board data**<br>**c. ensuring that privacy is protected**<br>**d. a process for certifying technologies as being compliant, including recognition of technologies approved internationally**<br>**e. new specific provisions to clarify the legal status of data generated by certified technologies**<br>**f. a specific provision to make it clear that a person can present to court with evidence of complying with the HVNL based on a non-certified technology system. It would be up to the court to decide what weight to place on that evidence.** | ✓ | - | - |
| **6.2. The law should enable but not require that Ministers can by regulation establish a Technology and Data Framework/s and a Technology and Data Framework Administrator/s (one or more appointed by ITMM from time to time or for specific** | ✓ | - | - |

[71] Additional Work Streams are initiatives that are outside the NTC Review program of work.

| Proposition | NTC Leg Reforms | Cost Benefit Analysis | Additional Work Streams[71] |
|---|---|---|---|
| **regulatory purposes).**<br><br>*Comment*: A legal mechanism that enables data sharing schemes does not in and of itself create a regulatory or cost burden for industry. The regulatory or cost burden is created by the individual data sharing schemes (e.g., technology acquisition and data transmission costs).<br><br>Data sharing schemes that are mandatory for some or all heavy vehicles (i.**e.,** where costs will be incurred by industry) will be subject to a regulatory impact statement process so that a cost benefit analysis (CBA) for any proposed scheme is undertaken.<br><br>Data sharing schemes that are voluntary in nature (e.g., a scheme being sought by an industry participant for more cost effective compliance with law) will not be subject to a RIS process or CBA. The decision to invest in a voluntary data sharing scheme are a business investment decision. | | | |

**Table 7 Safety Obligations and chain of responsibility**

| Proposition | NTC Leg Reforms | Cost Benefit Analysis | Additional Work Streams[72] |
|---|---|---|---|
| **Key Points:**<br><br>• **There are limited examples of cases where parties further up the chain have been investigated and prosecuted. It is still easier to go after the driver or operator. The future law will seek to address current accountability gaps for off-road parties that influence the safety of heavy vehicle transport activities by creating discrete offences for off-road parties.**<br><br>**The future law will set out a non-exhaustive list of risk areas to which safety obligations will apply under the primary duty.** | | | |
| **7.1. The future law should introduce a regulatory head of power for *Heavy Vehicle Safety Obligations,* which would be made as regulations and subject to parliamentary disallowance. The law will describe the risks a HVSO may regulate and the parties to which a HVSO may apply. HVSOs would be developed by the NTC subject to the Regulatory impact analysis process for ministerial councils and national standard setting bodies.**<br><br>*Comment:* this will have the effect of placing prescriptive obligations into regulations. | ✓ | ✓ | - |
| **7.2. The law will set out a non-exhaustive list of risk areas to which an HVSO may apply. The non-exhaustive list will align with the agreed risks to be managed under the primary duty:**<br>• **Fatigue**<br>• **Fitness to drive** | ✓ | - | - |

[72] Additional Work Streams are initiatives that are outside the NTC Review program of work.

| Proposition | NTC Leg Reforms | Cost Benefit Analysis | Additional Work Streams[72] |
|---|---|---|---|
| • **Vehicle Standards and Roadworthiness**<br>• **Mass and Dimension**<br>• **Loading**<br>• **Speed**<br>• **Competence, and**<br>• **Any other risk to public safety.**<br>*Comment*: Note that for "fitness to drive", the law will focus on being unfit to drive, whether due to a short-term issue or a long-term medical assessment managed through state-based driver licensing system (included through the AFTD). Any mandated training or other requirements, e.g., if competency-based training was mandated, then it is a given that such an initiative would be subject to regulatory impact assessment. | | | |
| **7.3. Existing prescriptive requirements in relation to fatigue, mass management and vehicle maintenance will be recast and simplified (where appropriate) as a HVSO.** | ✓ | ✓ | - |
| **7.4. The new law will allow for the establishment of prescriptive requirements, for off-road parties (HVSOs). Any off-road party to whom a HVSO applied will need to be defined (in primary law or regulations). The law should enable Ministers to prescribe parties from time to time in regulation, subject to regulatory impact assessments. It is proposed to retain the current list of specific parties in the law, and to conduct regulatory impact assessments for new proposed parties.** | ✓ | ✓ | - |
| **7.5. The law should have provisions to enable introducing specific offences for off-road chain of responsibility parties. More work needs to be done to develop specific offences.**<br>*Comment*: Creating discrete offences for specific off-road parties will assist in ensuring that parties turn their mind to the safety implications of their business model and activity. To assist off-road parties with voluntary compliance, the Regulator should be able to produce party-specific CoPs. Off-road parties breaching a HVSO would also be subject to other regulatory actions (e.g., an infringement notice) in addition to an infringement. | ✓ | - | - |

| Proposition | NTC Leg Reforms | Cost Benefit Analysis | Additional Work Streams[72] |
|---|---|---|---|
| The maximum penalty for a regulatory offence under the HVNL is $4,000 for an individual and $20,000 for a corporation, as indexed (s 730(3)(b)). These maximums are considered appropriate for consideration. Offences serious enough to warrant a higher penalty should be prosecuted under Chapter 1A. | | | |

**Table 8 Heavy Vehicle Registration**

| Proposition | NTC Leg Reforms | Cost Benefit Analysis | Additional Work Streams[73] |
|---|---|---|---|
| *Comment*: Some consideration has been given to investigating a National HV Registration Scheme. Essentially, there is very little prospect that an economic appraisal would show net economic benefits, therefore this proposal has been dropped.<br><br>**8.1. Those jurisdictions that don't currently allow businesses the option of paying heavy vehicle registration monthly by direct debit should consider implementing this customer service improvement** | - | - | ✓ |

[73] Additional Work Streams are initiatives that are outside the NTC Review program of work.

**Table 9 Delegation of authority in the Heavy Vehicle National Law**

| Proposition | NTC Leg Reforms | Cost Benefit Analysis | Additional Work Streams[74] |
|---|---|---|---|
| **9.1. Reform the delegation of authority in the HVNL so the NHVR Board has the power to sufficiently regulate and be held accountable for doing so. At present, many operational and technical matters are reserved to ITMM.** | ✓ | - | ✓ |
| **9.2. The new law is likely to give the NHVR Board greater discretion and flexibility. It seems appropriate to review the composition and skills mix of the Board and its governance (noting that the Board should remain skills-based). The review findings should be incorporated into the new regulatory framework.** | - | - | ✓ |
| **9.3. Detailed Proposals on ITMM/Non-ITMM Decision-making**<br>**a. Codes of Practice should be developed, approved, amended, and cancelled by the Regulator, subject to statutory consultation requirements. The Regulator can develop a Code of Practice at the request of industry, or at the direction of Ministers.**<br>**b. Business Rules for certification should be developed and approved by the Regulator.**<br>**c. Application forms should be developed and approved by the Regulator (without being subject to any statutory consultation requirements)**<br>**d. Ministerial guidelines should be reviewed, and consideration given to adopting an approach that focuses on Ministerial Directions.**<br>**e. The specific ministerial power in s 654(1)(a) to approve a standard for sleeper births should be removed. Any sleeper berth standard under the law should be made as part of the vehicle standards HVSO.**<br>**f. The Regulator should be subject to statutory consultation requirements with industry, participating jurisdictions and affected parties (minimum consultation timelines etc). Minor amendments and non- substantive changes can be excluded from these requirements.** | ✓ | - | ✓ |

[74] Additional Work Streams are initiatives that are outside the NTC Review program of work.

| Proposition | NTC Leg Reforms | Cost Benefit Analysis | Additional Work Streams[74] |
|---|---|---|---|
| g. **Ministers should have the power to cancel a Code of Practice, or a Business Rule approved by the Regulator.**<br>h. **Mechanisms should exist for the decision to approve a Code of Practice to be challenged (and therefore overturned) for circumstances where a party believes a Code of Practice was not developed in line with statutory consultation requirements (process review not merit-based review).** | | | |

**Table 10 Current law**

| Mechanism | Oversight |
|---|---|
| Industry codes of practice (s 706) | Industry develops<br>NHVR registers |
| Guidelines (s 653) | NHVR develops<br>Ministers approve |

**Table 11 Future Law**

| Mechanism | Oversight |
|---|---|
| **Codes of practice** | NHVR will develop in partnership with industry and in line with statutory consultation requirements.<br><br>Industry will be able to propose a CoP<br><br>NHVR Board to approve.<br><br>CoP can be challenged on certain grounds |
| **Guidelines** | Developed by party nominated by Ministers eg. NTC<br><br>Ministers approve, delegation for minor amendments |

**Table 12 Vehicle Classifications**

| Proposition | NTC Leg Reforms | Cost Benefit Analysis | Additional Work Streams[75] |
|---|---|---|---|
| **10.1. That vehicle classes and classifications will be moved from primary legislation to regulations (or other statutory instruments) to better enable future vehicle types to be recognised in the law.** | ✓ | - | - |

[75] Additional Work Streams are initiatives that are outside the NTC Review program of work.

# Fatigue Management General Schedule and Proposed

### Table 13 Current General Schedule (1 UP)

| Total Period | Max Work Time | Min Rest Time |
|---|---|---|
| 5.5 hrs | 5.25 hrs | 15 continuous minutes rest time |
| 8 hrs | 7.5 hrs | 30 minutes rest time, in blocks of at least 15 continuous minutes |
| 11 hrs | 10 hrs work time | 60 minutes rest time, in blocks of at least 15 continuous minutes |
| 24 hrs | 12 hours work time | 7 continuous hours stationary rest time |
| 7 days (168 hrs) | 72 hours | 24 hours continuous rest time |
| 14 days | 144 hours work time | 2 night rest breaks; and 2 night rest breaks taken on consecutive days |

### Table 14 PROPOSED GENERAL SCHEDULE using WWD

| Total Period | Max Work Time | Min Rest Time |
|---|---|---|
| 5.5 hrs | 5.25 hrs | 15 continuous minutes rest time |
| 12 hrs | 11 hrs | 60 minutes rest time in blocks of at least 15 continuous minutes. |
| 24 hrs | 12 hrs work time | 7 continuous hours stationary rest time. |
| 7 days (168 hours) | 72 hours | 24 hours continuous rest time |
| 14 days | 144 hours work time | 2 night rest breaks; and 2 night rest breaks taken on consecutive days |

**Table 15 Proposed Schedule using EWD**

| Total Period | Max Work Time | Min Rest Time |
|---|---|---|
| 5.5 hrs | 5.25 hrs | 15 minutes total short rest time ** |
| 12 hrs | 11 hrs | 60 minutes total short rest time |
| 24 hrs | 12 hrs work time | 7 continuous hours stationary rest time. |
| 7 days (168 hours) | 72 hours | 24 hours continuous rest time |
| 14 days | 144 hours work time | 2 night rest breaks; and 2 night rest breaks taken on consecutive days |

**** no prescribed minimum duration for a short rest break**

# Appendix B Recommendations list matched against ITMM reform package

| Recommendation | Reference in ITMM endorsed package (see Appendix A) |
|---|---|
| **Regulatory framework** | |
| 1 – Tiered safety assurance environment<br><br>That the future HVNL establish a tiered safety assurance environment comprising a baseline tier and an alternate compliance tier, designed to reflect industry diversity and deliver regulatory flexibility.<br><br>1a – Baseline compliance tier 1<br><br>That as part of the tiered safety assurance environment, the future HVNL establish a baseline tier comprised of simplified, predominantly prescriptive requirements, given effect by a broad head of power for the prescribing of heavy vehicle obligations.<br><br>1b – Alternative compliance tier 2<br><br>That, as part of the tiered safety assurance environment, the future HVNL establish an alternative compliance tier for accredited operators, underpinned by a new power allowing the regulator to issue alternative compliance options, within prescribed outer limits and other specified constraints.. | 1.5<br><br>1.6<br><br>3.3<br><br>5.1<br><br>5.2<br><br>7.1<br><br>7.2<br><br>7.5 |
| 2 – Ministerial approvals<br><br>That, as part of establishing an appropriate balance of regulatory discretion and ministerial oversight, the future law establish new arrangements for ministerial approvals, such that:<br><br>2a In recognition of restructured arrangements for alternative compliance and accreditation, ministers will no longer be required to approve accreditation business rules.<br><br>2b As part of enhancements to accreditation, ministers will be empowered to approve a national audit standard to be applied as part of the National Heavy Vehicle Accreditation Scheme, as well as other schemes and third parties. A national audit standard audit certificate will be automatically admissible evidence in primary duty proceedings.<br><br>2c The law clarify that consultation requirements apply to the development of ministerially approved guidelines. | 9.3 |

| Recommendation | Reference in ITMM endorsed package (see Appendix A) |
|---|---|
| 2d Ministers will no longer be required to approve a sleeper berth standard, noting this may be prescribed as a heavy vehicle obligation in the future. | |
| 3 – Ministerial directions<br><br>To enable ministers to appropriately direct the regulator, and without impinging on regulatory autonomy, the future law establish new ministerial direction arrangements, such that:<br><br>3a Ministers (collectively) will be empowered to give written directions about the issuing of alternative compliance options.<br><br>3b Ministers (individually or collectively) may direct the regulator to exercise a certain function or power in the case of a serious public risk, and when in the public interest to do so.<br><br>3c Ministers (individually or collectively) may direct the regulator to investigate or provide advice or information about a matter relating to a public risk.<br><br>3d Ministers (collectively) may direct the regulator to cancel a code of practice.<br><br>3e Ministers will retain the existing power (collectively) to direct the regulator about policies to be applied. | 9.3d |
| 4 – Codes of practice<br><br>That the future law establish new arrangements for codes of practice, replacing the existing industry code of practice mechanism and allowing the regulator to initiate, develop and approve codes of practice. | 9.3a<br><br>9.3g |
| 5 – Improvement notices<br><br>That the future law revise arrangements for improvement notices to allow improvement notice and prosecution processes to run concurrently. | Process improvement |
| **Assurance and accreditation** | |
| 6a That as part of the new alternative compliance tier (recommendation 1b), the future law restructure the National Heavy Vehicle Accreditation Scheme so that accredited operators can apply for an expandable range of alternative compliance options – | 5.1<br><br>5.2<br><br>5.4 |

| Recommendation | Reference in ITMM endorsed package (see Appendix A) |
|---|---|
| either on a bespoke basis or as part of accreditation modules developed by the regulator, within the ministerially approved limits.<br><br>6b That the law ensures a three-year transition period for current NHVAS operators to provide operators adequate time for them to develop the necessary safety management system to qualify for the enhanced scheme. | |
| 7 That, as a fundamental enhancement to the scheme, the law establishes a scalable safety management system as a core accreditation requirement. | 5.3 |
| 8 That, to support mutual alignment pathways and scheme robustness, a national audit standard be developed by the regulator and approved by ministers. | 5.3 |
| **Technology and data** | |
| 9 That the future HVNL enables technologies to be recognised under the HVNL by establishing a technology and data framework that includes powers, functions, duties and obligations for specified roles in the framework, and appropriate rules in relation to technologies recognised under the HVNL for data protection, stewardship and assurance, and access and use. | 6.1 |
| 10 That the technology and data framework will include the role, powers and functions of a framework administrator and include provisions for ministers to appoint one or more framework administrators. | 6.2 |
| 11 That the future HVNL enables the creation of data and technology applications by a framework administrator to outline the technical, data sharing, assurance and governance requirements for technologies recognised by the HVNL in line with ministerial requirements. | 6.1 |
| 12 That the future HVNL prohibits the access and use of data produced by recognised technologies under the HVNL (other than by its owner), except as allowed by the HVNL and regulations, other applicable Acts, and as specified in the relevant data and technology application. | 6.1 |
| 13 That the future HVNL ensures that a person can present to a court data from a non-certified application as evidence of complying with the HVNL and it will be up to the court to decide what weight to place on that evidence. | 6.1f |

| Recommendation | Reference in ITMM endorsed package (see Appendix A) |
|---|---|
| **Primary duties and responsibility** | |
| 14 That the future law expands the driver duty not to drive while fatigued to also include not driving if unfit for other reasons. | 3.7c |

# Appendix C Consideration of consultation RIS issues not being progressed through high-level regulatory framework decision RIS

Heavy Vehicle National Law Consultation RIS – Deliberation of policy issues not progressed through HVNL high-level regulatory framework Decision RIS

The proposals listed below were included in the Consultation RIS but are not addressed directly through a corresponding chapter of the DRIS.

More detail on proposals can be found in the CRIS: **https://www.ntc.gov.au/sites/default/files/assets/files/HVNLR-consultation-RIS.pdf**

| Consultation RIS Chapter | Proposed HVNL reform | Deliberation/ action |
|---|---|---|
| 8. Fatigue | Fundamental changes to the framework for managing fatigue (consultation CRIS Options 8.1 and 8.2).<br><br>Amend the standard hours outlined in the HVNL (consultation RIS Option 8.1): This option considered broad changes to the prescriptive standard rules for prescribed work and rest hours, with two sub-options to simplify prescriptive rules (Tier 1).<br><br>The wider framework associated with assurance (that is, fatigue modules under the NHVAS) (consultation RIS Option 8.2): This option proposed to establish a 'performance-based' Tier 2 with more flexibility, and for highly sophisticated operators with data-driven systems, a 'safety assurance' Tier 3. | Fatigue issues will be progressed through a subsequent RIS process in line with the recommendations of the Kanofski Review.<br><br>In responding to the CRIS, stakeholders supported the options to enable a flexible, performance-based approach but not as complex as two additional tiers.<br><br>Some stakeholders preferred and strongly advocated for the WA model of fatigue management. This was not supported in post CRIS consultation as WA fatigue management is part of the work health and safety regulatory framework and it was considered that trying to incorporate those concepts into the structure of the HVNL would make it too complex. |

| | | |
|---|---|---|
| | Widening the scope of fatigue requirements to cover a greater number of heavy vehicles (consultation RIS Option 8.3).<br><br>A sub-option, Option 8.3 (b) was considered to widen the scope of fatigue-regulated heavy vehicles to apply specific fatigue-related requirements to all vehicles with a gross vehicle mass (GVM) greater than 4.5 tonnes (that is, all vehicles under the HVNL definition); or all vehicles with a GVM greater than 8 tonnes, in line with licensing categories (medium or heavy rigid or above). | This option was supported, subject to tests. Stakeholder feedback emphasised that any changes to scope (for example, changes to requirements for 'local work' within 100km radius of base) need a clear policy evidence base and cost benefit analysis. For this reason this work will be progressed through a subsequent RIS and supported by in-depth analysis.<br><br>Kanofski recommendation 3.2 states that the future HVNL should: 'Enable the scope of Fatigue-regulated heavy vehicle (FRHV) to be expanded in the law, such that all vehicles over 4.5 tonne are by default considered fatigue-related heavy vehicles. Conduct a Regulatory Impact Assessment which would include testing exemption options for classes of vehicles or areas of operation from being covered by fatigue regulations (e.g., removing the exemption for vehicles between 4.5 and 12 tonnes and/or removing the 100km exclusion).' |
| | Targeted fatigue requirements for high-risk category drivers (consultation RIS Option 8.3.(a)) and a sub-option which would consider combinations of specific drivers and specific vehicles (consultation RIS Option 8.3.(b)). | These sub-options were not supported in post CRIS consultation due to the potential for added complexity and concerns about practical application. |
| | Principle-based Record Keeping (consultation RIS Option 8.4). Under this option, the HVNL would include an obligation to demonstrate compliance with the prescribed work and rest requirements for operators working under prescriptive rules and keep a record of the driver's work | Stakeholder feedback was generally supportive of simplification of record keeping, subject to management of safety risks, and operators being provided with more flexibility. Not prescribing work diary requirements and moving to bespoke |

| | | |
|---|---|---|
| | and rest time, but prescriptive work diaries that set out how the information should be kept would no longer be required. This option also would remove the distinction between local work and work greater than 100km. | recordkeeping received some support, though there were concerns about clarity of information requirements and supporting roadside enforcement.<br><br>To ensure that an appropriate balance is between simplify and veracity of records and to allow for record keeping requirements to be determinised in the context of an agreed understanding of the foundations of the HVNL, work to streamline record keeping requirements will be progressed through a subsequent RIS.<br><br>Kanofski recommendation 3.4 relates to record keeping and states 'record keeping requirements should not exceed what is necessary to ensure the law is enforceable'. |
| | Mandatory Electronic Records (CRS Option 8.5). This option proposed that all fatigue-regulated operators or drivers operating under prescriptive rules would be required to use an electronic work diary (EWD) to record information to demonstrate compliance with work and rest rules. Operators in other tiers may choose an EWD as their primary method of demonstrating compliance with any work and rest rules, and they would also be able to choose other compliance methods, such as fatigue monitoring technology. The EWD would need to be approved as fit for purpose. | Stakeholder feedback was that EWDs (digital record keeping) and other technologies for record keeping systems are strongly supported. However, there were mixed views on mandating EWDs, especially under the prescriptive tier. Some were concerned about a potential regulatory burden. Inflexible rules and administrative work diary offences and penalties are seen as a barrier to uptake of digital record keeping.<br><br>Mandating electronic records was not a recommendation put to Ministers through the Kanofski Review. |

| | | |
|---|---|---|
| | Roadside Enforcement and Offences for fatigue recordkeeping. Options 8.4 and 8.5 included the possibility of no longer using roadside enforcement for record-keeping offences, rather the NHVR risk-based audit compliance approach would be used. | This was not supported, due to stakeholder concerns about increased safety risk if roadside enforcement of record keeping was removed especially for significant risk breaches.<br><br>Stakeholder feedback was also that the effectiveness of current record keeping offences was questioned and arguments put forward that enforcement should apply to high-risk fatigue operators with repeated failures to correctly record work and rest information and not for simple administrative breaches.<br><br>During the Kanofski consultation, there was further firming of policy positions on record keeping for fatigue to simplify record keeping requirements and encourage EWDs. |
| 9. Access | Changes to increase general access via mass and dimension limits (Consultation RIS Option 9.1). | This option was not supported outright due to jurisdictional concerns about limitations on infrastructure on the current general access network. A cost benefit analysis will be undertaken as part of a subsequent RIS.<br><br>Kanofski recommendation 2.6 states:<br><br>As part of the final RIS economic analysis for the HVNL (and/or supporting regulations) that a cost benefit analysis and safety risk analysis be prepared on the merits of making any or all the following changes to mass and dimension: |

| | | |
|---|---|---|
| | | a. GML increase to CML<br><br>b. Overall Length increase from 19 to 20 metres (note: thus, removing many approvals required)<br><br>c. Overall height to increase from 4.3m to 4.6m.<br><br>d. Ensure general access width automatically reflects relevant changes in Australian Design Rules |
| | Improvements to the permit access decision process by recognising precedent, allowing for delegations, providing for geospatial maps to have standing in the law and simplifying vehicle classifications (Consultation RIS Option 9.2). | This option is partially supported and will be considered in greater detail as part of a subsequent RIS. |
| | Improving permit access division decision processes by changing statutory deadlines timeframes and formalising the decision framework with deemed referrals , and allowing for third-party review of access decisions . (Consultation RIS Option 9.3). | CRIS feedback highlighted industry concerns about inefficiencies in current arrangements for managing heavy vehicle access. However, the Kanofski Report concluded that many of industry's concerns with how heavy vehicle access is regulated are largely a matter of operational and system deficiencies. For this reason these amendments are not progressing as proposed in the CRIS.<br><br>To address these issues the HVNL Steering Committee has committed to oversee an operational project to set targets to implement upgraded access arrangements within 3-5 years:<br><br>a) Automated real time decision making within 3 years. |

| | | |
|---|---|---|
| | | b) Implementation of automated access assessment, such that the number of access permits required is reduced by 50% within 3 years and 90% within 5 years for all classes of heavy vehicles (including those under the Performance Based Standards (PBS) scheme). |
| | Moving access decision-making framework and processes into regulations/ standards (Consultation RIS Option 9.4). | This change is supported in principle, however the structure of legislation is ultimately a drafting decision. |
| | National approach to pilots and escorts through a national operational accreditation scheme (Consultation RIS Option 9.5). This work is not being progressed through the legislative component of the HVNL review and is instead being managed as an operational project. | This work is not being progressed through the legislative component of the HVNL review and is instead being managed as an operational project. |
| 10. Safer Vehicle Design | Streamline the PBS approval process (Option 10.1)<br><br>This option considered five distinct elements with the intent of streamlining the PBS approval process:<br><br>• NHVR is given the authority to assess and approve applications<br><br>• Linking access permissions to design<br><br>• Manufacturers self-certify that the build is as per the design<br><br>• Type approval of component vehicles | As noted by the Kanofski report, the most efficient way to improve PBS does not include amendment to legislation. For this reason operational reforms to PBS are being progressed through the NHVR project 'Performance Based Standards 2.0', which focuses on opportunities to reduce regulatory, administrative and cost barriers for industry and promote innovative approaches to heavy vehicle safety and productivity.<br><br>A full list of PBS focused initiatives can be found on the Heavy Vehicle National Law Reform non-legislative projects list on the Department of Infrastructure, Transport, Regional |

| | | |
|---|---|---|
| | • Allow transfer of approvals with sale of a PBS vehicle | Development, Communications and the Arts website.<br><br>While legislative reforms considered in the CIRS are not being progressed at this time, any changes arising from PBS 2.0 can be integrated into the new HVNL and considered in subsequent RIS processes if necessary. |
| | PBS technology standard (Option 10.2)<br><br>The creation of a PBS technology standard will allow for recognition of technology as an alternative means of complying with PBS scheme standards (both infrastructure and safety-related). | |
| | Increased vehicle width (Option 10.3)<br><br>The option focussed on aligning permitted heavy vehicle width in Australia with international standards. It would create a short-form PBS approval process for heavy vehicles whose only departure from the ADRs is that they exceed the permitted widths (i.e. 2.5m). | |
| 11. Roadworthiness | Standardised maintenance / roadworthiness assessment (Option 11.1)<br><br>This option had three key features:<br><br>1. Recognising the NHVIM expressly in the HVNL in order to increase consistency in the roadside inspection of vehicles. Currently the NHVIM is only used for annual inspections or<br><br>2. Amending the HVNL to require the use of self-clearing defects for non-safety cases. | In post CRIS consultation stakeholders supported the recognition of the NHVIM as the national standard for vehicle inspections. This change is expected to be progressed in alignment with Option 11.2 though a subsequent RIS process (if further analysis is required). |

| | | |
|---|---|---|
| | 3. Where a defect does relate to safety then an inspection for defect clearance would only be required to check whether the identified defect has been rectified, rather than a full inspection. | |
| | Risk-based inspection scheme (Option 11.2)<br><br>This option considered the NHVR including powers for the NHVR to develop a national regime of risk-based inspections of heavy vehicles (as set out in the National Heavy Vehicle Inspection Manual). Under this option the NHVR would develop risk criteria for identifying which vehicles have a higher risk of being unroadworthy, drawing on jurisdictional understanding of risk to roadworthiness. | Stakeholder feedback following the CRIS indicated that most stakeholders support the NHVR being granted a power to establish risk-based inspection schemes. This work will be progressed through stakeholder consultation and may be investigated further through subsequent RIS processes. |

# Appendix D Indicative list of indispensable duties and obligations, for adaptation into the future HVNL

**Key points**

- This appendix provides an indicative, but not final, list of safety duties and obligations that, when adapted into the future HVNL, will likely be categorised as indispensable.
- If a duty or obligation is categorised as being indispensable, it will not be:
  - Exemptible or;
  - Able to be subject to an alternative compliance option.
- Some duties and obligations under the current HVNL will self-evidently be categorised as indispensable. Others may be the subject of further analysis and policy debate.
- The process of developing a final list of indispensable duties and obligations will be carried out during the subsequent regulatory impact analysis phase.

## General considerations for determining whether a duty or obligation will be indispensable

Part of the rationale for developing a clear category of indispensable duties and obligations is to allow clear expression of parliamentary intent around which duties and obligations should form fundamental pillars of the law. While the law will not establish definitive criteria for determining whether a duty or obligation should be indispensable, the NTC has developed the following general policy considerations:

1. **Object of the law:** Does the duty or obligation establish an absolute, non-derogable requirement that is fundamental to achieving the object of the law?

   The concept of “non-derogability” is traditionally used in human rights law contexts to explain the principle that certain fundamental rights or obligations are non-negotiable and cannot be waived or overridden by exemptions or alternative arrangements. Here, the key consideration is whether an exemption or alternative compliance option would have any negative impact on achieving the object of the law.

2. **Overarching obligations vs prescriptive requirements:** Does the duty or obligation establish an overarching requirement to manage risk, or alternatively does it prescribe a method for managing a risk, that is linked to other obligations under the law?

A key example here relates to the duty to avoid driving while fatigued, under s 228 of the HVNL. This offence essentially provides an overarching obligation to manage the risk of fatigue. In contrast, work and rest hour schedules, and record-keeping requirements, prescribe methods for managing the overarching fatigue risk.

3. **Fundamental legislative principles:** To what extent does the obligation or duty raise fundamental legislative principles, in particular having regard to:
    a. The rights and liabilities of individuals; and
    b. The institution of parliament

## Safety duties

S 5 of the HVNL defines safety duties as including a set of offence provisions, including:

| Section | Duty |
|---|---|
| 26C | The Primary Duty on CoR parties |
| 26E | Prohibited requests and contracts |
| 89(1) | Safety requirement requiring a person not to use or permit use of an unsafe heavy vehicle |
| 93(1), (2) or (3) | Speed limiter tampering offences |
| 129(1), (2) or (3); | Contravening condition of mass or dimension exemption generally |
| 137 | Using a class 2 heavy vehicle |
| 150(1) | Contravening condition of class 2 heavy vehicle |
| 153A | Using restricted access vehicle |
| 186(2), (3), (4) or (5) | False or misleading transport documentation for goods |
| 187(2) or (3) | False or misleading information in container weight declaration |
| 335(1) | Must not tamper with approved electronic recording system |
| 336 | Using approved electronic recording system must not permit tampering with it |
| 337 | IAP program reporting entity must not permit tampering with approved electronic recording system |
| 454(1) or (2) | Offence to tamper with approved intelligent transport system |
| 467 | Compliance with conditions of BFM and AFM accreditation |
| 470(2), (3) or (4); | General requirements applying to operator with heavy vehicle accreditation |
| 604 | Contravention of supervisory intervention order |
| 610 | Contravention of prohibition order |

In addition to the s 5 definition of *safety duty,* the law sets out other offences commonly referred to as safety duties, including:

| Section | Duty |
|---|---|
| 26D | Duty of executive legal entity |
| 228 | The duty to avoid driving fatigued |
| 264 | Duty of employer, prime contractor, operator and scheduler to ensure driver compliance with fatigue requirements |

Most safety duties will be retained under the future law, although many will be adapted to suit the new regulatory environment and changes to accreditation, vehicle classification, and technology and data arrangements.

## Complying with management of specific safety risks

These are general requirements to manage specific safety risk areas identified in the law. Compliance with the applicable requirements for these specific safety risks cannot be exempted. Drivers/operators must comply with the requirements that are applicable to their operations, noting that the requirements may differ depending on the vehicle/type of operation.

Under the current HVNL they include the following sections:

| Section | Title |
|---|---|
| 96 | Compliance with applicable mass requirements |
| 102 | Compliance with applicable dimension requirements |
| 111 | Compliance with loading requirements |
| 250 - 260 | Compliance with applicable work and rest requirements |
| 296, 297, 298, 299, 303, 319A, 322, 323 | Compliance with driver record keeping (work diary) requirements |
| 319, 321, 324 | Compliance with (operator) record keeper requirements |

The future HVNL will retain but adapt overarching offences for specific safety risk areas. Overarching offences for applicable mass, dimension and loading requirements will be retained and categorised as indispensable obligations. The precise manner of adaptation will align with the new heavy vehicle classification framework, the detail of which will be landed during the subsequent regulatory impact assessment process.

An overarching offence for complying with applicable work and rest requirements will also be retained and adapted into the new accreditation environment.

There are differing views on how driver record keeping provisions should be provided for under the future law. This will be considered during the subsequent regulatory impact process.

## Complying with operating requirements for exemptions, authorisations/approvals and accreditation

These are requirements that apply to drivers/operators of vehicles that are operating under exemptions (permit or notice) from prescribed requirements (such as a mass or dimension exemption or a standard work and rest hour exemption), under a mass/dimension authorisation (permit or notice), under a PBS approval or under accreditation.

They include requirements relating to documentation, operating conditions etc. These requirements cannot be exempted or subject to alternative compliance options. Under the current HVNL they include the following sections:

| Section | Title |
|---|---|
| 25A | Keeping copy of PBS vehicle approval while driving |
| 79 | Return of permit (HV standards) |
| 80 | Replacement of defaced etc permit (HV standards) |
| Div 4 | Operating under vehicle standards exemption |
| Div 4 | Operating under mass or dimension exemption |
| Div 5 | Operating under class 2 HV authorisation |
| 137 | Using class 2 HV in accordance with authorisation |
| 153A | Using RAV on approved roads |
| 181 | Return of permit (M&D) |
| 182 | Replacement of defaced etc permit (M&D) |
| 284 | Return of permit (W&R Exemption) |
| 285 | Replacement of defaced etc permit (W&R Exemption) |
| Part 6.3 Div 8 Subdiv 4 | Offences relating to operating under work & rest hours exemption |
| 373 | Return of permit (work diary exemption) |
| 374 | Replacement of defaced etc permit (work diary exemption) |
| 375 | Contravening condition of a work diary exemption |
| 376 | Keeping relevant document while operating under work diary exemption (notice) |
| 392 | Return of permit (record keeping exemption) |
| 393 | Replacement of defaced etc permit (record keeping exemption) |
| 395 | Contravening condition of record keeping exemption |
| 466 | Accreditation labels for maintenance & mass accreditation |
| Part 8.3 | Operating under HV accreditation |

| | |
|---|---|
| 476 | Return of accreditation certificate |
| 477 | Replacement of defaced etc accreditation certificate |

## Approval and use of technology and data

These are requirements that relate to the approval of technology, how it is to be used, tampering offences and protection of data. These cannot be exempted or subject to alternative compliance options. Under the current HVNL they include the following sections:

| Section | Title |
|---|---|
| 314 | How EWD must be used |
| Part 6.4 Div 7 | Approval of Electronic Recording Systems |
| Part 6.4 Div 5 | Interfering with work records (EWDs) |
| Part 7.2 | Duties and obligations of operators of IAP |
| Part 7.3 | Obligations of drivers of IAP vehicles |
| Part 7.4 | Powers, duties and obligations of IAP service providers |
| Part 7.5 | Functions, powers, duties and obligations of TCA |
| Part 7.6 | Powers, duties and obligations of IAP auditors |
| Part 13.4 | Duties relating to protected information |

These offences will be adapted as part of implementation of the Technology and Data framework.

## General safety and enforcement requirements

Most offences relating to general safety and enforcement requirements are expected to remain under the future law, and most will be categorised as indispensable duties and obligations. Each will be assessed in light of the general considerations above during the subsequent regulatory impact analysis phase.

| Section | Title |
|---|---|
| 85 | Modifying heavy vehicle requires approval |
| 87A | Person must not tamper with plate or label |
| 89 | Safety requirement |
| 90 | Requirement about properly operating emission control system |
| 91 | Person must not tamper with emission control system |
| 92 | Display of warning signs required by HV standards |

| | |
|---|---|
| 93 | Person must not tamper with speed limiter fitted to HV |
| 108 | Dangerous projections |
| 109 | Warning signals |
| 134 | Displaying warning signs if not required by dimension exemption |
| 184 | Towing restriction |
| 185 | Requirements about coupling trailers |
| 186 | False or misleading transport documentation for goods |
| 187 | False or misleading transport documentation for container weight declarations |
| Div 4 | Other offences about container weight declarations |
| 193 | Weight of freight container exceeds stated weight |
| 305 | Driver must make supplementary records in particular circumstances |
| 306-307 | Driver must notify Regulator if WWD filled up etc |
| 308 | What driver must do if lost or stolen WWD found |
| 315 | Extended liability for driver record keeping requirements |
| Part 6.4 Div 4 | Provisions about false representations relating to work records |
| Part 6.4 Div 5 | Interfering with work records |
| 341 | Period for which, and way in which, records must be kept |
| 396 | Owner must maintain odometer |
| 397 | Driver must report malfunctioning odometer |
| 398 | What owner must do if odometer malfunctioning |
| 399 | What employer or operator must do if odometer malfunctioning |
| 454 | Offence to tamper with approved ITS |
| 478 | Offences relating to auditors |
| 517 | Complying with direction to move HV if causing harm |
| 522 | Produce a HV for inspection |
| 524 | Complying with direction to leave HV |
| 526 | Driver must give defect notice to operator |
| 528 | Must not remove or deface defective vehicle label |
| 529 | Must not use contrary to defect notice |
| 531 | Give amendment or withdrawal notice to operator |

| | |
|---|---|
| 533 | Comply with direction (minor risk breach MDL) |
| 534 | Comply with direction (substantial risk breach MDL) |
| 535 | Comply with direction (severe risk breach MDL) |
| 542 | Non-compliance with notice given by authorised officer |
| 553 | Non-compliance with seizure requirements of authorised officer |
| 558-559 | Non-compliance with embargo notice or requirements |
| 567 | Requirement to give name, address and date of birth |
| 568 | Requirement to produce document etc required to be in driver's possession |
| 569 | Requirement to produce documents etc generally |
| 570 | Requirement to provide information etc about heavy vehicles |
| 570A | Requirement to give information (coercive powers) |
| 573 | Contravention of improvement notice |
| 576C | Compliance with prohibition notice |
| 577 | Requirement to provide reasonable help |
| 584-585 | Obstruct or impersonate authorised officer |
| 590B | Offence to not comply with enforceable undertaking |
| 604 | Contravention of supervisory intervention order |
| 610 | Contravention of prohibition order |
| 636-638 | Liability of executive officer of corporation, unincorporated partnerships and unincorporated bodies |
| Part13.1 Div 1 | Offence about discrimination or victimisation |
| Part 13.1 Div 2 | Offences about false or misleading information |

# Appendix E Relevant sections of current HVNL

## Definition of transport activities (S 5)

***transport activities*** means activities, including business practices and making decisions, associated with the use of a heavy vehicle on a road, including, for example—

(a) contracting, directing or employing a person—

(i) to drive the vehicle; or

(ii) to carry out another activity associated with the use of the vehicle (such as maintaining or repairing the vehicle); or

(b) consigning goods for transport using the vehicle; or

(c) scheduling the transport of goods or passengers using the vehicle; or

(d) packing goods for transport using the vehicle; or

(e) managing the loading of goods onto or unloading of goods from the vehicle; or

(f) loading goods onto or unloading goods from the vehicle; or

(g) receiving goods unloaded from the vehicle.

## Definition of public risk (S 5)

***public risk*** means—

(a) a safety risk; or

(b) a risk of damage to road infrastructure.

## Definition of safety risk (S 5)

***safety risk*** means a risk—

(a) to public safety; or

(b) of harm to the environment.

## Definition of party in the chain of responsibility (S 5)

***party in the chain of responsibility***, for a heavy vehicle, means each of the following persons—

(a) if the vehicle's driver is an employed driver—an employer of the driver;

(b) if the vehicle's driver is a self-employed driver—a prime contractor for the driver;

(c) an operator of the vehicle;

(d) a scheduler for the vehicle;

(e) a consignor of any goods in the vehicle;

(f) a consignee of any goods in the vehicle;

(g) a packer of any goods in the vehicle;

(h) a loading manager for any goods in the vehicle;

(i) a loader of any goods in the vehicle;

(j) an unloader of any goods in the vehicle.

## Ministerial approvals (s 653 and 654)

### 653 Approved guidelines for exemptions, authorisations, permits and other authorities

(1) The responsible Ministers may approve guidelines about any of the following—

(b) granting vehicle standards exemptions;

(c) granting mass or dimension exemptions;

(d) granting class 2 heavy vehicle authorisations;

(e) granting electronic recording system approvals;

(f) granting work and rest hours exemptions;

(g) granting work diary exemptions;

(h) granting fatigue record keeping exemptions;

(i) granting heavy vehicle accreditation;

(j) granting or issuing an exemption, authorisation, permit or authority, or making a declaration, under the national regulations;

(k) granting PBS design approvals and PBS vehicle approvals;

(l) other matters as referred to in—

(i) paragraph (a)(ii) of the definition *road condition* in section 154; or

(ii) section 156A(1)(a)(ii); or

(iii) section 163(1)(b)(ii)(B); or

(iv) section 174(1)(b); or

(v) section 178(1)(b).

(2) The guidelines, and any instrument amending or repealing the guidelines, must be published in the Commonwealth Gazette.

(3) The Regulator must ensure a copy of the guidelines as in force from time to time and any document applied, adopted or incorporated by the guidelines is—

(a) made available for inspection, without charge, during normal business hours at each office of the Regulator; and

(b) published on the Regulator's website.

**654 Other approvals**

(1) The responsible Ministers may approve—

(a) a standard for sleeper berths; or

(b) standards and business rules for—

(i) advanced fatigue management; or

(ii) basic fatigue management; or

(iii) heavy vehicle maintenance management; or

(iv) heavy vehicle mass management; or

(c) a class of auditors for the purposes of Chapter 8.

(2) The approval, and any instrument amending or repealing the approval, must be published in the Commonwealth Gazette.

(3) The Regulator must ensure a copy of an approval in force under subsection (1), and any document the subject of the approval, is—

(a) made available for inspection, without charge, during normal business hours at each office of the Regulator; and

(b) published on the Regulator's website.

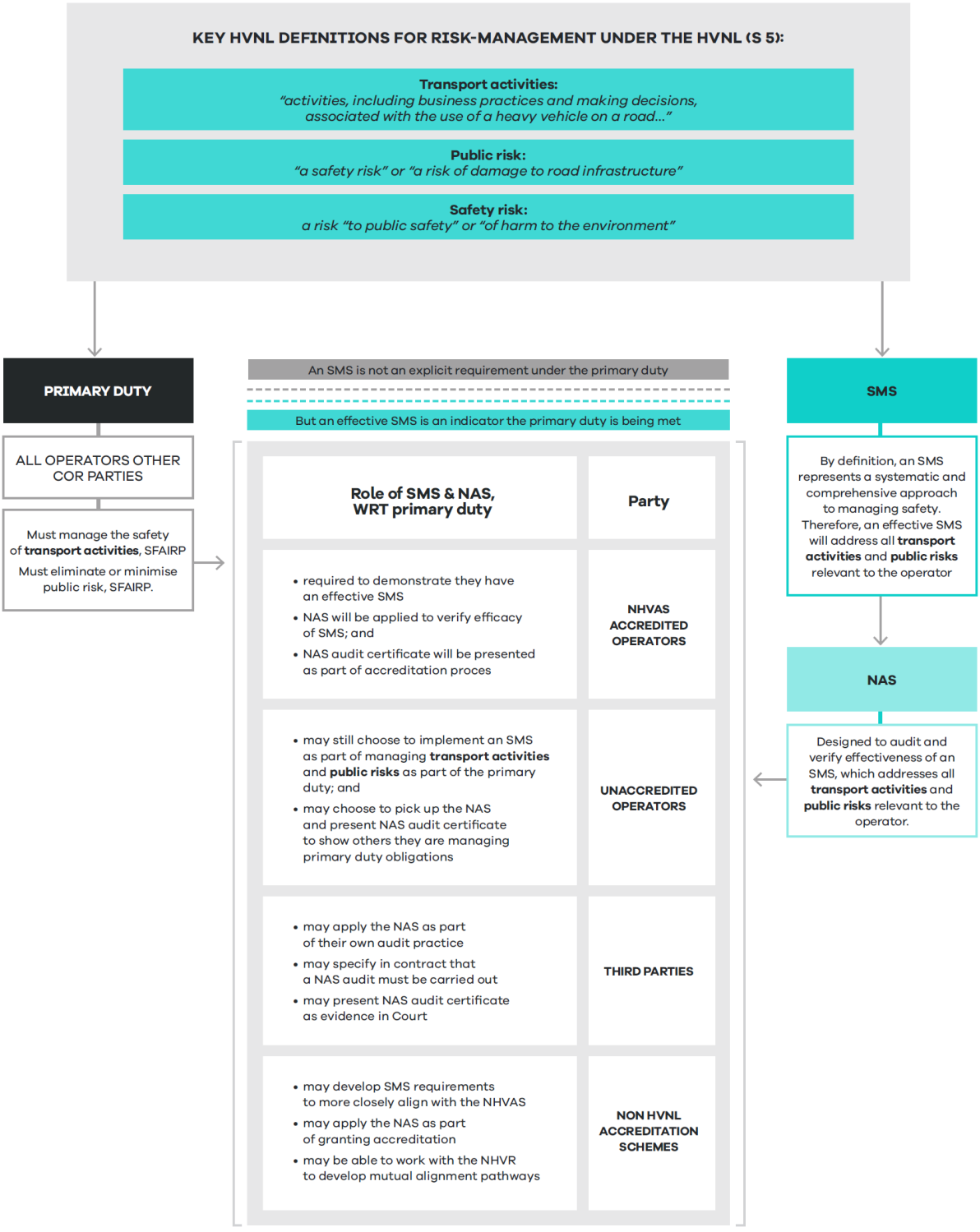
# Appendix F Overview of tiered safety assurance environment

| | Baseline compliance: HVOs | Alternative compliance |
|---|---|---|
| **Description** | ▪ The baseline tier that applies by 'default' to all operators, unless either:<br>– an exemption applies<br>– an alternative compliance option, relating to the specific HVO, elevates the operator to tier 2.<br>▪ Constructed new regulatory heads of power that enable the prescribing of 'heavy vehicle obligations' (HVOs). | ▪ A diverse range of alternative compliance options (ACOs) that may be either:<br>– issued to categories of operators<br>– granted to individual operators.<br>▪ For accredited operators only.<br>▪ Mechanised through a new power allowing the regulator to grant ACOs. Constraints on this power include:<br>– Legal permissibility<br>– A safety standard threshold<br>– Ministerial directions. |
| **What is the key change?** | ▪ The HVNL already contains heads of power that enable the prescribing of obligations in regulations.<br>▪ The HVO heads of power will be constructed as broadly as possible to make the law more adaptive and able to respond to new technologies, business practices and risks to safety. | ▪ Instead of hardwiring ACOs into legislation, the future law will empower the regulator to grant or issue ACOs. |
| **What are the benefits?** | ▪ Increased adaptiveness.<br>▪ Increased responsiveness. | ▪ Supporting operator diversity through enabling a broader range of bespoke and nuanced ACOs.<br>▪ Better tools to incentivise increased investment in safety.<br>▪ Creates a pathway for mutual alignment of HVNL and non-HVNL accreditation schemes. |

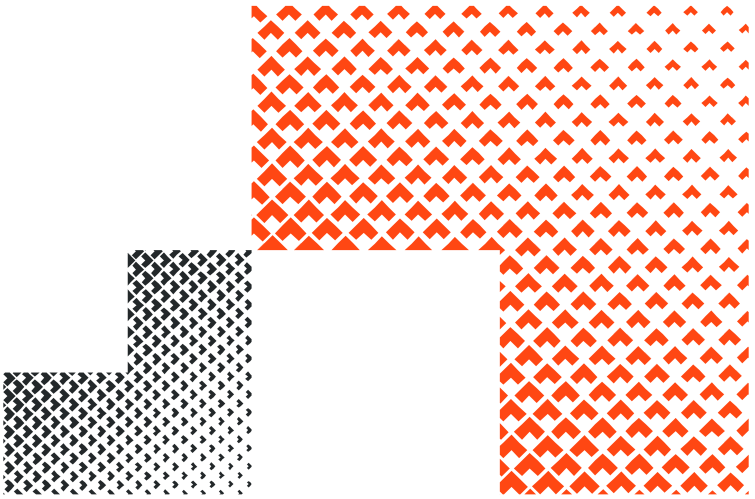
# Appendix G Links between primary duty, safety management systems, accreditation and the national audit standard

- Transport activities is defined broadly under the HVNL to capture 'activities, including business practices and making decisions, associated with the use of a heavy vehicle on a road'. This definition is supported by a non-exhaustive list of examples covering contracting, directing, employment, consignment, scheduling, packing goods, loading and receiving goods.
- Currently the definition of transport activities is called up in the Primary Duty under s 26C of the HVNL, which requires CoR parties to manage the safety of transport activities, so far as is reasonably practicable. The Primary Duty will be categorised as an indispensable requirement under the future law.
- The new HVO construct will also lean on the definition of transport activities. This effectively means that the scope of risks required to be managed under the primary duty, and the scope of matters potentially regulated by an HVO – will be the same.
- To this end, HVOs may be described as prescriptive obligations setting out requirements for managing specific elements of the Primary Duty.
- HVOs will not, however, amount to deemed compliance with the 26C. HVOs will also be prescribed for drivers, who are not subject to the Primary Duty.
- In the future, HVOs may also be prescribed for other off-road parties not listed in the CoR (who are also not subject to the Primary Duty).
- Appendix F elaborates on this relationship by providing a more comprehensive explanation of the relationship between "transport activities", the Primary Duty, HVOs, the Safety Management System (SMS) requirement for accredited operators, and ACOs.

## Table 16. Key HVNL definitions for risk-management under the HVNL (S 5)



**National Transport Commission**
Level 3/600 Bourke Street
Melbourne VIC 3000
Ph: (03) 9236 5000
Email: enquiries@ntc.gov.au
**www.ntc.gov.au**




# Reforms to Heavy Vehicle National Law (HVNL)

## Decision Regulation Impact Statement (RIS)

National Transport Commission | July 2024

# Report outline

| | |
|---|---|
| **Title** | Reforms to Heavy Vehicle National Law Decision Regulation Impact Statement |
| **Type of report** | Decision regulation impact statement |
| **Purpose** | For approval by the Infrastructure and Transport Ministers' Meeting |
| **Abstract** | This Decision Regulation Impact Statement (RIS) assessed the impact of supported policy changes in fatigue management and to general mass and dimension limits (slight increases to vehicle height and length) for heavy vehicles, and regulatory settings to support a new National Audit Standard (NAS) to build on recent changes to heavy vehicle accreditation.<br><br>Analysis of proposed options, balanced with feedback from stakeholders provided to the 2023 Consultation RIS has led the NTC to make several recommendations for consideration by ministers. |
| **Attribution** | This work should be attributed as follows, Source: National Transport Commission, Reforms to Heavy Vehicle National Law Decision Regulation Impact Statement.<br><br>If you have adapted, modified or transformed this work in anyway, please use the following, Source: based on National Transport Commission, Reforms to Heavy Vehicle National Law Decision Regulation Impact Statement. |
| **Key words** | heavy vehicle national law, national heavy vehicle regulator, national heavy vehicle accreditation scheme, heavy vehicle safety |
| **Contact** | National Transport Commission<br>Level 3/600 Bourke Street<br>Melbourne VIC 3000<br>Ph: (03) 9236 5000<br>Email: **enquiries@ntc.gov.au**<br>**www.ntc.gov.au** |

# Contents

# Executive summary

The review of the Heavy Vehicle National Law (HVNL) led by the National Transport Commission (NTC) and subsequent consultation processes have identified a series of changes to the HVNL that are critical for the law to accommodate the current and future needs of Australia's heavy vehicle industry.

This Decision Regulation Impact Statement (RIS) assessed the impact of supported policy changes in fatigue management and to general mass and dimension limits (slight increases to vehicle height and length) for heavy vehicles, and regulatory settings to support a new National Audit Standard (NAS) to build on recent changes to heavy vehicle accreditation.

If approved for implementation, the policies addressed by this Decision RIS will improve heavy vehicle safety and productivity.

## Context

The HVNL applies to heavy vehicles over 4.5 tonnes of gross vehicle mass. The HVNL consists of the Heavy Vehicle National Law and five sets of regulations. A first principles review of the HVNL was undertaken in 2019, and the NTC subsequently published a Decision Regulation Impact Statement (Decision RIS) that outlined high level changes to the HVNL regulatory framework, principally primary law, to create a modern platform for future reforms to HVNL policy (referred to as Decision RIS (2023) henceforth). The proposed amendments to the HVNL recommended in Decision RIS (2023) were endorsed by ministers at the 9 June 2023 Infrastructure and Transport Ministers Meeting (ITMM).

The NTC published a Consultation Regulatory Impact Statement (Consultation RIS (2023)) with policy proposals to amend fatigue management, slightly increase mass and dimension limits for general access vehicles and regulatory settings to support the new NAS which aimed to deliver outcomes which will help to improve the HVNL. The NTC conducted significant consultation to gain an understanding of stakeholder views on the policy options in the Consultation RIS (2023), including multiple bilateral and joint consultations with Australian governments, industry stakeholders, the National Heavy Vehicle Regulator (NHVR), union and police representatives, public information webinars and presentations for members of key industry associations, online survey targeting operators and drivers. Fifty-two formal submissions were received through this process.

## Options for consideration

This Decision RIS assesses policies recommended for inclusion in the future HVNL with consensus support.

### Fatigue Management

*Record-keeping Requirements for Written Work Diaries (WWD)*

Without available technology to test a driver's actual fatigue level, managing fatigue by setting work and rest requirements is currently the best tool to ensure safety, and an official Work Diary is used as evidence of compliance. This Decision RIS proposes several changes to record-keeping requirements to support industry requests that requirements should be risk-based and not exceed what is required to focus on significant risks. While agreed in

principle, there were challenges in identifying specific information that could be excluded from the diary and not adversely impact the evidentiary value of the WWD. Police also raised safety concerns around the risk of fraudulent behaviour such as manipulation of work and rest hours by drivers using parallel work diaries if provisions and requirements around lost, stolen or exhausted work diaries were removed.

The proposal is to remove three (relatively minor) duplicative requirements from driver work diaries e.g. make recording total work and rest hours on the daily sheet not subject to an offence under the HVNL(Option 1a). The administrative process requirements (e.g. for when a work diary is lost) have been removed (Option 1b). The overall impact of this proposal is some improvement to regulatory burden to industry and no adverse impact on safety.

*Scope of Fatigue Regulated Vehicles*

None of the options to change the cohort of vehicles included under prescriptive fatigue requirements presented in the C-RIS (2023) are recommended for further analysis or exploration at this stage. The qualitative and quantitative impact analysis conducted in the Consultation RIS (2023) had methodological limitations, and the analysis yielded limited evidence to support any of the options. There is insufficient evidence (in terms of fatigue incidents) that fatigue risk is not being adequately managed under the current legislative arrangements. Therefore, stakeholders generally supported the view that the regulatory burden associated with the proposed prescriptive rules cannot be justified.

Maintaining the status quo (Base Case 2) is the NTC's preferred position.

Notwithstanding the above, the definition of a fatigue regulated heavy vehicle will be moved to regulations so it can be more readily changed if there is evidence that additional heavy vehicles should be covered by the prescriptive rules in the future. This aligns with the approach to increase responsiveness and adaptiveness of the HVNL set out in the Decision RIS (2023). In the meantime, operators of heavy vehicles between 4.5 tonnes and 12 tonnes must manage fatigue risk under the HVNL primary duty and WHS legislation.

*Roadside Fatigue Enforcement*

The options proposed in the Consultation RIS (2023) to enable a more risk-based approach to roadside fatigue enforcement and proportionate responses to minor breaches yielded significant differences of views between government stakeholders and police agencies and industry.

A key option in the Consultation RIS (2023), strongly promoted by industry, was to limit the time period for which an infringement can be used as a compliance tool to 14 or 28 days (Option 3a), but this was strongly opposed by state and territory governments, police and the NHVR. Concerns raised include the unorthodox legal construction of the option, potential for increasing prosecutions for historical, low-level offences, and limitations on Authorised Officer discretion. The NTC sought agreement for a timeframe limit of 28 days, mirroring the scope of the 'compliance view' of an Electronic Work Diary, avoiding some of the legal concerns raised by jurisdictions, the perceived risk of increased driver prosecution and not impacting officer discretion (as enforcement tools are available).

Participating state and territory jurisdictions indicated a preference for a balanced mix of prescriptive and performance-based compliance tools, with prescriptive requirements complemented by duties-based requirements, over the model proposed in the Kanofski package.

The qualitative review and stakeholder feedback of other options to change enforcement of fatigue (3b,3c, and 3d) in the Consultation RIS (2023) yielded challenges around increased complexity to operators and governments, and resourcing requirements, and were not supported.

This Decision RIS proposes changes that take a practical approach in response to concerns that changes may undermine roadside enforcement and result in adverse safety outcomes.

The proposal is to allow Authorised Officers (including police) to issue formal warnings rather than fines for administrative offences relating to work diaries (Option 3e). This will provide Authorised Officers greater discretion to issue formal warnings and encourage a more risk-based approach to enforcement. A national system for police and the NHVR to record formal warnings is desirable for national visibility but not essential, given that the NHVR can use its current system, and police can use existing arrangements for cautions.

The Decision RIS also proposes a change to allow for a formal education 'order' to be issued in lieu of a fine for Work Diary administrative breaches (Option 3f). This proposal addresses industry requests that punitive action should focus on deceptive conduct not driver oversights. A supporting system would need to be cost effective to deliver and administer and could be based on an existing system (e.g. NHVR system) or a commercial off-the-shelf learning management system, and will not require change to (or integration with) driver licensing systems.

**Heavy vehicle mass and dimension limits for general vehicle access**

The overall aim of this set of reforms is to relax the definition of a 'general access vehicle' (that can use roads without needing to seek a permit or exemption notice), such that slightly heavier, higher or longer vehicles qualify, to improve productivity and safety outcomes.

*Mass*

This Decision RIS qualitative and quantitative impact analysis demonstrated that the proposal to increase General Mass Limits (GML) creates significant potential for productivity benefits. This amounts to productivity benefits of $107.8 million per annum, which is significantly greater than the estimated cost of pavement wear of $10.2 million per annum, 2024 price year. Accepted parameters have been used to estimate road damage costs, however, a more robust jurisdiction-specific network analysis that considers pavement types, gradients, and quality could provide further clarity on the exact impact of the additional weight on road assets. For this reason, headline NPV and BCR figures have not been calculated as part of the analysis.

It is also noted that there are a number of benefits, such as administrative cost savings associated with potentially not requiring enrolment in the current National Heavy Vehicle Accreditation Scheme (NHVAS), which is required for access to Concessional Mass Limits (CML) that have not been included in the analysis due to data/information or scope limitations. Further it is noted that while the analysis assumes a complete uptake of the allowable weight under the current CML arrangements by the impacted fleet, if the uptake is partial this will not only reduce the estimated productivity benefits but will also reduce road wear costs. In the absence of access to detailed network-wide road damage analysis that suggests otherwise, the analysis indicates that the benefits of increasing mass limits are likely to outweigh the costs.

The results of the impact analysis address the recent introduction of Euro VI technology through ADR 80/04 and the complementary *Heavy Vehicle (Mass, Dimension and Loading) National Amendment (Emission Control) Regulation 2024*. This ensures that the proposal considers the effect of the new regulation and does not reduce the relative productivity of Euro VI trucks over trucks with older emission control systems.

The proposal is to increase mass limits for general access vehicles by up to five per cent, such that the current Concessional Mass Limits (CML) become the new norm (GML) (Option 4b). It is understood that increased general mass limits will increase road funding and maintenance requirements and that there will be flow on implications for the road user charge.

*Height*

This Decision RIS qualitative impact analysis suggested that there are likely to be productivity and red-tape benefits from increasing the general access vehicle height limit to 4.6 m. Industry and government stakeholders support this proposal in-principle but raised concerns regarding the potential increased safety risk of vehicle rollover due to impacts of height on vehicle stability. The NHVR is undertaking technical work to better understand potential safety risks and controls to mitigate these.

Participating state and territory governments and local government also cited concerns about increased risks of overhead structure and vegetation strikes and subsequent costs to address damage. Limited data is available to assess this potential issue. A case study provided a high-level assessment, which highlighted that in select participating states a relatively small proportion of bridges and roads with overhead structures on state-owned networks would experience height constraints.

The proposal is to increase the vehicle height limit from 4.3 m to 4.6 m, subject to technical analysis of safety risks by the NHVR and identification of suitable risk controls that may be applied as safety conditions (Option 5a). Once controls and related conditions are developed, the impacts of these may be tested via a Decision RIS addendum.

*Length*

This Decision RIS qualitative impact analysis considered the different stakeholder views from the Consultation RIS (2023) on potential options to apply an extra meter of length to a prescribed 19m vehicle. Some stakeholders proposed an increase in the length of a sleeper cab berth and others focused on increased trailer length (payload). Both scenarios appear to offer benefits such as improved driver amenity and better rest (longer sleeper cab) or increases in volumetric load capacity and hence productivity (longer trailer). Industry strongly supported the length increase and flexibility to determine how it is applied.

Concerns were raised by participating state and territory and local governments regarding the potential impact of longer vehicles on swept path movements and short stacking at intersections, and therefore safety risks and costs of infrastructure damage. The NHVR is undertaking technical work to identify suitable controls to manage swept path within acceptable limits.

The proposal is to an increase the vehicle length limit from 19 m to 20 m, subject to technical analysis of safety risks by the NHVR and identification of suitable risk controls that may be applied as safety conditions (Option 6a). Once controls and related conditions are developed, the impacts of these may be tested via an addendum to this Decision RIS.

**National Audit Standard (NAS)**

The proposal is that the NAS requirements should be defined in primary law, to enable a new NAS to be developed and be approved by ministers. This allows the NHVR to maintain flexibility to adapt and update NAS without legislative change. This proposal also enables a tailored approach to meet the needs of the heavy vehicle industry and potentially enable faster implementation.

The NTC would like to acknowledge the assistance of industry and government stakeholders who have collaborated in developing these policies.

## Recommendations

Analysis of proposed options, balanced with feedback from stakeholders provided on the Consultation RIS (2023) has led the NTC to make several recommendations for consideration by ministers. These are set out in the callout box below.

**Recommendation 1:** That the requirements for the Work Diary (WD) be changed to:

a) Make recording the day of the week on the daily sheet not subject to an offence under the HVNL

b) Make recording the total work and rest hours on the daily sheet not subject to an offence under the HVNL

c) Introduce a default for the 'hours option' in the WD that is the standard hours for a solo driver of a fatigue regulated heavy vehicle.

**Recommendation 2:** Consolidate the following offences under 'Recording information under the national regulations – general' (s296):

a) How information is to be recorded (s301) - noting that some requirements will be removed from the law altogether and covered in the WD instructions only

b) Failing to record specific information regarding odometer reading (s298)

c) Time zone of a driver's base must be used (s303).

**Recommendation 3:** Remove s308(1)(b)(ii) and s308(1)(c) so that a found or returned WWD, after a replacement has been issued, is no longer required to be returned to the Regulator, noting that a driver will still be required to notify the Regulator using the approved form and to cancel any unused daily sheets in the WWD.

**Recommendation 4:** Remove requirements relating to returning an existing WWD with an application for a new one (s339(3)) and replace these with a new requirement for a driver to cancel any unused daily sheets in the existing WWD.

**Recommendation 5:** Remove s308(2) and s339(4), which contains the requirements relating to what the Regulator will do with returned WWD.

**Recommendation 6:** That the definition of a fatigue regulated heavy vehicle (as defined in the HVNL) remains unchanged.

**Recommendation 7:** Remove s590(1)(b) of the HVNL, to broaden the application of formal warnings by Authorised Officers as a compliance tool for fatigue record-keeping breaches and other breaches under the HVNL.

**Recommendation 8:** That the HVNL include provisions to enable formal education as an additional enforcement option for Work Diary administrative offences, subject to confirming a pathway that minimises implementation and ongoing administration costs to participating jurisdictions, police agencies and industry.

**Recommendation 9:** Increase the current General Mass Limits (GML) to match the current CML (inclusive of the ADR 80/04 (Euro VI) mass limit increase approved by ministers), repeal the current CML, and make no changes to HML.

**Recommendation 10:** Increase the general access heavy vehicle height limit from 4.3 m to 4.6 m, subject to technical analysis by the NHVR to confirm appropriate controls to reduce rollover risks.

**Recommendation 11:** Increase the general access heavy vehicle length limit from 19 m to 20 m, subject to technical analysis by the NHVR to confirm suitable swept path controls.

**Recommendation 12:** That the required provisions for the National Audit Standard (NAS) be introduced into the primary law only.

## Next Steps

If approved, the changes to the HVNL can be prepared.

Upon completion of the NHVR technical analysis for proposed increases to general access vehicle height and length, further impact analysis on any proposed conditions will be required.

# 1 Context

**Key points**

- This Decision RIS has been prepared to assist the NTC and, ultimately, to inform Infrastructure and Transport Ministers in considering options for future improvements to the HVNL, in line with the package of NTC reforms that were agreed to be progressed by ministers in August 2022.
- This document progresses the next phase of a series of reforms in recent years to improve the HVNL.
- The Decision RIS focuses on Infrastructure and Transport Ministers Meeting (ITMM) reform package policy areas not considered in the previous Decision RIS (2023) and carries forward preferred options as determined by stakeholders through the Consultation RIS released in October 2023.

This Decision Regulation Impact Statement (Decision RIS) has been prepared by the NTC to inform the Infrastructure and Transport Ministers Meeting (ITMM) about options for future improvements to the Heavy Vehicle National Law (HVNL). This document expands on the broad policy HVNL reforms ministers agreed to progress in August 2022.

This Decision RIS is based on the outcomes of a Consultation Regulation Impact Statement (Consultation RIS 2023) that was issued for public review in October 2023. The Consultation RIS considered various options for improving fatigue management and proposed increases to general mass and dimension limits for heavy vehicles. It also recommended modifications to the National Audit Standard (NAS), building upon the approved changes intended to enhance heavy vehicle accreditation, as outlined in the Decision RIS (2023) and endorsed by transport ministers in 2023.

## 1.1 Background

### 1.1.1 Overview of the HVNL Review to date

The HVNL is administered by the National Heavy Vehicle Regulator (NHVR) and applies to vehicles in Australia that exceed 4.5 tonnes in gross vehicle mass. It is established through a cooperative applied law scheme involving standard provisions promulgated through the Queensland Parliament. The HVNL is then applied in each participating jurisdiction as if it were a law made in that jurisdiction. The HVNL has been adopted across participating states and territories including Queensland, New South Wales, the Australian Capital Territory, Victoria, Tasmania, and South Australia. However, Western Australia and the Northern Territory are not regulated under the HVNL.

While the HVNL has improved road safety and laid the foundation for a streamlined national system for heavy vehicles, it has faced criticism for being overly prescriptive, inflexible, and complex.

These concerns about the HVNL prompted ITMM to direct the NTC in 2018 to review the HVNL and its supporting regulations, which comprise what is known as ‘The Review’. Since

this time, several notable events and workflows have been delivered to progress The Review, including[1]:

- Between March 2019 and October 2019, the NTC produced a series of seven issues papers for public consultation exploring key issues identified within HVNL across several policy areas
- A HVNL Consultation RIS was published in June 2020. Referred to in this document as 'Consultation RIS (2020)', it analysed an extensive suite of reform options informed by responses to the issues papers
- In 2021, ministers agreed that the HVNL review should transition to a programmatic approach, known as the Safety and Productivity Program, incorporating six agreed-upon reform streams
- In February 2022, ITMM appointed Mr Ken Kanofski to lead further stakeholder consultation on the HVNL Safety and Productivity Program and report to ministers via ITMM on further work required to deliver a new law
- In August 2022, ministers agreed to progress the recommended legislative and non-legislative changes to improve safety and productivity in the heavy vehicle sector, known as 'the ITMM reform package'
- In response to the ITMM reform package, the NTC prepared a Decision RIS, referred to in this document as 'Decision RIS 2023', which outlined the necessary changes to the regulatory framework (principally the primary law). Proposed amendments to the HVNL recommended in the Decision RIS (2023) were endorsed by ministers at the June 2023 ITMM.

### 1.1.2 Consultation Regulation Impact Statement (Consultation RIS 2023)

In October 2023, the NTC published its Reforms to Heavy Vehicle National Law Consultation RIS (referred to in this document as 'Consultation RIS (2023)') to test specific changes contained in the ITMM reform package beyond what was considered in the previous Decision RIS (2023). The Consultation RIS (2023) built upon the package of NTC reforms that ministers agreed to progress in August 2022 and was informed through engagements with over 50 organisations spanning more than 180 meetings.

The Consultation RIS (2023) tested three specific policy changes to the HVNL: Fatigue management; mass and dimension limits for general access; and additional changes to the National Heavy Vehicle Accreditation Scheme (NHVAS) audit framework. The relevance of each of these reform areas is described below:

- **Fatigue management** – Fatigue management has consistently been identified as a key concern for the heavy vehicle industry, government agencies, police and the National Heavy Vehicle Regulator (NHVR). A range of fatigue proposals (pre-2022) have been considered through the HVNL review process. However, the proposals did not receive sufficient support from stakeholders. Fatigue management remained a central consideration during stakeholder engagement sessions chaired by Mr Kanofski and forms part of the September 2022 ITMM reform package.
- **Access –** The Consultation RIS (2020) highlighted industry concerns about inefficiencies in current arrangements for managing heavy vehicle access. Mr Kanofski's report to

[1] Note, further detail about each of the events and publications outlined in the following dot points can be found in the Chapter 2 of the Consultation RIS (2023), available on the NTC website.

ITMM concluded that many of industry's concerns about heavy vehicle access regulation are largely a matter of operational system deficiencies rather than problems inherent in the law. The Consultation RIS (2023) further considered access-related regulatory reforms to increase prescribed vehicle mass and dimension limits for general access to the road network. It also reviewed the merit of new limits for inclusion under the future HVNL.

- **Enhanced operator assurance –** The Decision RIS (2023) introduced a new approach to alternative compliance endorsed by ministers. Under this new approach, operators accredited under the National Heavy Vehicle Accreditation Scheme (NHVAS) can access alternative compliance options issued by the regulator, provided they demonstrate a Safety Management System (SMS) and any additional requirements that may be exercised through accreditation modules. To strengthen this new approach, changes have been made to the NHVAS to create a more comprehensive and robust scheme, with safety at the forefront. A significant part of this reform is the introduction of a National Audit Standard (NAS). The NAS focuses on SMS-based audits that continuously improve audit outcomes for the NHVAS. Additionally, to encourage their operators to meet HVNL primary duty obligations, other SMS-based heavy vehicle accreditation schemes may adopt the NAS. The Consultation RIS (2023) investigated the implementation options for the NAS at a legislative and principles-based level.

The Consultation RIS (2023) assessed options under these three reform areas through a qualitative and, where possible, quantitative impact assessment. Stakeholders were invited to explore and provide comments on the Consultation RIS via formal submissions and completion of an online survey. This process is described in more detail in Section 1.2.1.

## 1.2 About this Decision Regulation Impact Statement

This Decision Regulation Impact Statement (RIS) represents the next phase of work towards an updated HVNL. It builds upon the proposals presented in the Consultation RIS (2023) and more recent stakeholder feedback to present recommendations under each reform area considered in the Consultation RIS.

The consultation process that has informed the development of this Decision RIS involves matters both within and outside of its scope. The structure of this document is described below.

### 1.2.1 Consultation process that has informed this Decision RIS

After the public release of the Consultation RIS (2023), the NTC consulted widely to gather and understand feedback on proposals. This involved bilateral and joint consultations with Australian governments, industry stakeholders, the NHVR, union and police representatives from 8 October to 23 November 2023. Public information webinars and presentations were also conducted for members of key industry associations during the consultation period.

The NTC also conducted workshops in Melbourne with industry and government members of the NTC's Reform Advisory Committee on 3 November 2023 and met with police representatives on 2 November 2023. The workshops were well attended.

During the consultation period, all stakeholders were strongly encouraged to provide evidence and information through formal submissions to improve the analysis of the proposed reforms.

Fifty-two submissions were received from diverse stakeholders, including state and territory jurisdictions, safety regulators, local government, police, unions, agricultural organisations, heavy vehicle, third-party providers and bus sector representatives. A list of stakeholders that provided submissions is outlined in Appendix A as part of the stakeholder engagement record.

The NTC conducted a survey with 84 responses to gather additional information to complement formal submissions. Exploring the underlying assumptions and choices outlined in the Consultation RIS, the survey focused on the 'time commitment' for written and electronic work diaries. While the survey was primarily targeted at heavy vehicle operators, it also included questions relevant to drivers. The findings from the survey have played a supplementary role in informing the development of the Decision RIS. A summary of results can be found in Appendix C, with key findings highlighted in call-out boxes throughout this document.

The NTC has considered the views gathered from previous submissions, survey results, and extensive workshop consultations to inform the development of this Decision RIS. Feedback from stakeholders is summarised throughout this document.

### 1.2.2 Matters in scope

This Decision RIS assesses regulatory reform options included in the Consultation RIS (2023), including options to:

- address limitations within the HVNL that currently contribute to ineffective fatigue management
- improve access arrangements for heavy vehicles by reducing administrative burden and productivity impacts
- improve confidence across industry in the robustness of the NHVAS and provide consistency between accreditation schemes.

### 1.2.3 Matters out of scope

The ITMM Reform Package included a wide range of reform propositions that addressed the overall structure of the HVNL, access, fatigue management, duties and driver health, enforcement, penalties and offences, accreditation, technology and data, the primary duty, registration, and delegation of authority in the HVNL. Many identified reforms were categorised as "non-legislative" and, therefore, were not subject to a formal regulatory impact analysis process.

The previous impact analysis process (Decision RIS 2023) involved considering reforms to the structure of the HVNL, duties and driver health, accreditation, technology, data, and delegation of authority, and these reforms were agreed upon. Currently, work is underway to develop the necessary details for drafting instructions for the Office of Parliamentary Counsel to draft amendments to the HVNL for approval by transport ministers.

Consistent with the Consultation RIS (2023), this work falls outside of the scope of this Decision RIS and includes:

- work to be carried out in close consultation with the NHVR to ensure a smooth transition from the current NHVAS to the future SMS-based scheme, including work on ensuring the transition of the existing NHVAS accreditation streams, under the requirements made by responsible ministers concerning heavy vehicle operations that may be subject to

alternative compliance accreditation, as well as developing new alternative compliance options

- work to finalise the details of the technology and data framework
- a comprehensive review of penalties under the HVNL; and
- the recent announcement by the Australian Government to increase the overall width limit of new trucks that are fitted with a number of safety features from 2.5 m to 2.55 m.

### 1.2.4 Document Structure

This Decision RIS outlines the need for change and recommends preferred fatigue management, access, and accreditation options. It summarises the feedback and issues raised by stakeholders in response to the Consultation RIS (2023) and presents a set of preferred options for ministers to consider. This document also includes an analysis of the potential impact of each option, either quantitatively or qualitatively, building on previous analysis conducted in the Consultation RIS (2023).

This document has been prepared to address critical questions identified by the National Regulatory Impact Analysis Guide for Ministers' Meetings and National Standard Setting Bodies.[2] Responses to the questions have been used to develop this Decision RIS, with a preferred option recommended to ministers under each reform area.

The document is structured as follows:

- A definition of the problem(s) this Decision RIS is intended to address and the case for government intervention (Chapter 2)
- An overview of Decision RIS objectives and potential barriers to reform (Chapter 3)
- Fatigue management options, analysis, stakeholder feedback and recommendations (Chapter 4)
- Access options, analysis, stakeholder feedback, and recommendations (Chapter 5)
- Accreditation options, analysis, stakeholder feedback and recommendations (Chapter 6)
- Evaluation approach (Chapter 7)
- Summary of recommendations and next steps (Chapter 8).

[2] Commonwealth of Australia, Department of the Prime Minister and Cabinet (2023), Regulatory Impact Analysis Guide for Ministers' Meetings and National Standard Setting Bodies.

# 2 Problem statement and need for government intervention

**Key points**

- The review of the HVNL identified several major issues with its structure and design, creating obstacles to effective and adaptable regulation.
- This Decision RIS aims to address several key issues within the HVNL, including:
  - **Problem statement 1:** Several limitations to the HVNL contribute to ineffective fatigue management.
  - **Problem statement 2:** Limits to general access to the road network under the HVNL impact on the regulatory burden of the freight industry and productivity.
  - **Problem statement 3:** Confidence in the robustness of the current NHVAS could be improved; there is a lack of consistency or recognition between different accreditation schemes and a regulatory environment where operators are faced with multiple and duplicative assurance audits.
- Governments are responsible for facilitating reform to address these issues to help protect road users in the community from the safety risks associated with sharing the road with heavy vehicles.

## 2.1 Purpose of this chapter

The purpose of this chapter is to outline:

- The problem this Decision RIS seeks to address
- The need for government intervention to address it.

## 2.2 The problem

The policy proposals in the Consultation RIS sought to address several key issues, including:

- **Problem statement 1:** Several limitations to the HVNL contribute to ineffective fatigue management.
- **Problem statement 2:** Limits to general access to the road network under the HVNL impact on freight industry regulatory burden and productivity.
- **Problem statement 3:** Confidence in the robustness of the current NHVAS could be improved; there is a lack of consistency or recognition between different accreditation schemes and a regulatory environment where operators are faced with multiple and duplicative assurance audits.

Below is feedback from stakeholders on these problem statements, followed by the NTC's response to this feedback and revised problem statements.

### 2.2.1 Stakeholder feedback on the problem

The NTC requested feedback from stakeholders on how well the Consultation RIS (2023) accurately portrayed the problem to be addressed within the identified issues and other relevant factors in the problem statement. Although not all stakeholders responded, a summary of their comments is below.

Several stakeholders, mainly industry representatives such as operators and drivers, believe the problem is accurately described and does not require amendment. They agree that the new HVNL needs greater flexibility and that reducing the administrative burden on the industry while maintaining road safety is an important focus of reform. Some industry submissions have called for these issues to be addressed urgently.

Various stakeholders have expressed concerns about the issues discussed during The Review and suggested expanding the problem statement. One jurisdiction indicated that the problem statement was too narrow to undertake a full assessment and only considered specific issues driven by those put forward by Mr Kanofski. Some industry stakeholders shared this view, and two trucking associations, the Victorian Trucking Association (VTA) and Queensland Trucking Association (QTA), submitted a joint statement suggesting that the Consultation RIS reflected a "narrowing of issues compared to the original scope of The Review presented five years ago". While NatRoad expressed disappointment in the review's "lack of ambition", it acknowledged that the proposals present an opportunity to reduce administrative burden, improve enforcement, and enhance access conditions, which represents forward progress. Some stakeholders in the heavy vehicle industry, including operators, drivers, and representatives, expressed concern over the lack of consideration of issues specific to the heavy vehicle workforces in the problem statements. These issues included driver retention, an ageing workforce, a lack of skilled workers and driver shortages. Some stakeholders discussed specific issues experienced by drivers, including seat vibrations, thermal loading, and sunlight glare. The Transport Workers' Union (TWU) also noted the lack of consideration of driver welfare. Due to increasing economic pressures, the HVNL had created a culture whereby industry now works to the maximum number of allowable hours because it is legal to do so, not necessarily because it is safe. Finally, some industry stakeholders highlighted that the HVNL is not in place in the Northern Territory and Western Australia, seeing this as an issue that was not raised in the Consultation RIS.

Rail industry representatives, including the Australian Rail Track Corporation (ARTC) and the Office of the National Rail Safety Regulator (ONRSR), raised some issues not addressed in the problem statement. These include considering issues related to the under-pricing of heavy vehicle access and the resulting market failure. Additionally, these stakeholders comment that there are safety challenges associated with the interaction between heavy vehicles and trains at level crossings, which are likely to worsen with expanded vehicle access.

Some stakeholders disagreed with the problem statement as presented, suggesting that the burden on industry has been overrepresented. Representatives from one police group submitted that the argument that 'current prescriptive fatigue requirements are onerous for drivers and operators' overstates the complexity of recording basic information and fails to recognise the accuracy and reliability of driver records, which are critical in effective fatigue management.

Other police and jurisdictional representatives expressed that the Consultation RIS (2023) focused too heavily on minimising record-keeping and work and rest breaches to address industry concerns. They emphasised the importance of enforcing record-keeping and work

and rest breaches as essential for monitoring compliance and enforcement of fatigue requirements in the absence of other suitable measures or roadside tests to determine drivers' fatigue levels. This perspective was echoed in a submission from Gas Energy Australia (GEA), which highlighted that the fatigue policy lever in the HVNL places too much emphasis on work diaries and may not effectively achieve the intended purpose of ensuring safety and alertness in those drivers unaffected by fatigue.

Local council representatives had concerns about certain parts of the problem statement, particularly regarding access. The Municipal Association of Victoria (MAV) pointed out that vehicle safety is not the primary consideration when providing access across the road network. Instead, it suggested that councils are responsible for maintaining local road infrastructure. The association also noted that funding from the federal and state governments to support asset maintenance and defray infrastructure costs has decreased in recent years despite the deteriorating condition of local road infrastructure.

Representatives from the bus industry argued that the scope of the problem statement predominantly focused on the heavy vehicle industry and did not fully recognise the unique aspects of the bus and coach industry and the task of moving people associated with it. The Bus Industry Confederation (BIC) pointed out that the long-distance tourist and charter sector of the bus and coach industry also undertakes long distance interstate journeys and that buses and coaches greater than 4.5 tonnes are subject to fatigue regulations. This indicates that this group felt it was not adequately reflected in the Consultation RIS (2023) discussion of fatigue-related problems.

Industry stakeholders raised several other issues in submissions. Section 7.2 describes and responds to these further.

### 2.2.2 NTC response

Feedback from stakeholders in response to the problem statements presented in the Consultation RIS (2023) has informed the revised problem statements in the subsections below.

In response to concerns raised by stakeholders about the scope of issues covered in the Consultation RIS (2023), the ITMM reform package policy areas agreed to be progressed by ministers in August 2022, which were not addressed in the previous Decision RIS (2023), remain the NTC's key focus. These areas include fatigue management, certain elements of prescribed vehicle mass and dimension limits, and potential changes to the National Audit Standard (NAS) to support enhanced accreditation. Therefore, issues raised by stakeholders outside these reform areas will not be explored in this Decision RIS. The NTC's response to individual issues raised by stakeholders outside of the scope of this process is provided in Section 7.2.

The concerns raised by police representatives about the Consultation RIS (2023) overstating the administrative burden placed on operators by fatigue requirements are also shared by some operators throughout the Review and have emerged again in feedback on the Consultation RIS (2023). Without available technology to test a driver's actual fatigue level, managing fatigue by setting work and rest requirements is currently the best enforcement tool to ensure safety. This Decision RIS aims to explore various options to ensure such requirements deliver strong safety outcomes at a minimised cost to operators and enforcement bodies.

This reform process does not aim to address reduced federal and state funding for local councils as a barrier to improved access for heavy vehicles. However, the NTC acknowledges the associated cost of expanding heavy vehicle access for road managers, and this is considered in the assessment of access options provided in Section 5. Cost is also acknowledged as a potential barrier to reform, as described in Section 3.3.2 of this Decision RIS.

For other feedback provided by stakeholders, key amendments to the problem statements include:

- Where possible, problem statements have been streamlined to focus on key elements relevant to the reforms explored in this Decision RIS.
- Problem statement 1 has been modified to reflect that heavy vehicles over 12 tonnes, including vehicles moving freight and long-distance tourist and charter sectors of the bus industry, are subject to prescriptive fatigue requirements under the HVNL.
- Problem statement 1 has been modified to note that due to the inability to conduct a test to monitor a driver's actual fatigue level, heavy vehicle driver fatigue is currently best managed through the prescription of work and rest hours.

### 2.2.3 Problem statement 1: There are several limitations to the HVNL that contribute to ineffective fatigue management.

Driver fatigue is a major risk to road safety. Operating a heavy vehicle while fatigued increases the chances of a crash, and ongoing fatigue can leave long-term impacts on the driver's physical and mental well-being. In 2009, fatigue management requirements were introduced in the Australian road freight industry and were incorporated into the HVNL. The main goal of these HVNL fatigue requirements is to provide for the safe management of the fatigue of drivers of fatigue-regulated heavy vehicles. Additionally, operators and other chain of responsibility (CoR) parties must ensure that drivers are not fatigued as part of their primary duty (s26C). This means that CoR parties are obligated to take all reasonably practicable measures to ensure the safety of transport activities, including managing driver fatigue.

As it is challenging to measure or conduct a roadside test to monitor a driver's fatigue level, currently, the best available tool for monitoring fatigue is the prescription of work and rest hours set under the HVNL. However, drivers note challenges with this, as further described below.

If drivers work for longer than the maximum work time allowed by law or rest for less than the minimum required time, they may be penalised. Some drivers must also complete a National Driver Work Diary as evidence of their work and rest hours. Failure to carry and use a work diary can result in fines and penalties. Alternatively, operators can opt for more flexible work and rest options through the NHVAS Fatigue Management Module (options include Basic Fatigue Management (BFM) and Advanced Fatigue Management (AFM)). To utilise these options, operators must demonstrate effective management of their driver's fatigue risks.

However, despite fatigue management requirements, driver fatigue remains Australia's leading cause of fatal single-vehicle crashes. The 2020 NTARC report found that fatigue is still the biggest cause of driver deaths, accounting for 34.8 per cent of fatalities that year.[3]

[3] NTI (2020), *Major Incident Investigation Report.*

This Decision RIS addresses several issues related to heavy vehicle fatigue under HVNL. It builds upon previous work and seeks to rectify the documented fatigue issues in previous NTC publications.[4] Key issues are summarised below:

- **Controls under the HVNL focus on long-haul journeys but not risks associated with short-haul journeys** – The HVNL focuses on enforcing fatigue regulations for long-haul journeys involving large vehicles, such as those carrying freight and operating in the bus industry's long-distance tourist and charter sectors. However, it does not impose prescriptive requirements on smaller vehicles weighing less than 12 tonnes. It assumes that drivers of lighter vehicles face lower fatigue risks due to their typically shorter-distance work. Recent research suggests, however, that fatigue risk is similar for long-distance and short-distance heavy vehicle drivers.[5] It should also be noted that driving a non-fatigue-regulated vehicle does not count towards work hours under the HVNL, which can pose a safety risk.
- **Prescriptive work and rest requirements reduce drivers' ability to actively manage their fatigue** – In addition to the general duty to not drive while fatigued, drivers of fatigue regulated heavy vehicles must comply with certain maximum work and rest limits set by the standard hours schedule, unless they are working under BFM or AFM accreditation. Some drivers are critical of the inflexibility of fatigue management requirements, noting they do not support the entire range of tasks and variability of day-to-day work in the industry. Drivers have reported that they construct their work schedules around the prescribed hours, which makes them feel forced to sleep and drive at specific times that don't align with their circadian rhythms. This can cause them to drive while tired and rest while awake and alert. It can be particularly challenging for drivers to meet fatigue requirements when unforeseen circumstances may result in running out of driving hours before reaching their home base, potentially forcing drivers to take a long rest break in unsuitable (or less suitable) conditions that do not support quality rest.
- **Current record-keeping requirements are complex and onerous for heavy vehicle drivers –** The HVNL sets out extensive and complex requirements for maintaining a work diary. A whole division of the HVNL is dedicated to these requirements, which detail how to obtain, fill in, and carry out a work diary. There are also additional work diary requirements in the regulations, and the work diary itself provides specific instructions for filling it in. In some cases, due to extensive requirements, some drivers may make mistakes when filling in their diaries. While these mistakes may not necessarily affect work and rest times or undermine the diary's function as an evidentiary document, they are still punishable under the HVNL. For example, poor writing, crossing the page in a different direction or not connecting lines as prescribed can be penalised and could result in a fine of $189 – at minimum.
- **Fatigue enforcement and compliance focuses on whether drivers conform to prescriptive rules** – Some feedback suggests that enforcement efforts sometimes prioritise addressing past violations rather than addressing immediate fatigue risks. Some operators and drivers feel that focusing on minor administrative or historical breaches is frustrating and does not lead to improved safety. Certain stakeholders believe the current approach fails to identify and address systemic risky behaviours, such as requirements from specific operators that may encourage their drivers to operate while fatigued. Some stakeholders have proposed that roadside enforcement should

[4] Namely, Consultation RIS (2020), D-RIS (2023) and in issues paper developed by the NTC in 2019.

[5] Williamson, Ann, and Rena Friswell (2013), "The Effect of External Non-Driving Factors, Payment Type and Waiting and Queuing on Fatigue in Long Distance Trucking." *Accident Analysis and Prevention* Vol. 58, p.26–34.

focus less on procedures and administration and instead on risk-based safety measures that actively target deliberate and systemic behaviours.

### 2.2.4 Problem statement 2: Limits to general access to the road network under the HVNL creates an administrative burden and impacts freight industry productivity.

Truck routes and operating conditions are regulated through a complex, multi-tiered access regime in the HVNL, influenced by jurisdictional freight initiatives.

The current heavy vehicle access regime allows general access to the road network for vehicles within specified mass and dimension limits. This means they can travel on the entire road network (all roads) where it is safe unless otherwise signposted. General access vehicles do not exceed 2.5 m wide (increasing to 2.55 m), 19 m long (articulated combination), and 4.3 m high, and general mass limits (GML) are applied by vehicle type.[6] Limited controls and oversight are needed for these vehicles. The HVNL provides general access for vehicles within prescribed mass and dimension requirements, and operators of these general access vehicles do not require a permit or a notice to operate on the road network.

Vehicles that do not fall within general access limits have restricted access to the road network. These vehicles are considered higher risk and require particular risk controls and management. As set out in the call-out box below, there are multiple pathways for achieving higher mass or dimension limits for road operators.

**Pathways to access higher mass or dimension limits for road operators include:**

- Mass limit schemes: Concessional Mass Limits (CML) and Higher Mass Limits (HML) are provided through exceptions to the General Mass Limits (GML) and on condition that operators hold mass management accreditation via the NHVAS (amongst other conditions for HML). CML and HML allow NHVAS members to operate at mass limits above the national general mass limits subject to several conditions. Vehicles operating under CML have access to the same network as applies to that vehicle when operating at GML. To access the scheme, a transport operator must apply through the NHVR, pay a fee, and maintain their accreditation, auditing, and renewals.

- Commodity-specific schemes: Concessional schemes also exist for specific commodities to enable vehicles to exceed prescribed mass limits under specific circumstances, for example, the movement of grain (Grain Harvest Management Scheme in NSW, VIC, QLD and SA) or livestock (Livestock Loading Schemes). These schemes are an industry necessity from a practical point-of-view and risks are managed due to the seasonal operation of the freight task. Eligible vehicles must operate under the scheme's conditions and only travel on approved routes for that vehicle type as per any road manager conditions. Some of these commodity-specific schemes may permit mass concessions higher than CML.

[6] Refer to the NHVR website for further details on all general access vehicle mass and dimension limits, at https://www.nhvr.gov.au/road-access/access-management. Also note that some vehicles are allowed general access at different dimensions (e.g. PBS Level 1 vehicles can operate at 20 m long).

- Access authorisation by notice: Operators may access specific parts of the road network under a notice. A notice is published in a Commonwealth Government gazette that notifies operators that certain types of vehicles have been granted access to specific roads under certain conditions. Notices can be national or involve one or more jurisdictions and require the NHVR to work with road managers to agree on the terms of the notice. Operators prefer notices as they remove the need for individual vehicle permits and provide more access certainty. Operators may be required to obtain permits to travel on roads that connect to routes identified in notices (often referred to as the 'last mile').

- Access authorised by permit: Heavy vehicle permits grant a vehicle access to a particular route or network, allowing operators to operate above the prescribed general access limits. To receive a permit, an operator must apply to the NHVR. The NHVR will assess the vehicle and determine who the relevant road managers are (e.g., state and territory road authorities and local councils). The NHVR refers the application to the relevant road manager(s) to gain consent to use the route. Relevant road managers will consider the application and provide their decision to the NHVR. If all road managers provide consent, the NHVR will issue a permit. This process can take up to 28 days and sometimes longer. Operators have identified that the permit application process is administratively cumbersome, often uncertain and inconsistent and takes significant time to make decisions. The NHVR has set a goal of targeted elimination of permits and a future where permits are required by exception rather than as a rule.[7] ITMM has also set a 50 per cent permit reduction target in three years and 90 per cent in five years.

- Performance Based Standards (PBS) Scheme: Operators can also take advantage of the PBS scheme administered by the NHVR, which enables industry to use the latest systems and technologies to design innovative vehicles for specific freight tasks to operate on suitable networks for their level of performance. Most PBS vehicles have access to specific road networks. PBS Level 1 vehicles (up to 20 m in length) have recently been granted general access for GCMs less than the GML for the PBS vehicle combination. Under the HVNL, PBS vehicles can receive a range of exemptions, including vehicle length, height limitations, and overall vehicle mass restrictions.[8]

Given considerable improvements in vehicle safety and efficiency over the last several decades, industry has argued that there is a strong basis for additional modest increases to mass and dimension limits for general access vehicles to better reflect enhancements to road safety and support the growing freight task. Despite the various schemes and mechanisms that allow operators to take advantage of higher mass and dimension limits under specific circumstances, feedback from industry suggests that requirements to access these schemes create a significant administrative burden, take time, and, in some instances, create uncertainty and inconsistency of access decisions across different road networks.

[7] Refer to the NHVR (2020), *Heavy Vehicle Productivity Plan 2021 – 2025* and NTC (2019), *Easy access to suitable routes Issues Paper* and the NHVR website for further details on the permit process.

[8] Typically, PBS vehicles have individual axle group mass that are the same as prescriptive vehicles, however PBS combinations are allowed increased Gross Combination Mass (GCM) compared to the prescriptive fleet. The additional GCM often comes from the increased vehicle dimensions and additional axle groups.

Options presented in this Decision RIS aim to address several key issues relating to general access and industry regulatory burden and productivity, including:

- **Despite the fast-growing national freight task and improvements in vehicle safety over time, this has not been reflected in expanded general access** – Most general access limits have not changed since the 1990s. However, considerable advancements in the heavy vehicle fleet have made them considerably safer. For example, the introduction of crash avoidance technologies (e.g., braking and vehicle stability systems), protective technologies (e.g., cabin strength standards and seatbelt and fatigue monitoring devices) and general safety features (e.g., improved cabin design, and better suspensions, such as 'road friendly suspension') have made a proven contribution towards reducing the number and severity of heavy vehicle crashes.[9] In parallel, the national road freight task has grown significantly and is likely to grow by another 77 per cent by 2050.[10] As such, the HVNL review has identified that general access conditions may be amended to better optimise productivity, safety and sustainable infrastructure factors, given advances in vehicle designs that ensure safety and minimise pavement wear.
- **The current access regime is complex and challenging for operators to understand compliance requirements, available concessions, available networks, and access requirements** – The many pathways available to operate above general mass and dimension limits create considerable complexity for operators navigating the current access regime. Whilst the diversity of heavy vehicle operations is recognised, there is considerable red tape in seeking access, and operators must sometimes follow lengthy and onerous processes and meet specific requirements, which can have a high administrative cost. For example, the general access length limit for semi-trailers and prime movers is 19 m under the law. However, some vehicles have general access with 20 m limits, for example, PBS Level 1 vehicles and truck and dog vehicles that come under a new notice. Similarly, for vehicle height, certain commodities, such as livestock carriers, can operate with general access at 4.6 m under certain conditions. There are also notices for 4.6 m height road networks for vehicles such as curtain-siders (or taut liners), which have operating requirements to address the higher centre of gravity and consequent roll-over risk. Notices such as these vary by state.
- **There is a potential missed opportunity to improve operator productivity in prescriptive vehicle combinations** – The current access arrangements under the HVNL aim to balance the safety risk, amenity, and road wear costs of heavy vehicles with the need for productive and efficient freight movements. Ideally, the controls on heavy vehicle access should enable access to roads close to 'optimal' levels – where the marginal social benefits balance the marginal social costs of access.[11] The pathways to access higher mass and dimension limits described above effectively manage risk for higher risk freight movements, allowing road managers to assess vehicle movements on a case-by-case basis, outweighing the cost of compliance to operators. However, there is a case for exploring red tape reduction surrounding low-risk, prescriptive combinations that are regularly granted access under these schemes and, as such, already operate widely on the national freight network. Finally, modest improvements to general access

[9] NSW Government (2020), *Safety features and technologies in heavy vehicles,* and NHVR (2020), *Vehicle Safety and Technology Uptake Plan.*

[10] BITRE (2022), *Australian aggregate freight forecasts – 2022 update (summary),* p.3.

[11] See the Kanofski report to ministers for discussion regarding the philosophical approach to access decision making of roads fulfilling a significant economic purpose of moving people and freight, an approach adopted by the Tasmanian Government, online at https://www.infrastructure.gov.au/sites/default/files/documents/ken-kanofski-advisory-report-tominister-on-hvnl-public-release-version-accessible.docx.

limits could provide efficiency and productivity benefits and reduce the need for individual notices and schemes.

### 2.2.5 Problem statement 3: Confidence in the robustness of the current National Heavy Vehicle Accreditation Scheme could be improved; there is a lack of consistency or recognition between accreditation schemes and a regulatory environment where operators are faced with multiple and duplicative assurance audits.

The NHVAS provides an alternative pathway for complying with certain HVNL requirements. It is a national formal process for recognising operators with robust safety management systems administered by the NHVR. Accreditation schemes such as NHVAS are intended to provide confidence and trust that a regulated party can comply, and is complying, with the law or other requirements.[12]

In 2018, Fellows Medlock and Associates reviewed heavy vehicle accreditation schemes as commissioned by the NHVR (The Medlock Report).[13] The report concluded that available evidence pointed to improvements in operational safety performance through membership in an accreditation scheme (or multiple schemes). This was evident in lower crash rates, insurance claim rates, and the incidence of non-conformities and major defects. However, the report found limitations with the current accreditation model and opportunities for improvement. Similar concerns were later echoed by stakeholders in a consultation held by Mr Kanofski.

Key concerns were related to the quality and consistency of audits across schemes, lack of mutual recognition between schemes and lack of recognition of accreditation standards by enforcement authorities.

The recommendations endorsed by ministers in the Decision RIS (2023) enabled a high-level regulatory framework for a new NHVAS, which included a compulsory SMS accreditation requirement and a new audit framework. Importantly, changes set for future law allow ministers to approve a NAS developed by the regulator. Additionally, the law will set new SMS standards to improve audits and audit outcomes for operators in SMS-based accreditation schemes.

This Decision RIS aims to build on previous work to improve the NHVAS and address the following key limitations of the current approach:

- **Audits can be improved to increase reliability and confidence** – The current NHVAS auditing regime checks compliance with NHVAS Business Rules and Standards for relevant modules (mass, maintenance, fatigue). However, NHVAS audits are not based on outcomes and proactive risk management, limiting their effectiveness in promoting continuous improvement of operators' systems over time. Furthermore, there are concerns that current audits may not provide sufficient assurance regarding safety competency and outcomes, leading to operators facing multiple third-party customer audits across the chain of responsibility. The current approach does not align with international standards prescribed under ISO 19011 Guidelines for Auditing (Safety) Management Systems. This assessment outlines new changes to the law that empower responsible ministers to approve the regulator's development of a NAS for the purposes

[12] NTC (2019), *Assurance Models Issues Paper.*

[13] Fellows Medlock and Associates (2019), *Analysis of Heavy Vehicle Accreditation Schemes in Australia.*

of accreditation. While the law will not specify IS019011, the NTC can confirm that the regulator has agreed to construct its NAS based on this international best practice standard. Adherence to IS019011 also ensures that NHVAS audits, auditors, and audit programs reflect measures to assess the operator's safety system's effectiveness in achieving the accreditation scheme's desired outcomes.

- **Auditor competency requirements may not be fit-for-purpose for the new NHVAS SMS requirements** – The new HVNL will impose stricter auditing requirements to align with the enhanced NHVAS. Under the new law, NHVAS audits will be carried out under the oversight of the NAS. The NAS will facilitate outcomes-based reviews of operators' SMS for new NHVAS entrants. Existing NHVAS operators will have three years from the commencement of the new law to develop their NHVAS-compliant SMS. For operators applying for or maintaining NHVAS accreditation, the level of independent, robust, and comprehensive audit processes will be determined based on the operational-specific risks associated with their unique operations. This demonstrates the scalability of the NHVAS and SMS-based auditing. Auditors must be capable of conducting SMS audits for operations of varying sizes, types, nature, and freight-task complexities. An impartial and competent third-party auditor instils confidence and trust in the assurance system, thereby giving value to the assurance scheme.[14] The effectiveness of an operator's SMS in achieving desired safety outcomes and ensuring system compliance will require auditors with additional expertise and activities beyond the current audit framework. Recent stakeholder feedback highlights that existing competency requirements will need significant scaling up to meet the demands of the enhanced NHVAS regime and the NAS.
- **There is a lack of consistency and capacity for mutual alignment of accreditation schemes across Australia** – In Australia, heavy vehicle operators can participate in regulatory accreditation schemes to obtain certain regulatory concessions. For example, operators using restricted access vehicles in Western Australia must join the Western Australian Heavy Vehicle Accreditation Scheme (WAHVAS). Similarly, operators looking for regulatory concessions in HVNL states can join the NHVAS, which is administered by the NHVR. This means operators involved in cross-border freight tasks may need to join multiple schemes to access different concessions. This can lead to additional audit requirements and increases the financial and administrative burden on operators, for instance, by paying multiple scheme membership and audit fees, as well as increased time commitments.[15]

## 2.3 Need for government intervention

The rationale for government action to implement the reforms in the Consultation RIS (2023) remained unchanged from the rationale presented in the previous Consultation RIS (2020) and Decision RIS (2023). This is based on the belief that governments have a responsibility to attempt to protect road users in the community.

We asked stakeholders whether we had provided sufficient evidence to support the case for government intervention in response to the Consultation RIS (2023) and what other factors should be considered. Below is feedback from stakeholders, followed by justification for government intervention.

[14] NTC (2019), Assurance Models Issues Paper.
[15] Ibid.

### 2.3.1 Stakeholder feedback

Most stakeholders who responded to the need for government intervention believed that a strong case had been made and an intervention was justified. Therefore, the changes in the justification for government intervention in this Decision RIS aim to simplify and strengthen this argument.

### 2.3.2 Justification

Heavy vehicles are involved in a disproportionate number of severe crashes due to their size, time on the road and distance driven. These crashes tend to be more severe than those involving light vehicles. In the year to June 2023, 14.5 per cent of all fatal crashes involved heavy vehicles.[16] However, it's important to note that this statistic doesn't necessarily mean the heavy vehicle driver is at fault. It is estimated that in approximately 70-80 per cent of fatal crashes involving heavy vehicles, the driver was not at fault.[17] These crashes often result in death or severe injury, particularly for vulnerable road users such as pedestrians, cyclists, and drivers of passenger cars, due to the size and mass of the heavy vehicle.

The costs associated with a heavy vehicle crash extend beyond direct costs to road users. Costs can be indirect and include broader socioeconomic impacts, ongoing medical costs, environmental costs and costs relating to road closures, which may further impact access for emergency services vehicles at critical times. As such, governments are fundamentally obligated to ensure their citizens' public safety and well-being. Measures to achieve this outcome must be justified regarding benefits exceeding costs.

Self-regulation of heavy vehicle activities is not considered an acceptable alternative to government regulation. This is because the structure of the heavy vehicle industry is typically commercial, market-oriented, and naturally competitive. If not regulated effectively, activities of markets and industries can lead to perverse outcomes. Often, a small cohort of unscrupulous operators may seek an unfair competitive advantage by ignoring regulations intended to support safety and compliance.

Heavy vehicles also create a range of impacts in their day-to-day operations. Key examples are impacts on road infrastructure, including pavement wear, traffic congestion, and the environment.

The HVNL serves as a national regulation for overseeing the use of heavy vehicles on roads. Its primary focus is to ensure the safety of heavy vehicles and their drivers, as well as to minimise risks to public safety by ensuring operators utilise suitable routes. The HVNL also aims to manage the impact of heavy vehicles on the environment, road infrastructure and public amenity. The Decision RIS seeks to identify opportunities for improving critical aspects of the HVNL to reduce the risks associated with heavy vehicles and to safeguard other road users in the community.

[16] Derived from BITRE (2023), *Road deaths in crashes involving heavy vehicles – quarterly bulletin, Apr-Jun 2023,* online at https://www.bitre.gov.au/sites/default/files/documents/heavy_bulletin_jun2023.pdf.
[17] Commonwealth of Australia (2021), *National Road Safety Strategy 2021-30 and NTI Data.*

# 3 Objectives and potential barriers to reform

**Key points**

- This Decision RIS presents a series of policy proposals, the outcomes of which aim to help improve the HVNL so that it better meets its object.
- Overcoming and responding to existing and emerging constraints and barriers will be critical to ensuring that proposed reforms successfully address the problems identified in the previous chapter.

## 3.1 Purpose of the chapter

The purpose of this chapter is to outline:

- Objectives of reforms proposed in this Decision RIS; and
- Potential constraints that could impact the success of proposed reforms.

## 3.2 Objectives

This Decision RIS presents a series of policy proposals, the outcomes of which aim to help improve the HVNL to meet its overarching objectives across key policy areas, as set out below.

The HVNL has a single object with four component parts, set out as follows[18]:

> *The object of this Law 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 practice.*

[18] Heavy Vehicle National Law (NSW), Chapter 1, Part 1.1, Section 3.

## 3.3 Potential barriers to successful reform

The Consultation RIS (2023) outlined a series of constraints that could impact the success of delivering policy proposals. Here, stakeholders were asked to identify any other impediments that could impact the successful implementation of the options presented.

Below is a description of stakeholder feedback, followed by an updated overview of potential barriers and constraints that may impact the success of the reforms proposed under this Decision RIS.

### 3.3.1 Stakeholder feedback

Stakeholders generally supported the barriers and constraints discussed in the Consultation RIS (2023), however in some cases, additional barriers to reform were raised for further consideration.

Several stakeholders suggested that while the intent of reforms was generally clear, their success may be limited by human factors relating to the driver workforce. The Bus Industry Confederation (BIC) commented that a shortage of drivers, driver retention, lack of skilled workers in the heavy vehicle sector, and an ageing driver workforce may limit the progress of reforms. Bonaccord Group suggested that the reforms would likely uniquely affect each heavy vehicle industry sector.

Various stakeholders have highlighted those external factors, such as the social and economic climate, that are likely to influence the success of industry reforms by imposing additional pressures. For example, the Transport Workers' Union (TWU) has underscored that escalating economic pressures have fostered a culture where industry feels compelled to work to the maximum number of allowable hours. The TWU maintains that this will continue to impact the extent to which changes to fatigue laws can enhance safety outcomes. Furthermore, a submission from a jurisdiction and police representative has cautioned about extraneous macroeconomic constraints, such as recent major weather events and the anticipated rise in heavier electric vehicles, as factors that may influence jurisdictional considerations of options affecting infrastructure, such as proposed mass increases and the impact on pavement wear.

Some industry stakeholders, including those from the Commercial Vehicle Industry Association of Australia (CVIAA) and individual drivers, argued that the success of reforms would depend upon clear and regular communication between the NTC and other reform bodies, as well as heavy vehicle transport companies, businesses, peak operators, and supplier associations. These stakeholders advocated for a routine consultation process, suggesting that awareness of reforms across the industry could be expanded with clear communication.

### 3.3.2 Barriers and constraints

The NTC agrees with the additional barriers raised by stakeholders in response to the Consultation RIS (2023) and suggests that they should be considered further in this Decision RIS.

Incorporating stakeholder feedback, constraints that could impact the success of the policy proposals set out in this Decision RIS are discussed below:

- **Changes to general access to the road network by increasing vehicle mass and dimension limits will impact road infrastructure** – For example, higher vehicles may increase the risk of strikes to overhead power lines, vegetation and bridges, and longer vehicles create potential swept path issues and result in short-stacking at rail crossings and intersections. Mr Kanofski noted that road managers, as the asset owners, are ultimately responsible for access decision-making and the performance of roads.[19] Additionally, road managers are generally concerned about the balance of heavy vehicle access, road degradation, and road funding. For instance, the Australian Local Government Association (ALGA) has stated that councils manage around 77 per cent of Australia's roads by length. In their 2023-24 pre-budget submission, they sought a commitment of $300 million per year for local governments to improve freight productivity on their road networks and support the implementation of the HVNL reforms. This commitment includes providing route and asset assessment support to councils to better understand the infrastructure condition for more informed access decisions and fixing, upgrading, and maintaining key route infrastructure to support increased productivity on first and last-mile freight networks.
- **Some matters explored in this Decision RIS are outside the influence of HVNL** – The HVNL aims to improve the Australian heavy vehicle industry's productivity, efficiency, and safety. The policy proposals in this Decision RIS are intended to ensure that the object of the law is met. However, some matters raised in the HVNL review process are outside the influence of HVNL. For example, the key determinants for heavy vehicle productivity are likely to be the prioritisation of infrastructure spending and efficient road pricing, which are beyond the scope of heavy vehicle regulation. Therefore, while the policy proposals in this Decision RIS are likely to assist in reducing red tape and minimising road safety risk, they will improve productivity, efficiency, and safety only to the extent enabled by the scope of the HVNL.
- **The HVNL's scope does not encompass the Northern Territory or Western Australia**, which means it has limited capacity to resolve issues in these states.
- **Labour availability and skills shortages are continually challenging issues for the freight and logistics industry –** Historically, the industry has often been viewed as labour-intensive, dangerous, and male-dominated. The COVID-19 pandemic exposed major labour shortages across the industry and presented challenges across supply chains, many of which persist today. A "two-speed crisis" has been identified, with immediate job vacancies and long-term structural issues, including high employee turnover, skills shortages, and an ageing workforce.
- **Australia's environmental, political and economic climate will likely influence the success of reforms to the HVNL.** Unforeseen weather events, continuing economic and cost of living pressures and other events can influence the extent to which reforms to the HVNL will deliver intended outcomes.
- **Some parts of the heavy vehicle industry are less exposed to communications regarding reforms to HVNL than others.** The success of reforms will depend upon clear and regular communication between the NTC and other reform bodies, heavy vehicle transport companies, business and peak operators and supplier associations.

[19] Note, third parties e.g. rail asset owners also make access decisions where there are interactions between their assets and the road network.

# 4 Fatigue management

**Key points**

- The purpose of this chapter is to outline the regulatory impact of policy options proposed in the Consultation RIS (2023) to improve fatigue management under the HVNL and present recommendations to ministers of reforms that should be progressed.
- Several reforms within the record-keeping and enforcement policy areas are recommended for progression.

## 4.1 Purpose of this chapter

The chapter describes feedback from stakeholders on the suite of policy options proposed in the Consultation RIS (2023) to improve fatigue management under the HVNL and presents recommendations to ministers for reforms that should be progressed through this Decision RIS.

The intent of each option is summarised below, followed by an overview of stakeholder feedback, and a response from the NTC. Recommended fatigue management policy reforms are presented in Section 4.10.

## Record-keeping

There were two options proposed in the Consultation RIS (2023) to streamline record-keeping requirements:

- Option 1a: Removing duplicative prescriptive work diary requirements and streamlining offences.
- Option 1b: Remove administrative process requirements and offences.

These options are not mutually exclusive in that both could be implemented if desired.

Stakeholders broadly supported options to streamline record-keeping requirements under the HVNL, but some changes were suggested through submissions and follow-up targeted NTC consultation. The NTC has responded with several small but important changes to Options 1a and 1b. The primary focus of the changes is to achieve a balance between reducing administrative burden and streamlining offences while ensuring safety and a robust fatigue compliance approach.

## 4.2 Option 1a: Removing duplicative prescriptive work diary requirements and streamlining offences

This option proposed in the Consultation RIS (2023) focuses on removing duplicative prescriptive work diary requirements in the law (particularly around how information is recorded) and streamlining offences relating to these requirements.

Compared to the base case, this means:

- There would be a single requirement in the law that the driver must record the required information in the driver's work diary in the manner and at the time prescribed by the national regulation, like the current s296. There would be different risk categories and associated penalty levels for this single requirement to reflect the seriousness of the offending.
- Separate offence provisions for failing to record specific information (s298) when information is to be recorded (s297) and how information is to be recorded (s301) would be removed from the law.

### 4.2.1 Impact analysis

In the Consultation RIS (2023), the impacts of options proposed to simplify record-keeping requirements under the HVNL were assessed and compared using a multi-criteria analysis (MCA). This approach is commonly used where the full monetisation of costs and benefits is not appropriate or possible, according to OIA cost-benefit analysis guidelines. Due to a lack of information and data regarding the cost of compliance with current record-keeping requirements, a quantitative impact analysis has not been undertaken.

See Appendix B for a description of the approach to the MCA and an overview of impact categories.

The analysis demonstrated that the option would improve the current state. Drivers and operators required to complete a work diary would likely benefit from the consolidation of information required in the work diary as it would be likely to reduce the risk of errors by drivers, thereby reducing the risk of committing an administrative offence.

The results of the qualitative impact analysis presented in the Consultation RIS (2023) are shown below.

**Table 1. Summary of Option 1a impact analysis**

| Overall Impact | Public Safety | Efficiency and Productivity | Regulatory burden to industry | Regulatory Costs to government | Asset Management | Flexibility and responsiveness |
|---|---|---|---|---|---|---|
| Improvement. | Neutral. | Neutral. | Improvement.<br><br>Reduced time taken for record-keeping. | Neutral. | N/A | Improvement.<br><br>NHVR has more flexibility to make changes to some aspects of the work diary |

### 4.2.2 Stakeholder feedback

Option 1a was well supported by industry groups, including heavy vehicle peak bodies, bus industry representatives, agricultural groups, and smaller operators and drivers. These groups see the benefits of the option in reducing the regulatory burden on heavy vehicle drivers. Some groups suggested that it may aid in retaining professional and skilled staff and drivers. Two industry groups suggested that the positive impacts of the option on drivers

were understated. Industry groups highlighted recent driver consultation findings that indicated the WWD is complex and difficult to use.

Participating state and territory jurisdictions also recognised the potential benefits of this option for drivers and operators, supporting it either in full or in principle in submissions to the NTC. State and territories that provided in-principle support called for clarity regarding the exact requirements to be removed from the work diary and requested confirmation of governance arrangements. Some states and territories suggested sections that should be retained while certain prescriptions should be removed from others. Jurisdictions raised concerns that making some data points mandatory but not others could create confusion for industry and enforcement agencies. Jurisdictions also raised concerns that making data points optional sends a poor message to industry about the importance of maintaining full and accurate records.

Police groups were less supportive of this option, suggesting that the impact analysis underestimated the potential public safety risk. Police noted that the evidentiary value of WWD should not be undermined by any changes to the requirements. Police cited concerns that reducing mandatory requirements in work diaries would increase the safety risk to other road users as the ability to manage and enforce fatigue effectively would be reduced. Police felt this was incongruent with state or federal government road safety priorities and public expectations. Regarding streamlining offences, two police groups highlighted different penalties associated with s297, s298, s296 and s301. Police highlighted that these offences have different associated risk levels, making consolidation difficult.

The NHVR supported streamlining offences to a single offence that controls how diaries are filled out. The NHVR did not support changes to the WWD, noting that they may impact the evidentiary value of the WWD. The NHVR also raised the issue that adopting EWDs would address challenges relating to simplifying unnecessary information contained in the WWD.

### 4.2.3 NTC response

Feedback from stakeholders highlights the challenges for reforms to driver record-keeping requirements in the WWD. Stakeholders felt that WWD requirements must be sufficient to demonstrate compliance with driver work and rest hours and to uphold the evidentiary value of the WWD. In addition, reducing the administrative burden and complexity of WWD record-keeping requirements for drivers was seen as a high priority.

Based upon feedback received and additional consultation with stakeholders, several changes to Option 1a were made. Changes reduce the potential safety risks highlighted by police and participating states and territories. Conversely, they also reduce potential regulatory-based administrative benefits to industry. As a result, the qualitative impact assessment will likely remain unchanged without a substantial shift in improvement from the current record-keeping requirements as analysed and presented in the Consultation RIS (2023).

### 4.2.4 Concluding comments and recommended option

It is recommended that a revised proposal be made that achieves a policy intention similar to Option 1a.

**Revised Option 1a:**

- Make recording the day of the week on the Work Diary (WD) daily sheet not subject to an offence under the HVNL. The field for day of the week would be retained on the WD

daily sheet, but completing the field would not be mandatory under the instructions in the WD.

- Make recording the total work and rest hours on the WD daily sheet not subject to an offence under the HVNL. The fields for total work and rest hours would be retained on the WD daily sheet, but completing the fields would not be mandatory under the instructions in the WD.
- Introduce a "default for the hours" option in the WD. The default would be standard hours for a solo driver of a fatigue regulated heavy vehicle. A driver would only be required to record their hours options on the daily sheet if they operate under standard hours for a fatigue regulated bus, accreditation hours (including under an Alternative Compliance Option), or exemption hours.
- Move the following requirements to regulations and consolidate the offences under 'Recording information under the national regulations – general' (s296).
  - How information is to be recorded (s301) - noting that some requirements will be removed from the law altogether and covered in the WD instructions only
  - Failing to record specific information regarding odometer reading (s298)
  - Time zone of a driver's base must be used (s303).
- Retain the separate offence for information is to be recorded at the start of work (s297).

This revised Option 1a is described in more detail below.

The primary purpose of the proposed changes is to ensure that only the record-keeping requirements necessary to ensure the law is enforceable are included in the HVNL. Other 'non-essential' requirements should be removed from the law and marked as optional for the driver to complete in a WWD. This approach is already taken in the current WWD, with fields such as "number plate change and comments" and "calculate your work and rest hours" marked optional. Drivers are not fined for not completing or making a mistake in the optional fields in a WWD. **The proposed additional optional fields are the day of the week and total work and rest**.

It is also proposed that there be **a default for the hours option**. The default would be standard hours for a solo driver of a fatigue regulated heavy vehicle. A driver would only be required to record their hours options on the daily sheet if they operate under standard hours for a fatigue regulated bus, accreditation hours (including under an Alternative Compliance Option), or exemption hours. This is similar to the approach taken for driving arrangements in that the driver only has to indicate when they are working under two-up arrangements (i.e. the default is solo driver arrangements). Having default information means less opportunity for a driver to be fined for forgetting to 'tick a box'.

It is noted that the proposed changes would require changes to the WWD instructions to take effect. As part of the implementation of the 'default hours option', work diary instructions would need to be revised to clearly communicate to drivers the effect and operation of the default hours option. It's intended that there would be an offence provision in the amended HVNL covering non-compliance with work diary instructions.

Other proposed changes relate to how information is recorded in the WWD, including removing from the law some of the detailed requirements that are better placed and already covered in the WWD instructions. The detailed requirements that will be removed from the law are:

- Reference to a daily sheet that has not been cancelled *by the Regulator* (see option 1b)
- Using sheets in turn from front (to be covered in the WWD instructions)

- Writing with enough pressure to be readable on duplicate sheets (to be covered in the WWD instructions)

Many work diary requirements will be moved from the primary law to regulations without changes to the requirements themselves.

However, the offences for these requirements will be consolidated under s296 where possible. These include s298, s301 and s303. Information to be recorded immediately after starting work (s297) will remain separate to ensure the different risk levels associated with failing to comply with these requirements are reflected in the penalty level. Requirements relating to obtaining a WWD and the form of the WWD will also be moved to regulations, along with counting time requirements. Penalty levels for these offences will be reviewed as part of the penalty review project.

## 4.3 Option 1b: Remove administrative process requirements and offences

This option focuses on removing unnecessary administrative processes from the law. Compared to the base case, this means:

- Requirements for drivers and record keepers, if a work diary is filled up, lost, stolen, or destroyed, are removed from the HVNL
- The requirement to keep supplementary records if a work diary is filled up, lost, stolen, or destroyed would be retained in the HVNL
- The format of supplementary records would be defined by the NHVR.

### 4.3.1 Impact analysis

A qualitative multi-criteria impact analysis was used to assess the impacts of options proposed to simplify record-keeping requirements in the Consultation RIS (2023). A quantitative analysis was not undertaken due to insufficient data and information.

The analysis demonstrated that Option 1b would improve the current state and identified an opportunity to streamline the law, reduce red tape and ensure the right balance of record-keeping requirements where a work diary is lost or stolen.

The table below presents the results of the multi-criteria analysis as presented in the Consultation RIS (2023). See Appendix B for a description of the approach to the MCA and an overview of impact categories.

**Table 2. Summary of Option 1b impact analysis**

| Overall Impact | Public Safety | Efficiency and Productivity | Regulatory burden to industry | Regulatory Costs to government | Asset Management | Flexibility and responsiveness |
|---|---|---|---|---|---|---|
| Improvement. | Neutral. The requirement is being enforced at a low level now with limited | Neutral | Improvement.<br><br>Limited evidence to suggest that drivers and | Neutral. | N/A | Neutral. |

| | | |
|---|---|---|
| | evidence to suggest that this is having an adverse impact on road safety. | operators are returning/reporting stolen or lost diaries now; however some burden may be removed. |

### 4.3.2 Stakeholder feedback

There was a varied level of support from stakeholders for Option 1b.

Option 1b received strong support from industry groups, including heavy vehicle peak bodies, bus industry representatives, agricultural groups, and smaller operators and drivers. Some large industry groups believe that the positive impacts of this option have been understated and that the reduction in regulatory burden to industry would be significant. One large industry group suggested that this option should be implemented through a minor new policy process rather than an option in a major review.

Participating states and territories provided a varied response to Option 1b. Two participating states and territories were not supportive due to concerns around drivers using multiple diaries if the requirement to notify the NHVR of a lost or stolen diary is removed. Another jurisdiction was partially supportive but wanted the impacts of the change to be tested for adverse outcomes. One jurisdiction fully supported the option. There was some support amongst these stakeholders to streamline the administrative process requirements relating to what a driver must do if a lost or stolen written work diary (WWD) is found or returned. Additionally, there were suggestions among states and territories that the development of a national database for WWD/ EWDs would be required, which could support the identification of fraudulent activity.

Police opposed aspects of this option. Like the states and territories, police raised concerns around the risk of fraudulent behaviour such as manipulation of work and rest hours by drivers using parallel work diaries if provisions and requirements around lost, stolen or exhausted work diaries were removed, and disagreed that public safety would be unaffected. There was support among police for a transparent, national, real time work diary management system, via electronic register, which would help to identify where multiple diaries are in use at one point in time.

The NHVR supported this option in principle, acknowledging that the current process is burdensome for industry and the regulator. The NHVR emphasises that adoption of EWDs provides a simpler and less burdensome approach to supporting the recording of work and rest hours and that NHVR platforms including the Safety and Compliance Regulatory Platform (SCRP) and Roadside Compliance Monitoring Solution (RCMS) could be utilised to support compliance of fatigue record-keeping, rather than the creation of another database.

### 4.3.3 NTC response

As discussed above, feedback received from stakeholders on Option 1b was varied. Industry stakeholders supported the option, while states, territories and enforcement agencies did not support the complete removal of these administrative processes from the law. However, there was some support amongst these stakeholders to streamline the administrative process requirements relating to what a driver must do if a lost or stolen WWD is found or returned.

### 4.3.4 Concluding comments and recommended option

Based on the feedback received, an alternative proposal is recommended that achieves a similar policy intention to Option 1b.

**Revised Option 1b:**

- Retain the legislative requirements around WWDs that are filled up, lost, stolen, or destroyed. Drivers would still be required to notify the Regulator in the approved form of that happening (s306).
- If the WWD is found or returned after a replacement work diary has been issued, the driver will still be required to notify the Regulator in the approved form and to cancel any unused daily sheets in the WWD. However, they will no longer be required to return it to the Regulator (i.e. remove s308(1)(b)(ii) and 308(1)(c))).
- Requirements relating to what the Regulator will do with returned diaries will also be removed (308(2)).
- Requirements relating to returning an existing WWD with the application for a new one (s339(3)) will also be removed and replace with a requirement for the driver to cancel any unused daily sheets in the existing WWD.

These changes will still allow authorised officers to check compliance with work diary and supplementary record requirements, and the Regulator to monitor the issuing of work diaries in the future.

The NTC acknowledges that some stakeholders have expressed a preference for creating formal arrangements to track work diaries, such as a database of work diaries, and that the NHVR would be best placed to do this. This feedback has been noted and taken into consideration during the development of the proposal to streamline these requirements. The aim is to ensure that the proposed changes do not undermine the potential to develop a database in the future. However, it is important to note that the development of a work diary database is not required for this option to proceed.

## Scope of Fatigue Regulated Heavy Vehicles (FRHVs)

Options to change the scope of fatigue regulated heavy vehicles were included in the Consultation RIS (2023) to consider the impact of changes to the cohort of vehicles included under prescriptive fatigue requirements. Broadly, there was low support from stakeholders to change the scope of FRHVs, with many stakeholders calling for a better understanding of the fatigue risk posed by vehicles between 4.5 tonnes and 12 tonnes.

Five options were proposed to change the scope of FRHVs:

- **2a)** Prescriptive fatigue requirements for HVs >12 tonnes only, full work diary requirements for HVs >12 tonnes.
- **2b)** Prescriptive fatigue requirements for HVs >12 tonnes only, ‘lite’ diary requirements for lower risk operations.
- **2c)** Prescriptive fatigue requirements for all HVs over 4.5 tonnes, full work diary requirements for all operations.
- **2d)** Prescriptive fatigue requirements for all HVs over 4.5 tonnes, work diary exemption for local work (all HVs)

- **2e)** Prescriptive fatigue requirements for all HVs over 4.5 tonnes, 'lite' work diary requirements for lower risk operations.

## 4.4 Impact analysis

Impact analysis conducted as part of the Consultation RIS (2023) highlighted that changes to the scope of FRHVs would have varying impacts for operators of different cohorts of freight vehicles. Namely, vehicles over 12 tonnes, vehicles over 12 tonnes undertaking local work <100km, and vehicles between 4.5 tonnes and 12 tonnes. These options are also likely to positively impact road safety, noting that a direct causal link between fatigue management intervention and safety outcomes is difficult to demonstrate. A summary of findings from the qualitative analysis conducted as part of the Consultation RIS (2023) is provided below:

- It can be assumed that by expanding the scope of vehicles required to manage fatigue through prescriptive work and rest hours (currently the best available mechanism to measure and mitigate fatigue-related risks), all options considered under this reform area have the potential to improve road safety outcomes by reducing fatigue-related crashes.
- All options would have the lowest impact on the fleet of heavy vehicles over 12 tonnes (22 per cent of total heavy vehicle fleet[20]). This is because these vehicles are already subject to fatigue requirements under the schedule of standard hours, which requires completing a work diary and retaining work diary records. Only Option 2e, has any implication for this cohort of vehicles whereby introducing the 'lite' work diary could reduce the time taken to record work and rest times for vehicles considered 'lower risk' (e.g., undertaking daytime operations).
- There would be considerable impact for vehicles over 12 tonnes undertaking local work (i.e., operating <100km from base), which currently have no requirement to maintain a work diary—approximately 47 per cent of the heavy vehicle fleet.[21]
- There would be significant implications for the cohort of vehicles between 4.5 tonnes and 12 tonnes (31 per cent of the heavy vehicle fleet[22]). These vehicles are not currently subject to prescriptive work and rest rules, work diary requirements, or record-keeping requirements.
- There is an impact on bus drivers in the removal of the work diary exemption for local work (<100km).

Quantitative breakeven analysis was also conducted as part of the Consultation RIS (2023) to understand what percentage reduction in fatigue-related heavy vehicle crashes would be required to offset the costs associated with each proposed option. While the analysis was constrained by limitations in terms of data availability and lack of evidence to draw a strong link between work diaries and crash rates, key findings are detailed as follows:

- The cost estimates show that proposed changes to expand the scope of FRHVs will result in an increased operator compliance burden in all the proposed options compared to the base case.
- No estimated breakeven rate could be calculated for Option 2a, 2c and 2e because the estimated incremental costs of these options were greater than the total cost of fatigue-related heavy vehicle crashes. This means that crashes would need to be reduced by

[20] NTC (2019), *Effective Fatigue Management*, p.31.
[21] Ibid.
[22] Ibid.

greater than 100 per cent to break even with the costs associated with operator work diary compliance burden, which is impossible.

- Current fatigue-related crash rates would need to reduce by 84 per cent for Option 2b to deliver a positive net economic benefit and 72 per cent for Option 2d to do the same. These are substantial crash reductions that would be challenging to achieve in reality. Both options are characterised by a comparatively lower operator compliance burden of filling out work diaries.

The following sections provide stakeholder feedback in response to the options and analysis, and the NTC's response is provided for all options collectively.

## 4.5 Stakeholder feedback

Peak industry bodies were generally not supportive of options to alter the scope of FRHVs. These groups opposed options to increase and change work diary requirements for vehicles >12 tonnes (Options 2a and 2b) amid concerns that this would create a high additional cost burden for operators and that it would fail to address fatigue issues in a largely unregulated 4.5 tonne to 12 tonne cohort. Representatives from the bus industry also rejected these proposals due to the additional administrative cost burden it would place on bus operators. In contrast, representatives from the agribusiness sector raised the issue that, unlike other commercial operators where the additional costs can be passed on to consumers, those in the 'primary industry' transport sector cannot transfer the increased transport cost. These operators would be forced to absorb the costs in an already low-margin industry.

One peak industry body provided support for Option 2d, arguing that evidence[23] has shown that fatigue is a substantial or major problem for vehicles under 12 tonnes undertaking local work, pointing to extending the level of prescriptive requirement to cover 4.5 tonne to 12 tonne vehicles. The peak body suggests that Option 2d would deliver strengthened regulation at the lowest cost to industry.

Most peak industry bodies also rejected Options 2c to 2e on the basis that there is little credible evidence to suggest that a fatigue safety problem exists for heavy vehicles between 4.5 tonnes and 12 tonnes, and that the additional cost burden for operators is too high. However, some smaller industry representatives support the proposals, stating that a 'one-size-fits-all' model would reduce complexity by simplifying compliance training and managing drivers across a multi-tonnage vehicle fleet.

Participating states and territories also generally did not support proposals to change the scope of FRHVs. Most states and territories rejected the proposals on the basis that the Consultation RIS (2023) failed to make a sufficient case that the proposal would achieve road safety benefits that outweigh the costs of implementation and that the cost to drivers and operators, including bus fleets under this proposal would be significant, and called for detailed analysis of cost impacts. States and territories also raised the issue that introducing the concept of 'lite' work diaries and 'lower risk' operations creates additional complexity and is poorly defined. Some states and territories supported the consideration of an expanded scope of FRHVs but considered it inappropriate for industry operators outside the scope of current fatigue regulations to be onboarded by adopting a retrograde system of written record-keeping. States and territories indicated such an approach may disincentivise the

[23] Friswell, R, A Williamson and N Dunn (2006), *Road transport work and fatigue: a comparison of drivers in the light and long distance heavy vehicle road transport sectors.*

uptake of EWDs. Some states and territories called for an additional option to expand the scope of FRHVs to above 8 tonnes.

Police representatives provided mixed feedback on the proposals. Some rejected the proposals, while others provided conditional or full support. Where support was provided, this was on the basis that it would bring the definition of an FRHV in line with the GVM for Fatigue Regulated Buses (FRB) and would improve road safety through greater fatigue management of all heavy vehicles. One police group supported the proposals in principle. However, it raised the issue that without a comparable increase in enforcement capacity, there will likely be no effective change as current enforcement practices would likely continue. Additionally, there would likely be a reduction in the enforcement of high-risk vehicles due to the allocation of finite resources across an expanded fleet.

The NHVR did not provide a definitive view of any option, stating that further work is required to understand the fatigue risk posed by heavy vehicles between 4.5 tonnes and 12 tonnes before any changes to the scope of FRHVs could be supported. The NHVR also argued that more work is needed to identify the nature of operations of the sectors that will be captured by this change.

## 4.6 NTC response and concluding comments

None of the options proposed within the scope of FRHVs are recommended for further analysis or exploration at this stage, maintaining the Base Case 2 is the NTC's preferred position. The qualitative and quantitative impact analysis conducted in the Consultation RIS (2023) had methodological limitations, and the analysis yielded limited evidence to support any of the options. Overall, stakeholders expressed agreement with the possible impacts of the options presented in the Consultation RIS (2023).

There is insufficient evidence (in terms of fatigue incidents) that fatigue risk is not being adequately managed under the current legislative arrangements. Therefore, the regulatory burden associated with the proposed prescriptive rules cannot be justified. Allowing for reduced work diary requirements for lower risk operations did not sufficiently reduce the regulatory burden, and stakeholders generally thought this would add complexity to the fatigue management regime.

The NTC explored alternative data options from universities and insurance companies, which did not yield additional information or datasets that could be analysed to enhance our understanding of heavy vehicle fatigue crash risk by different vehicle weights and freight tasks and impacts of proposed interventions.

Although some transport agencies wanted to test the case for changing FRHVs to > 8 tonnes, no evidence was provided to support the need for such a change.

Notwithstanding the above, the definition of a fatigue regulated heavy vehicle will be moved to regulations so it can be more readily changed if there is evidence that additional HVs should be covered by the prescriptive rules in the future. This aligns with the approach to increase responsiveness and adaptiveness of the HVNL set out in the D-RIS (2023).

In the meantime, operators of HVs between 4.5 and 12 tonnes must manage fatigue risk under the HVNL primary duty and WHS legislation.

## Enforcement

Options to enable a more risk-based approach to enforcement were included in the Consultation RIS (2023) to support industry in seeking more proportionate responses to minor work and rest and administrative offences that do not impact on safety.

The proposed options for consultation were:

- Option 3a: Limit on the timeframe for issuing a work and rest breach infringement
- Option 3b: Risk profile for work and rest breaches
- Option 3c: Enable a review of fines for 'trifling' work diary offences
- Option 3d: Driver defence for minor administrative errors.
- Option 3e: Support the use of formal warnings for administrative offences relating to work diaries.
- Option 3f: Allow for a formal education option in lieu of a fine.

Regarding the Consultation RIS (2023), the Office of Impact Analysis (OIA) advised that under its guidelines, changes in offences are not within the scope of the regulatory impact assessment process, and therefore the analysis conducted to assess enforcement options focused on the advantages and disadvantages of each option compared against the base case. A summary of findings from this analysis is presented against each of the options.

## 4.7 Options 3a to 3d

Four options within the fatigue enforcement proposals received limited support from stakeholders and will not be subjected to further analysis or consideration through this Decision RIS process. These include:

- Option 3a: Limit on timeframe for issuing a work and rest breach infringement
- Option 3b: Risk profile for work and rest breaches
- Option 3c: Enable a review of fines for 'trifling' work diary offences
- Option 3d: Driver defence for minor administrative errors.

### 4.7.1 Impact analysis

A summary of the advantages and disadvantages of these options as presented in the Consultation RIS (2023) is provided below:

**Table 3. Summary of advantages and disadvantages of Options 3a to 3d**

| Summary of advantages | Summary of disadvantages |
|---|---|
| **Option 3a:** Limit on the timeframe for issuing a work and rest breach infringement | |
| Encourages risk-based approach to enforcement and may reduce regulatory burden for operators for minor work and rest breaches that no longer pose an immediate safety risk. | May encourage greater use of judicial system and may create an incentive for non-compliant behaviour by drivers, particularly in areas where the likelihood of being intercepted at the roadside within the timeframe is low. |

| | |
|---|---|
| **Option 3b: Risk profile for work and rest breaches** | |
| Encourages a risk-based approach to enforcement by building a more sophisticated risk-based approach for breach of work and rest rules. | Increases the complexity of the HVNL and may be more resource intensive than current state, requiring tracking of incidents to inform new breach levels. |
| **Option 3c: Enable a review of fines for 'trifling' work diary offences** | |
| Encourages a risk-based approach to enforcement by providing drivers with an opportunity to challenge fines. | May be more resource intensive, authorities may need additional time to review fines. There may also be implementation challenges in establishment of a national approach. |
| **Option 3d: Driver defence for administrative errors** | |
| Encourages a risk-based approach to enforcement by providing drivers with an opportunity to challenge fines. | May be more resource intensive, as an officer would need to consider the driver's defence when issuing a fine. |

Stakeholder feedback in response to the option and qualitative analysis presented in the Consultation RIS (2023) is summarised below.

### 4.7.2 Stakeholder feedback

**Option 3a**

Option 3a focussed upon limiting the time period for which an infringement can be used as a compliance tool to 14 or 28 days. This was not supported by participating state and territory jurisdictions, police or the NHVR. Concerns raised include the unorthodox legal construction of the option, potential for increasing prosecutions for historical, low-level offences, and limitations on Authorised Officer discretion.

The NTC developed an alternative to option 3a to address the concerns raised. The alternative proposal would limit the timeframe for roadside inspections of a National Work Diary to 28 days, mirroring the scope of the 'compliance view' of an Electronic Work Diary. This alternative option is consistent with the intent of the Ken Kanofski Package Proposition 3.5 but avoids some of the legal concerns raised by jurisdictions or the perceived risk of increased driver prosecutions. Similarly, this alternate option does not impact officer discretion as it does not alter the available enforcement tools.

Participating State and Territory jurisdictions indicated a preference for a balanced mix of prescriptive and performance based compliance tools, with prescriptive requirements complemented by duties based requirements, over the models proposed in the Kanofski package.

**Summary of survey results – Option 3a**

In relation to Option 3a, stakeholders were asked the survey question "Which of the fatigue enforcement options do you agree would deliver a fairer regulatory approach?".

Eighty-four stakeholders from across several industry groups and sectors responded to this survey question. Key findings are as follows:

- Out of 20 responses, 60 per cent of business representatives either agreed or strongly agreed that this option provides a fairer regulatory approach, with 20 per cent in disagreement. (Note: 5 per cent of business representatives did not respond to this option)
- Out of 32 responses, 53 per cent of drivers either agreed or strongly agreed that this option provides a fairer regulatory approach, with 6 per cent in disagreement. (Note: 25 per cent of drivers did not respond to this option)
- Out of 19, 47 per cent of owner-operators either agreed or strongly agreed that this option provides a fairer regulatory approach, with 11 per cent in disagreement. (Note: 26 per cent of owner-operators did not respond to this option)
- Out of 13, 54 per cent of other stakeholders either agreed or strongly agreed that this option provides a fairer regulatory approach, with 15 per cent in disagreement. (Note: 8 per cent of these stakeholders did not respond to this option)

For further information on survey results, please see Appendix C.

**Option 3b**

Option 3b is not supported by stakeholders. There was general concern from most stakeholders, including participating state and territory jurisdictions, the police and industry, that Option 3b undermines the aim of the HVNL of simplifying the law by introducing unnecessary complexity and creating a costly and inflexible enforcement approach. Some stakeholders also state that there is a lack of data driven analysis to demonstrate that road safety would improve through the new set of breach levels, and that any further development of this option would need to explain how the risks associated with the option could be managed appropriately.

The NHVR also does not support Option 3b, agreeing with other stakeholders that the proposal would overly complicate enforcement and reduce flexibility. It suggests the proposal also has the potential to increase the duration of intercepts at the roadside, reducing the total number of vehicles that an authorised officer can intercept over time and reducing safety outcomes. It is the NHVR's view that risk profiling of work and rest breaches is best managed through regulatory operational policy rather than through legislative provisions.

**Summary of survey results – Option 3b**

In relation to Option 3b, stakeholders were asked the survey question "Which of the fatigue enforcement options do you agree would deliver a fairer regulatory approach?".

Eighty-four stakeholders from across several industry groups and sectors responded to this survey question. Key findings are as follows:

- Out of 20 responses, 50 per cent of business representatives either agreed or strongly agreed that this option provides a fairer regulatory approach, with 30 per cent in disagreement. (Note: 5 per cent of business representatives did not respond to this option)
- Out of 32 responses, 43.8 per cent of drivers either agreed or strongly agreed that this option provides a fairer regulatory approach, with 12.5 per cent in disagreement. (Note: 28.1 per cent of drivers did not respond to this option)

- Out of 19, 36.8 per cent of owner-operators either agreed or strongly agreed that this option provides a fairer regulatory approach, with 15.8 per cent in disagreement. (Note: 31.6 per cent of owner-operators did not respond to this option)
- Out of 13, 30.8 per cent of other stakeholders either agreed or strongly agreed that this option provides a fairer regulatory approach, with 15.4 per cent in disagreement. (Note: 7.7 per cent of these stakeholders did not respond to this option)

For further information on survey results, please see Appendix C.

**Option 3c**

There was mixed feedback from stakeholders on Option 3c. Option 3c was well supported by small industry groups, including bus industry representatives and heavy vehicle drivers and operators; however, it was less supported by participating state and territory jurisdictions and police. Industry groups supported options that reduce work and rest requirements for heavy vehicle drivers and operators. Peak heavy vehicle industry bodies also supported this option, but under some conditions.

Most state and territory jurisdictions did not support this option. Some jurisdictions indicated that they already had mechanisms in place that allowed for a review of infringements. Some state and territory jurisdictions emphasised that it is likely to increase regulatory burden on industry to initiate an administrative review or legal proceedings, and on the government and judicial system in undertaking reviews. Police were also not supportive of this option, arguing that the impact would be to limit the ability of authorised officers to respond to driver behaviour, resulting in adverse safety outcomes.

The NHVR supported this option in principle, suggesting that legal advice is needed to understand the extent to which HVNL may alter the operation of a jurisdiction's infringement legislation to provide reviews of trifling offences.

**Summary of survey results – Option 3c**

In relation to Option 3c, stakeholders were asked the survey question "Which of the fatigue enforcement options do you agree would deliver a fairer regulatory approach?".

Eighty-four stakeholders from across several industry groups and sectors responded to this survey question. Key findings are as follows:

- Out of 20 responses, 50 per cent of business representatives either agreed or strongly agreed that this option provides a fairer regulatory approach, with 20 per cent in disagreement. (Note: 5 per cent of business representatives did not respond to this option)
- Out of 32 responses, 46.9 per cent of drivers either agreed or strongly agreed that this option provides a fairer regulatory approach, with 6.3 per cent in disagreement. (Note: 25 per cent of drivers did not respond to this option)
- Out of 19, 57.9 per cent of owner-operators either agreed or strongly agreed that this option provides a fairer regulatory approach, with 5.3 per cent in disagreement. (Note: 26.3 per cent of owner-operators did not respond to this option)

- Out of 13, 46.2 per cent of other stakeholders either agreed or strongly agreed that this option provides a fairer regulatory approach, with 15.4 per cent in disagreement. (Note: 7.7 per cent of these stakeholders did not respond to this option)

For further information on survey results, please see Appendix C.

**Option 3d**

There was limited support for Option 3d with the exception of smaller industry groups which viewed the proposal as an opportunity to reduce regulatory burden on drivers and operators. Bus industry representatives also provided support, stating that drivers face harsh penalties for minor work diary infringements, sometimes harsher than the penalties given for dangerous driving activities. Heavy vehicle industry bodies generally supported the intention of this proposal although they provided support for other options as a preference.

The NHVR did not support this option as allowing for driver defence at the roadside may increase complexity for enforcement, as well as increased time required for intercepts. These issues were echoed in submissions from state and territory jurisdictions and police representatives.

**Summary of survey results – Option 3d**

In relation to Option 3d, stakeholders were asked the survey question "Which of the fatigue enforcement options do you agree would deliver a fairer regulatory approach?".

Eighty-four stakeholders from across several industry groups and sectors responded to this survey question. Key findings are as follows:

- Out of 20 responses, 65 per cent of business representatives either agreed or strongly agreed that this option provides a fairer regulatory approach, with 15 per cent in disagreement. (Note: 5 per cent of business representatives did not respond to this option)
- Out of 32 responses, 53.1 per cent of drivers either agreed or strongly agreed that this option provides a fairer regulatory approach, with 3.1 per cent in disagreement. (Note: 25 per cent of drivers did not respond to this option)
- Out of 19, 47.4 per cent of owner-operators either agreed or strongly agreed that this option provides a fairer regulatory approach, with 10.5 per cent in disagreement. (Note: 31.6 per cent of owner-operators did not respond to this option)
- Out of 13, 30.8 per cent of other stakeholders either agreed or strongly agreed that this option provides a fairer regulatory approach, with 30.8 per cent in disagreement. (Note: 7.7 per cent of these stakeholders did not respond to this option)

For further information on survey results, please see Appendix C.

### 4.7.3 NTC response and concluding comments

Option 3a and the alternative Option 3a proposed by the NTC were strongly supported by industry, however opposed by participating state and territory transport agencies, the NHVR

and police who favour maintaining the existing arrangements. Option 3a will not be progressed.

Options 3b, 3c and 3d will also not be progressed further due to limited support from stakeholders in response to the Consultation RIS (2023).

## 4.8 Option 3e: Support the use of formal warnings for administrative offences relating to work diaries

Under this option, the law would be amended to provide authorised officers with broader abilities to issue formal warnings. This could be applied to administrative offences relating to work diaries.

Compared to the base case, this means:

- Removal of the clause "The person has exercised reasonable diligence to prevent the contravention and was unaware of the contravention" from s590 of the HVNL.

A qualitative analysis conducted in the Consultation RIS (2023) found that the option may encourage a risk-based approach to enforcement by providing authorised officers with broader abilities to issue formal warnings and may mean drivers are less likely to receive a fine. However, implementation would require consideration of a formal warning national database.

Below is summarised stakeholder feedback on the option and qualitative analysis presented in the Consultation RIS (2023).

### 4.8.1 Impact analysis

The table below compares the advantages and disadvantages of Option 3e against the base case, as per analysis presented in the Consultation RIS (2023). See Appendix B for a description of the approach to the MCA and an overview of impact categories.

**Table 4. Advantages and disadvantages of Option 3e**

| Option | Advantages | Disadvantages |
|---|---|---|
| **Option 3e:** Support the use of formal warnings for administrative offences relating to work diaries | ▪ **Encourages a risk-based approach to enforcement –** Authorised officers would be provided with broader abilities to issue formal warnings, providing less complexity in decision making. | ▪ **Implementation challenges –** To achieve the full benefits of this reform, a formal warning national database should be considered. Police stakeholders have indicated that they do issue warnings and cautions for work diary offences at the roadside. In some state and territory jurisdictions, police record these warnings within a database. However, if a driver receives multiple formal warnings from police and the NHVR across different state and territory jurisdictions, an authorised officer |

will not have visibility of this roadside.

### 4.8.2 Stakeholder feedback

Stakeholders are broadly supportive of Option 3e.

Industry stakeholders are supportive of the proposal, which encourages officers to use discretion for lower-level offences by providing an additional form of sanction.

Participating state and territory jurisdictions are also generally supportive of this proposal, the majority providing full or partial support. Those that provide partial support advocate for the development of an accessible national database available to all officers in real time so that officers can determine whether prior warnings have been issued for similar offences. One jurisdiction recommends that the NTC should consult with jurisdictions on the scope of formal warning allowances.

Police agencies showed general support for the option. One noted that the use of formal warnings is already an important component of an officer's discretionary powers in their jurisdiction - in the 2022/23 FY, SA Police officers issued 2,342 infringement notices for heavy vehicle offences of which 1,043 were caution notices. This is a 45 per cent caution rate for heavy vehicle offences. Some police groups called for a national database if this option were implemented to enable officers to track traffic histories to inform considerations as to whether issuance of a warning is warranted and will achieve the desired improvement in a driver's behaviour and, ultimately, road safety.

The NHVR is supportive of the proposal, stating that the HVNL does not currently provide fully, flexible, fit-for-purpose enforcement options that achieve optimal safety outcomes, and therefore the NHVR supports reform on the use of formal warnings. Regarding a database to track formal warnings, the NHVR also suggests that there could be consideration of the use of the NHVR Safety and Compliance Regulatory Platform (SCRP) which is accessed and updated on the roadside in real time by NHVR Safety and Compliance Officers through the Roadside Compliance Monitoring Scheme (RCMS).

**Summary of survey results – Option 3e**

In relation to Option 3e, stakeholders were asked the survey question "Which of the fatigue enforcement options do you agree would deliver a fairer regulatory approach?".

Eighty-four stakeholders from across several industry groups and sectors responded to this survey question. Key findings are as follows:

- Out of 20 responses, 90 per cent of business representatives either agreed or strongly agreed that this option provides a fairer regulatory approach, with 5 per cent in disagreement.
- Out of 32 responses, 53 per cent of drivers either agreed or strongly agreed that this option provides a fairer regulatory approach, with 3 per cent in disagreement. (Note: 22 per cent of drivers did not respond to this option)

- Out of 19, 58 per cent of owner-operators either agreed or strongly agreed that this option provides a fairer regulatory approach, with 5 per cent in disagreement. (Note: 26 per cent of owner-operators did not respond to this option)
- Out of 13, 69 per cent of other stakeholders either agreed or strongly agreed that this option provides a fairer regulatory approach, with no responses in disagreement. (Note: 8 per cent of these stakeholders did not respond to this option)

For further information on survey results, please see Appendix C.

### 4.8.3 NTC response, concluding comments and recommended option

The legislative amendment that removes a barrier for NHVR officers to issue formal warnings rather than fines as per Option 3e should be progressed.

Transport agencies and police feedback focused on the need for a national database accessible by authorised officers at the roadside to record formal warnings to support the better use of these enforcement tools. While NTC agrees this non-legislative initiative would support delivery of the option, it is not essential to the successful implementation. As noted by the ATA in its submission, authorised officers have the opportunity to make notes in a work diary and could choose to note any warnings given.

Establishing a national database or adding extra functionality to RCMS will not be costed in the Decision RIS; however, it may be a desirable future feature.

## 4.9 Option 3f: Allow for a formal education option in lieu of a fine

Under this option, it is proposed to embed an education requirement in the law for specific minor, low risk offences by first-time offenders. This would allow an authorised officer to issue a requirement that an offender undertake mandatory education, in lieu of a fine.

Compared to the base case, this means:

- An education requirement would be embedded in the law for specific minor, low risk offences. This would allow officers to issue a requirement that an offender undertake mandatory education, in lieu of a fine.

Qualitative analysis conducted in the Consultation RIS (2023) found that the option may encourage a risk-based approach to enforcement by providing an option for formal education to be issued by authorised officers instead of traditional compliance practices. However, the option would also require the creation, management (e.g., updating) and administration of 'formal education' modules of tools to facilitate formal education, which may be resource intensive.

Stakeholder feedback in response to the option and qualitative analysis presented in the Consultation RIS (2023) is summarised below.

### 4.9.1 Impact analysis – advantages and disadvantages

The table below compares the advantages and disadvantages of Option 3e against the base case, as per analysis presented in the Consultation RIS (2023).

**Table 5. Advantages and disadvantages of Option 3f**

| Option | Advantages | Disadvantages |
|---|---|---|
| **Option 3f:** Allow for a formal education option in lieu of a fine | ▪ **Encourages a risk-based approach to enforcement –** Recognises that education and the encouragement of better safety management practices can be just as powerful as enforcement and provides an option for formal education by authorised officers instead of traditional compliance practices.<br>▪ **Reduced regulatory burden for operators –** authorised officers would be able to issue a requirement that an offender undertake mandatory education, in lieu of a fine. | ▪ **Resource intensive –** Requires the creation, management (e.g., updating) and administration of 'formal education' modules of tools to facilitate formal education. May also require the tracking of the completion of formal education, to ensure compliance. |

### 4.9.2 Stakeholder feedback

Stakeholders provided broad support for Option 3f, with different views provided on whether education needs to be formalised in the law.

Industry peak bodies were generally not supportive of the option as a mandatory provision. One heavy vehicle peak body stated that this proposal should not be considered further as it creates additional complexity and requires the development of a national database. In its current form, the option would impose more demands on drivers, including the effort involved in proving that they didn't need the training or had already done it. Another industry body suggested that, instead, an option should be considered whereby penalties for non-safety breaches, such as record-keeping breaches, are reduced.

Smaller industry groups, bus industry groups and the transport workers union were more supportive of the proposal, emphasising that this would help to remove punitive measures against drivers and create a greater educative focus.

Participating state and territory jurisdictions provided a mixed response to Option 3f. Some supported the proposal to include a mandatory education requirement in law; however, they called for more work to describe the operational features of the proposal, including:

- The need to undertake further analysis to determine likely costs and method of implementation and operation.
- The need for a comparison of issues such as imposition of time, travel and other costs of training in the event of being allocated a formal education penalty as opposed to the quantum of the infringement notice to understand likely benefit.

One jurisdiction and police agency raised concerns about the proposal, arguing that using education as part of the overall compliance and enforcement strategy is preferred as Option 3f only applies *in lieu of a fine,* and that the issuing of an infringement should establish a level of intent or recklessness that negates the value of non-punitive education. This stakeholder consider that the education direction power would more appropriately accompany a formal warning.

Two participating state and territory jurisdictions rejected the proposal on the basis that further information on the impact of the option is required. One jurisdiction called for a cost-benefit analysis to determine the viability of the proposal, suggesting that the costs may be significant and perpetual.

Other police agencies supported the proposal, contingent upon several criteria:

- Creation of a national register to track attendance and enable enforcement officers to have visibility over previous offending actioned via training and training completed.
- New offences surrounding failure to attend mandatory education would need to be developed.

The NHVR supports the concept of education to change driver behaviour. However, due to the potential costs and implementation challenges, the NHVR does not support providing a formal education option in lieu of a fine within the HVNL. The NHVR states it will continue advocating for informal education as part of its compliance and enforcement strategy.

**Summary of survey results – Option 3f**

In relation to Option 3f, stakeholders were asked the survey question, "Which of the fatigue enforcement options do you agree would deliver a fairer regulatory approach?".

Eighty-four stakeholders from across several industry groups and sectors responded to this survey question. Key findings are as follows:

- Out of 20 responses, 70 per cent of business representatives either agreed or strongly agreed that this option provides a fairer regulatory approach, with 10 per cent in disagreement. (Note: 5 per cent of business representatives did not respond to this option)
- Out of 32 responses, 50 per cent of drivers either agreed or strongly agreed that this option provides a fairer regulatory approach, with 3 per cent in disagreement. (Note: 28 per cent of drivers did not respond to this option)
- Out of 19, 42 per cent of owner-operators either agreed or strongly agreed that this option provides a fairer regulatory approach, with 10.5 per cent in disagreement. (Note: 26 per cent of owner-operators did not respond to this option)
- Out of 13, 77 per cent of other stakeholders either agreed or strongly agreed that this option provides a fairer regulatory approach, with no responses in disagreement. (Note: 8 per cent of these stakeholders did not respond to this option)

For further information on survey results, please see Appendix C.

### 4.9.3 NTC response and concluding comments

A formal education requirement, as an alternative to an infringement for Work Diary administrative offences, should be enabled under the HVNL regulatory framework. This could be to enable an administrative scheme managed by the NHVR, or a framework specified in the law.

Under this option, the alternative of undertaking formal education in lieu of paying an infringement would be created. This would provide an opportunity for Work Diary

administrative offences to be addressed through an enforcement pathway that focuses on providing drivers with the skills and knowledge to prevent further offending.

For Option 3f to be viable and successful, there are three key implementation principles:

1. The administrative systems supporting the education options (e.g. training delivery, payment (if required), and recording who has been offered/accepted/completed formal education) must be cost effective and not impose a significant operating cost burden on transport or police agencies and the NHVR.
2. The option needs to be administratively simple for authorised officers so that it is used in appropriate circumstances at the roadside.
3. The education option needs to be easy and low cost for an offender to access so that formal education is a lower cost option than paying an infringement.

Some considerations remain to be resolved that have legislative and/or operational cost implications, including:

1. Discretion of an authorised officer to offer (or not) the formal education.
2. The implications of not successfully completing the formal education.

Ministers should ask the NTC to work with state government agencies, the NHVR and police to develop an implementation pathway consistent with the above principles and considerations.

## 4.10 Recommended fatigue management policy reforms

Recommendations in relation to fatigue management policy reforms are set out below.

**Recommendation 1:** That the requirements for the Work Diary (WD) be changed to:

a) Make recording the day of the week on the daily sheet not subject to an offence under the HVNL

b) Make recording the total work and rest hours on the daily sheet not subject to an offence under the HVNL

c) Introduce a default for the 'hours option' in the WD that is the standard hours for a solo driver of a fatigue regulated heavy vehicle.

**Recommendation 2:** Consolidate the following offences under 'Recording information under the national regulations – general' (s296):

a) How information is to be recorded (s301) - noting that some requirements will be removed from the law altogether and covered in the WD instructions only

b) Failing to record specific information regarding odometer reading (s298)

c) Time zone of a driver's base must be used (s303).

**Recommendation 3:** Remove s308(1)(b)(ii) and s308(1)(c) so that a found or returned WWD, after a replacement has been issued, is no longer required to be returned to the Regulator, noting that a driver will still be required to notify the Regulator using the approved form and to cancel any unused daily sheets in the WWD.

**Recommendation 4:** Remove requirements relating to returning an existing WWD with an application for a new one (s339(3)) and replace these with a new requirement for a driver to cancel any unused daily sheets in the existing WWD.

**Recommendation 5:** Remove s308(2) and s339(4), which contains the requirements relating to what the Regulator will do with returned WWD.

**Recommendation 6:** That the definition of a fatigue regulated heavy vehicle (as defined in the HVNL) remains unchanged.

**Recommendation 7:** Remove s590(1)(b) of the HVNL, to broaden the application of formal warnings by Authorised Officers as a compliance tool for fatigue record-keeping breaches and other breaches under the HVNL.

**Recommendation 8:** That the HVNL include provisions to enable formal education as an additional enforcement option for Work Diary administrative offences, subject to confirming a pathway that minimises implementation and ongoing administration costs to participating jurisdictions, police agencies and industry.

## 4.11 Implementation

Implementing the fatigue policy recommendations as above will require:

- Updates to systems and processes for the NHVR and enforcement officers
- Education and communication of key changes with industry
- Training of enforcement officers.

A summary of key actions for implementation is provided in the table below:

**Table 6. Fatigue management changes implementation actions**

| | |
|---|---|
| **Updates to systems and processes** | ▪ Developing and printing a revised WWD by the NHVR (to be introduced once current WWD stock is exhausted)<br>▪ Confirming a low-burden pathway for implementing the formal education option.<br>▪ System updates to accommodate new offence codes across police and jurisdictional systems.<br>▪ Updates to operating procedures for enforcement officers. |
| **Industry education and communication** | ▪ NHVR to develop guidance material for industry to support release of the updated WWD.<br>▪ NHVR to communicate key legislative changes. |
| **Training of enforcement officers** | ▪ NHVR to communicate legislative changes, and changes to the WWD to police, AOs and participating state and territory jurisdictions.<br>▪ NHVR to offer training to police, AO and jurisdiction as to how to use new systems and processes, either via online modules or an in-person training session. |

It is anticipated that the fatigue management changes will be implemented through a phased rollout approach with a phase of preparation for the new enforcement practices and communication of changes, followed by a period of trial and feedback.

See chapter 7 for details of how these reforms will be evaluated.

# 5 Access

**Key points**

- The purpose of this chapter is to outline the regulatory impact of policy options proposed in the Consultation RIS (2023) to improve access arrangements for heavy vehicles under the HVNL, analyse impacts and present a set of recommendations to ministers of reforms that should be progressed.
- Based upon the findings of consultation and analysis conducted as part of the development of this Decision RIS, several reforms are recommended for progression.

## 5.1 Purpose of this chapter

This chapter describes the suite of policy options and the regulatory impact of the options proposed in the Consultation RIS (2023) to improve access arrangements for heavy vehicles by reducing administrative burden and productivity impacts. Policy options considered in the Consultation RIS (2023) include changes to the following prescribed mass and dimension vehicle limits:

- Options for an up to five per cent increase in general mass limits allowed for all heavy vehicles to establish a new general mass limit (GML). The new GML will effectively replace the current Concession Mass Limits (CML). This change will result in only two mass limits under the HVNL: a new GML and Higher Mass Limits (HML). The options consider the implications of potential mass increases for vehicles meeting ADR 80/04 (Euro VI) emissions control standards.
- Options for increasing the prescribed height limit of vehicles from 4.3 m to 4.6 m.
- Options for increasing the prescribed length limit of vehicles currently limited to 19 m to 20 m.

It is noted that increasing GML, height and length prescribed limits will benefit general access vehicles, though strictly speaking these prescribed limits also apply to some vehicles with restricted access. For simplicity, this report is focused on the benefits to general access vehicles. The policy intent of each option is summarised below, followed by an overview of stakeholder feedback.

Following consultation and additional analysis, recommended access policy reforms are presented in Section 5.6.

## 5.2 Approach to analysis

The analysis of the access options proposed in the Consultation RIS (2023) has been refined where possible in response to stakeholder feedback.

Parties impacted by this reform are consistent with those identified in the Consultation RIS (2023). To assess the impacts of the reform options it is important to identify the individuals and groups affected by the reform. Table 7 outlines the key groups and individuals that are likely to be affected by the reform options.

## Table 7. Groups impacted by RIS impact category

| Consultation RIS (2023) Impact Category | | Group impacted |
|---|---|---|
| a) | Public Safety | ▪ Heavy vehicle drivers and other road users (who may be killed or injured) including vulnerable road users such as cyclists, motorcyclists and pedestrians<br>▪ Chain of responsibility parties<br>▪ General public (through wider costs of crashes)<br>▪ Public and private providers of transport, emergency response, health, infrastructure, and insurance services (secondary beneficiaries)<br>▪ Enforcement agencies, including police and the NHVR. |
| b) | Productivity and Efficiency | ▪ Heavy vehicle drivers, operators, and businesses<br>▪ Off-road chain of responsibility parties (reduced costs of moving goods)<br>▪ General public (through reduced costs of moving goods). |
| c) | Regulatory burden to industry | ▪ Heavy vehicle drivers, operators, and businesses<br>▪ Off-road chain of responsibility parties. |
| d) | Regulatory costs to government | ▪ Australian government<br>▪ State and territory governments<br>▪ Local government<br>▪ Enforcement agencies, including police and the NHVR. |
| e) | Asset management | ▪ State and territory governments<br>▪ Local governments and other road managers<br>▪ Heavy vehicle drivers, operators, and businesses<br>▪ the Australian community. |
| f) | Flexibility and responsiveness | ▪ Heavy vehicle drivers, operators, and businesses<br>▪ Off-road chain of responsibility parties<br>▪ Vehicle suppliers<br>▪ Vehicle safety (and other) technology suppliers. |

The benefits and costs of each of the options in the Consultation RIS (2023) were assessed using qualitative and quantitative analysis, and this approach has been applied in the Decision RIS.

The qualitative analysis reported in the Consultation RIS (2023), using MCA analysis, is applied again in this Decision RIS.

A summary of costs and benefits considered in the quantitative analysis are shown in Table 8 below. Additional quantitative analysis has been conducted from the analysis presented in the Consultation RIS (2023) to further quantify the potential impact of proposed options where possible and some case studies have been developed. These costs and benefits are presented here in summary and described in detail in relevant sections of this Decision RIS below.

**Table 8. Costs and benefits considered in the quantitative analysis**

| | **Consultation RIS** (2023) **Impact Category** | | | | | |
|---|---|---|---|---|---|---|
| **Reform area** | **Public Safety** | **Productivity and Efficiency** | **Regulatory burden to industry** | **Regulatory costs to government** | **Asset management** | **Flexibility and responsiveness** |
| Changes to general access limits to increase mass | Changes in crashes | Changes in vehicle operating costs, travel time, and externalities and emissions | - | - | Changes in road wear costs | - |
| Changes to general access limits to increase height | Case study investigating the potential impact on height constrained bridges | Case study investigating potential diversions caused by height constrained bridges | Changes in costs associated with permit applications | - | - | - |
| Changes to general access limits to increase length | Case study investigating the potential for changes in crashes as a result of productivity benefits of a longer trailer.<br>Case study investigating the potential fleet impacted by uptake of a longer sleeper berth | Case study investigating the potential for changes in vehicle operating costs, travel time, and externalities and emissions, as a result of a productivity benefits of a longer trailer. | Changes in costs associated with permit applications | - | - | - |

## 5.3 Options 4a and 4b: Increase general access vehicle mass limits

Two policy options were proposed in the Consultation RIS (2023) to increase general access vehicle mass limits, compared to the Base Case:

- **Base Case 4**: Current state whereby access to additional mass allowance beyond GML requires operators to, e.g., seek accreditation for a scheme, or authorisation by notice or permits, or PBS.
- **Option 4a**: Establish a new GML in the HVNL by increasing the current GML by up to 5 per cent to match the current CML. An additional mass allowance is provided for ADR 80/04 (Euro VI) vehicles (steer and/or drive axles) to account for an increase in the prime mover/truck tare mass, but this doesn't translate to a GVM limit increase above current CML.
- **Option 4b**: Establish a new GML in the HVNL by increasing the current GML by up to five per cent to match the current CML. An additional mass allowance is provided for ADR 80/04 (Euro VI) vehicles for their higher tare weights, which translates to an up to 5 per cent increase to GVM, so there is no productivity loss for Euro VI vehicles.

**ADR 80/04 (Euro VI) Compliant Vehicles**

The current minimum noxious emission standard for new heavy vehicles in Australia is based on the international standard commonly known as Euro V. However, the Australian Government has recently adopted a new Australian Design Rule 80/04, mandating Euro VI standards for all newly approved heavy vehicle models supplied from 1 November 2024, and all existing models supplied from 1 November 2025, to reduce noxious emissions from the road transport sector.[24]

Newer trucks that meet Euro VI standards are heavier than equivalent Euro V trucks due to the additional mass and space required by the upgraded emission systems, which may include batteries or storage tanks (e.g., natural gas, hydrogen, diesel emission fluid e.g., AdBlue). Under current general mass limits, this higher tare weight (unladen weight) may reduce the amount of freight that heavy vehicles can legally carry, which impacts on productivity and profitability of advanced emissions vehicles.[25, 26]

Euro VI compliant vehicles include zero emission vehicles such as battery electric and hydrogen fuel cell vehicles.

Proposals to improve access for heavy vehicles by raising mass allowances for general access vehicles received divergent views from industry versus participating state and

[24] See media release October 2022 "Cleaner emissions standards for trucks and buses", online at: https://minister.infrastructure.gov.au/c-king/media-release/cleaner-emissions-standards-trucks-and-buses.

[25] Department of Infrastructure, Transport, Regional Development, Communications and the Arts (2022), *Questions and answers on the new ADR 80/04*

[26] NHVR (2020), Vehicle Safety and Environmental Technology Uptake Plan, Truck Industry Council Budget Submission 2019/20

territory jurisdictions and local councils responsible for managing and maintaining the road asset.

Preliminary impact analysis was included in the Consultation RIS (2023) to highlight the potential impacts, costs and benefits of the proposal. This analysis has been further developed as part of this Decision RIS, and stakeholder feedback, impact analysis, and the NTC's response is presented below.

### 5.3.1 Stakeholder feedback

Industry stakeholders generally supported an increase in mass limits. Several stakeholders, particularly smaller industry players, provided support for both options. These stakeholders consider the proposal to be a simplification of current mass allowances and suggest that the relative increases in heavy vehicle mass are of little impact and should be adopted to reduce the frequency of heavy vehicle movements.

Several stakeholders, including those from peak heavy vehicle industry bodies and smaller industry groups, provided explicit support for either Option 4a or Option 4b. Option 4b was generally better supported than 4a, with stakeholders pointing to key benefits, including delivery of a strong productivity and efficiency benefit for industry, and simplification of current rules while providing industry with the opportunity to transition to a more carbon neutral environment. Some stakeholders provided support for Option 4a but noted that it was not their preferred option. One heavy vehicle industry peak body emphasised that if Option 4b was adopted, an industry-wide productivity improvement would be maintained as the fleet is upgraded, by contrast the productivity benefits of Option 4a would dwindle over time.

Transport agencies and local government road managers raised several issues with the proposal, particularly the costs associated with increased road infrastructure wear, which includes pavements and structures (e.g., bridges and culverts). These issues included:

- Increased road and infrastructure damage due to the operation of heavier vehicles across the network, and associated costs
- Complication of existing routes and network access arrangements
- Removing CML downplays the importance of auditing and assurance for safety and would make existing investment in mass management modules obsolete overnight
- Any change to mass limits that increase pavement wear could be reflected in higher road user charges to registered operators.

Two participating state and territory jurisdictions raised concerns that the analysis presented in the Consultation RIS (2023) underestimated the costs to road managers of the increased pavement wear, arguing that the methodology used was inadequate for assessing the impact, and called for a cost-benefit analysis of the options.

Some specific jurisdictional comments were that:

- The analysis was conducted on aggregate effects across all HVNL-participating jurisdictions and did not specify the costs and benefits as they applied to each jurisdiction.

It was important that the analysis incorporated the effects of mass increases associated with heavier ADR 80/04 (Euro VI) vehicles. (i.e., principally on the steer axle) and that the complexity of incorporating Euro VI increases was considered. Some participating state and territory jurisdictions requested that the Decision RIS address concerns with how existing

mechanisms for recovering increased costs resulting from implementing the proposed mass increase(s) may result in capital shortfalls for road managers.

Other jurisdictional stakeholders provided conditional support for one or more of the proposals; however, they also called for further analysis to be undertaken to understand the safety risk of increased mass allowances, relative to the productivity and environmental benefits expected to be achieved.

Local government representatives were not supportive of the proposals unless council road managers could be guaranteed that the additional cost impacts of adopting either Option 4a or Option 4b would be offset through the provision of additional road funding to local government.

Comparatively, some police stakeholders provided strong negative feedback for changes to mass allowances for general access vehicles. This view was shared by rail industry groups, highlighting the potential for increased safety risk where higher mass heavy vehicles may interact with trains at level crossings.

The NHVR provided support for Option 4b over Option 4a on the basis that it does not disadvantage safer and more efficient vehicles. The NHVR agreed with the findings in the Consultation RIS (2023). The NHVR highlighted that in allowing vehicles to carry greater mass, this reform would potentially reduce the total number of journeys a vehicle would take, reducing the number of vehicles on the road network, which, in turn, would be likely to reduce risk and increase safety.

### 5.3.2 NTC response

Policy developments in allowances for ADR 80/04 (Euro VI) vehicle mass since the release of the Consultation RIS (2023) need to be taken into account for the Decision RIS. Ministers' commitment to mandate Euro VI for new vehicles has been followed by recent approval to amend the HVNL (*Heavy Vehicle (Mass, Dimension and Loading) National Amendment (Emission Control) Regulation 2024)*, providing for an allowance of up to 0.5 tonnes associated with Euro VI, to accommodate the additional mass from the emissions equipment. This is effectively a new Euro VI GML and therefore a new flow-on CML limit for Euro VI vehicles. To account for this new development in the Decision RIS, the base case has been updated to be more nuanced, in that the impact of the Euro VI 0.5 tonne allowance at GML is incorporated into the base case (Option 4). Options 4a and 4b remain unchanged. Options 4 is now defined as:

- **Base Case 4**: Current state whereby access to additional mass allowance beyond GML requires operators to e.g. seek accreditation for a scheme, or authorisation by notice or permits, or PBS. It is assumed that an additional mass allowance is provided for ADR 80/04 (Euro VI) vehicles (steer and/ or drive axles) to account for an increase in the prime mover/ truck tare mass.

It is acknowledged that the additional 0.5 tonne allowance associated with Euro VI will increase wear to pavements and structures (e.g., bridges and culverts) and that the cost of this wear is not captured in this analysis. Further details on this have been provided in Section 5.3.3. Some participating states and territory jurisdictions expressed concern that removing a condition for operators to be accredited with the NHVAS mass management module at current CML would likely reduce safety and mass compliance. It is unclear whether, or to what extent, any such adverse outcomes would result. Many, if not most operators are accredited for other reasons – particularly for access to Higher Mass Limits. They would likely remain accredited and would be required to comply with accreditation rules

– even when operating at GML. While there would almost inevitably be some degree of non-compliance with the proposed increased mass limits, it is reasonable to conclude this would be at a similar rate to that which occurs under the current GML.

Considering stakeholder feedback on proposals to increase mass presented in the Consultation RIS (2023), the qualitative impact analysis is considered adequate to reflect the impacts with minor improvements, as shown below (Section 5.3.3).

For the quantitative impact analysis, several enhancements have been made to better understand the potential impacts of the proposed changes, as called for by stakeholders in submissions to the Consultation RIS (2023). Key refinements have been incorporated into the quantitative mass analysis to better represent potential impacts, and to align with feedback received from stakeholders. Key refinements include:

- A more targeted approach to define the impacted fleet – In the Consultation RIS (2023), it was assumed that all mass constrained rigid and articulated trucks will be impacted. Further development and definition of the options has allowed refinement which includes applying the analysis to "representative truck types" to more accurately calculate how the options will impact different vehicle cohorts. This has resulted in reducing the size of the impacted vehicle fleet, which in turn has reduced the magnitude of the costs and benefits of the options, as compared to the Consultation RIS (2023) analysis. These truck types are detailed in Section 5.3.4.
- A more nuanced application of changes in mass limits for representative truck types as a result of the proposals – In the Consultation RIS (2023), it was assumed that all impacted vehicles would benefit from the maximum allowable increase in mass limits (a 5 per cent increase), with the weight of Euro VI technology accounting for half of this increase in Options 4a and 4b. Stakeholders recommended including details on axle configurations and groupings to better define the changes to mass limits in the analysis. This has been reflected in this Decision RIS through a refinement of this approach, with the most common axle configuration being defined for each selected heavy vehicle combination, and an exact increase in mass being defined for each axle group and consequently the overall vehicle. Nuance related to mass limit caps mandated by the Heavy Vehicle (Mass, Dimension and Loading) National Regulation Schedule 2 has been reflected in the analysis.[27] This targeted application of mass increases has resulted in a further reduction in the magnitude of costs and benefits as compared to the Consultation RIS (2023) analysis. Further details on the exact changes in mass can be found in 5.3.4.
- Refinement to road damage calculations – Due to the lack of available information on the impact on road wear associated with the increase in mass limits, in the Consultation RIS (2023) a weighted cents/tonne assumption was tested based upon a simplified scaled analysis. For road damage, the established study parameter was that all vehicles would be 1t heavier in Option 4a and 1.5t heavier in Option 4b. Consultation on this approach with stakeholders highlighted that road wear was underestimated. In the Decision RIS, an alternative approach has been taken to attempt a more accurate road wear costs

[27] The CML mass of heavy vehicle must not be more than -
(a)if the maximum mass permitted for the heavy vehicle under the general mass limits is 55t or less—1t more than the maximum mass permitted for the heavy vehicle under the general mass limits; or
(b)if the maximum mass permitted for the heavy vehicle under the general mass limits is more than 5]5t—2t more than the maximum mass permitted for the heavy vehicle under the general mass limits

estimation. Transport for NSW (TfNSW) road wear parameters have been used in the base case (Option 4) as in the Consultation RIS (2023). However, these parameters have been proportionally scaled up and adjusted to account for the heavier vehicles in Options 4a and 4b. These adjustments have been informed by the NHVR Pavement Impact Comparison Calculator which was published post Consultation RIS (2023) publication. It is noted that the use of the calculator has been to provide high-level percentage increases, without accounting for detailed road variables. As compared to the Consultation RIS (2023), this refinement in road wear calculations has resulted in an increase in the magnitude of road wear costs (as compared to the benefits).

Further details on the above refinements, approach, and results are presented in the sections below.

### 5.3.3 Qualitative impact analysis

Qualitative multi-criteria analysis conducted to assess Options 4a and 4b in the Consultation RIS (2023) concluded that the proposal had the potential for improved productivity as a result of increased mass limits, particularly for those operators not currently accessing CML. Further, based on stakeholder feedback, the productivity gains for Option 4a would decline over time as the proportion of the ADR 80/04 (Euro VI) fleet increased, and by comparison Option 4b would deliver sustained productivity benefit.

It was determined that increasing GML to current CML levels could result in cost savings for operators relating to statutory fees, NHVAS auditing services, and complying to other accreditation standards. Public safety was also qualitatively investigated as a potential impact of operating heavier vehicles under general access.

A summary table of the qualitative analysis is provided below. See Appendix B for a description of the approach to the MCA and an overview of impact categories.

**Table 9. Summary of qualitative assessment of the impacts of changes to GML against Base Case 4**

| Overall Impact | Public Safety | Efficiency and Productivity | Regulatory burden to industry | Regulatory Costs to government | Asset Management | Flexibility and responsiveness |
|---|---|---|---|---|---|---|
| **Option 4a New GML effectively replaces CML. No additional mass allowance is provided for Euro VI vehicles.** | | | | | | |
| **Improvement.**<br><br>General freight vehicles overall benefits.<br><br>Benefits would be greater for Euro VI vehicles. | **Improvement**. Increased mass may have negligible impacts in most cases and in some cases may contribute to greater risk (e.g. loads with a higher centre of | **Improvement**. Proposed options are assumed to increase take-up of higher general mass limits (i.e. equivalent to the current CML). There may be lower administrative costs, which | **Improvement**. Reduced regulatory requirements for operators currently accessing concessional mass limits. | **Improvement**. Reduced number of operators in the (mass) accreditation scheme. | **Negative Impact**. Increased costs of road wear from assumed greater uptake of concessional mass limits. However, if there are fewer trips then this may | **Improvement**. Removal of accreditation requirements simplifies and improves flexibility for CML operators. |

| | | | | | | |
|---|---|---|---|---|---|---|
| | gravity), but it is likely that this would be offset by reductions in vehicle movements. | improves efficiencies.<br><br>Would deliver productivity gains, but these would diminish over time as the fleet upgrades to Euro VI. | | | reduce the impacts. If operators leave the accreditation scheme, there is a potential for greater variability in loading. | |
| **Option 4b New GML effectively replaces CML. The new GML allows for Euro VI increased tare mass.** | | | | | | |
| **Improvement.**<br><br>General freight vehicles overall benefits.<br><br>Benefits would be greater for Euro VI vehicles. | **Improvement**. Increased mass may have negligible impacts in most cases and in some cases may contribute to greater risk (e.g. loads with a higher centre of gravity), but it is assumed that this would be offset by reductions in vehicle movements. | **Improvement**. Proposed options are assumed to increase take-up of higher general mass limits (i.e. equivalent to the current CML). There may be lower administrative costs, which improve efficiencies.<br><br>Improvement sustained over time as the fleet upgrades to Euro VI. | **Improvement**. Reduced regulatory requirements for operators currently accessing concessional mass limits. | **Improvement**. Reduced number of operators in the (mass) accreditation scheme. | **Negative Impact**. Increased costs of road wear from assumed greater uptake of concessional mass limits. However, if there are fewer trips then this may reduce the impacts. If operators leave the accreditation scheme, there is a potential for greater variability in loading. | **Improvement**. Removal of accreditation requirements simplifies and improves flexibility for CML operators. |

### 5.3.4 Quantitative impact analysis

As with the Consultation RIS (2023), the **primary benefits** being investigated as part of the quantitative analysis in the impact analysis of Options 4a and 4b relate to the potential increase in productivity for operators that currently operate under GML.

The **primary costs** relate to the impact on road damage because of increased axle group mass limits. It is noted that regulatory requirements currently associated with those operating at CML or HML as part of the National Heavy Vehicle Accreditation Scheme (NHVAS) may restrict take-up of these increased mass limits. These impacts are assessed as part of sensitivity testing and can be seen inTable 14 Table 14.

**Defining impacted fleet and changes to allowable mass for each truck type under Option 4a and 4b, and vehicle kilometres travelled.**

In taking a more targeted approach towards defining the impacted fleet, a series of truck types along with their axle configurations were identified. These were identified as vehicles that exist in the largest numbers and are likely to most benefit from the mass proposals. The combinations include:

- Rigid trucks with a tandem drive axle

- Prime movers towing tri-axle semi-trailers

- 26 m B-doubles with a tri-axle trailers

- A-double road trains with tri-axle trailers, and a tandem-axle dolly

For each of the above truck types and combinations, an exact increase in mass has been defined for each axle group and consequently the overall vehicle. Nuance related to mass limit caps mandated by the Heavy Vehicle (Mass, Dimension and Loading) National Regulation Schedule 2 has been reflected in the analysis.[28] The purpose of selecting these representative combinations is to reflect the different impacts the options will have on a spectrum of vehicles depending on the vehicle size, mass and axle groups. The additional mass impacting productivity and road damage as a result of the increased mass limits under the current status quo and each project option is detailed in the table below, using semi-trailers as an example:

**Table 10. Additional mass impacting productivity and road damage, for a semi-trailer**

| Option | Total mass (t) | Additional mass impacting productivity (t) | Additional mass impacting road damage (t) | CML mass as a percentage of GML | Euro VI mass as a percentage of GML |
|---|---|---|---|---|---|
| Semi-trailers | | | | | |
| 4 (Euro VI included in GML) | 43.5 | n/a | n/a | n/a | n/a |
| 4a (Euro VI included in new GML (CML)) | 44.0 | 0.5 | 0.5 | 2.33% | n/a |

[28] The CML mass of heavy vehicle must not be more than - (a) if the maximum mass permitted for the heavy vehicle under the general mass limits is 55t or less—1t more than the maximum mass permitted for the heavy vehicle under the general mass limits; or (b) if the maximum mass permitted for the heavy vehicle under the general mass limits is more than 55t—2t more than the maximum mass permitted for the heavy vehicle under the general mass limits. Mass has not been increased past these limits, even if the sum of individual group limits are greater than limits allowed as per this schedule.

| | | | | | |
|---|---|---|---|---|---|
| 4b (Euro VI provision) | 44.5 | 1.0 | 1.0 | 2.33% | 1.16% |

In the above example, the semi-trailer would get an additional 0.5 tonne of weight included in the new GML (Option 4), which means in Option 4a, half of the additional tonne provided by the higher GML will taken up by Euro VI. The truck will therefore not be able to use the total additional mass offered for productivity by the new GML under Option 4a. Under Option 4b, however, the truck will be able to utilise the full tonne offered under the new GML due to the provision available for the mass associated with Euro VI technology. This means that Option 4b will have a greater impact on road damage as compared to Option 4a, due to the vehicle being 0.5 tonne heavier (on account of the Euro VI provision).

The impacted Vehicle Kilometres Travelled (VKT) for the above truck combinations were sourced from the Survey of Motor Vehicle Use, 2020 (Australian Bureau of Statistics) (SMVU). In addition to identifying representative truck combinations, the analysis also targets select commodities that were identified as being mass constrained and therefore would benefit from the proposal. The rationale behind this approach is that under Base Case 4, mass constrained commodities would reach their mass limit before volumetric limits, and therefore could take on more payload if they were presented with increased axle group mass limits in the project case. The commodities available in the SMVU that were identified as mass constrained include:

- Food and live animals
- Beverages and tobacco
- Crude materials inedible, except fuel
- Mineral fuels, lubricants and related materials
- Animal and vegetable oils, fats and waxes
- Chemicals and related products not elsewhere specified.

The commodities above identified to be mass constrained and expected to be impacted by the mass options make up approximately 20 per cent of the total VKTs travelled by the reference vehicles. Filtering the VKT data available in the SMVU by the truck combinations and commodities identified above results in the fleet and associated VKT that is likely to be impacted by the mass proposals. It is noted that the SMVU reports on vehicles at a point in time for the year 2020. The VKT data has therefore been escalated to 2024 figures using assumptions detailed in the list of assumptions below. This results in the number of VKT by the impacted fleet in Base Case 4.

This analysis seeks to calculate the magnitude of the potential impact on VKT as trucks are allowed to carry higher payloads as a result of increased mass limits under Options 4a and 4b. It is assumed that as trucks get heavier and overall freight throughput remains the same, fewer trips are required which translates to a reduction in VKT. The percentage increase associated with the additional mass provided for productivity is used to adjust and scale down the VKT by the impacted fleet in both project case options.

**Assumptions and limitations**

The following general assumptions underpin the analysis:

- Assessing the impacts of changes in general mass limits requires consideration of the road freight task that is mass constrained – i.e., freight which may use all mass allowable

for the vehicle/trailer but not necessarily the volumetric capacity. While studies and surveys are periodically undertaken for specific supply chains, there is limited general data available on road freight movements and mass utilisation of vehicles. Commodities that are assumed to be mass constrained have been determined through consultation

- Determining the uptake of mass concessions is challenging with limited data availability. Although impacted fleet assumptions have been refined, due to there not being any information on the likely uptake of the higher mass, it is assumed that each vehicle type takes on the maximum allowable weight under each option. In other words, it is assumed that the entire impacted fleet operates at GML in Base Case 4 and takes advantage of the increased mass limits associated with CML in Option 4a and 4b. Allowances for participation in mass modules and management schemes is accounted for through sensitivity testing as seen in Table 14.
- It is assumed that overall freight throughput remains constant in Base Case 4 and Options 4a and 4b.
- It is assumed that the percentage increase in the mass of a vehicle directly translates to a percentage decrease in laden vehicle kilometres required to transport a fixed volume of freight.
- Only data on mass constrained laden trips is used, which implicitly assumes that every VKT is a part of a full trip, and that partially loaded trips are not impacted. In reality this is likely not the case.
- The state of registration of vehicles is used to apportion data to each state. While this does not accurately account for trucks operating out of their state of registration, these volumes are expected to be marginal.
- As previously mentioned, there has been further progress on the introduction of Euro VI policy since the Consultation RIS (2023) was developed. Ministers have now approved the *Heavy Vehicle (Mass, Dimension and Loading) National Amendment (Emission Control) Regulation 2024.* This impact analysis does not consider the impacts of Euro VI vehicles in terms of safety and environmental benefits as these have been covered by separate reforms[29] and are not the focus of this Decision RIS. This Decision RIS investigates the impacts of increased mass allowance proposed by Mr Kanofski and in the Consultation RIS (2023), it is complicated by the introduction of Euro VI vehicles, which by virtue of increased mass on the steer axle for equipment have a productivity disadvantage to other vehicles with higher emissions. To assist with policy decision-making on options to increase mass allowances, the analysis investigates the impact Euro VI technology has on vehicle mass limits, and therefore impacts on productivity gains. Given that the technology's environmental impacts are not being quantified, and the fact that Euro VI policies have received ministerial approval since the publication of the Consultation RIS (2023), the analysis employs a simplifying assumption of including the mass of Euro VI onto vehicles in Base Case 4. This is for the purposes of the analysis only and does not imply a change in option definition. This effectively means that the incremental impact of Euro VI on environmental benefits, and the incremental impact of the technology's mass on road damage, is not investigated in this analysis;

[29] See Department of Infrastructure, Transport, Regional Development, Communications and the Arts website for further information https://www.infrastructure.gov.au/infrastructure-transport-vehicles/vehicles/vehicle-safety-environment/questions-and-answers-new-adr-8004

however, the impact of Euro VI on mass limits, and the resulting impact on productivity and road damage, is being investigated.

- The analysis assumes that 100 per cent of the impacted fleet complies with Euro VI standards in the analysis year. In practice, it would be expected that there would be a ramp-up or turnover period where Euro VI compliant vehicles replace older vehicles across the fleet. For Option 4a, this would result in productivity likely reducing over several years as Euro VI standards are slowly incorporated into the fleet, and flat line when a 100 per cent of the fleet is compliant, as the technology will constrain the mass allowed under GML and CML. However, in the uptake years leading to 100 per cent Euro VI compliance, all the current and older vehicles (Euro V and below) will incur the full benefit of CML in Option 4a. This benefit is not quantified because the uptake and environmental benefits associated with Euro VI are out of scope of this Decision RIS. Given that this analysis aims to provide an indicative magnitude of the extent of annual potential impacts of the reform, assuming a 100 per cent uptake allows the analysis to estimate a theoretical steady-state annual impact of the reform.
- Euro VI additional emissions systems/technology is assumed to weigh 0.5 tonnes.
- VKT data from 2020 has been escalated at a growth rate of 1.8 per cent per annum[30] to estimate the freight task for 2024, assuming that growth in kilometres travelled is directly proportional to the growth in the size of freight throughput.
- There are challenges in estimating the costs of increased road pavement wear which can be specifically attributed to the delta increase in heavier vehicles, because there are vehicles currently operating at these higher masses under various regulatory arrangements including the CML. Further, pavement wear will be impacted differently based on the axle group that will incur the additional mass. Road managers may be impacted by increased mass of heavy vehicles on the general access road network, but this may be offset to some degree by reduced numbers of heavy vehicle movements.
- In the absence of robust data to inform a targeted appraisal of the reforms, the theoretical nature of the impact analysis should be noted. While the assumptions employed might not exactly reflect the conditions observed in practice, the use of simplified parameters helps in providing an indicative monetised value of the costs incurred in Base Case 4, and the potential for improvement through the reform.
- Due to the general assumptions listed above, the results are limited to an annual estimate, with a price year of 2024. This avoids uncertainties involved in forecasting road wear costs and productivity benefits. It is noted that all costs and benefits are expected to occur on an annual basis.

In addition to the general assumptions detailed above there are a series of parameter values used in the analysis. Parameters underpinning the **benefits calculations** are provided in Table 11.

**Table 11. Key parameters used for benefit calculations**

| Key parameter | Core analysis value | Source |
|---|---|---|
| Travel time costs savings assumptions | | |
| Average speed | 80km/hr | Study parameter |

[30] BITRE, Australian aggregate freight forecasts – 2022 update (2022).

| Key parameter | Core analysis value | Source |
|---|---|---|
| Travel time value – Rigid trucks | $43.10 per vehicle hr | Calculated values based on occupancy rates and ATAP PV3 Road Parameter Values, various sources |
| Travel time value – Semi-trailers | $34.55 per vehicle hr | |
| Travel time value – B-doubles | $35.06 per vehicle hr | |
| Travel time value – Road trains | $35.06 per vehicle hr | |
| Vehicle operating costs (VOC) savings assumptions | | |
| VOC | $2.52 / vkt | Calculated parameter using average speed and freeway model coefficients sourced from Austroads |
| Emissions and externalities cost savings assumptions | | |
| Externalities unit cost | $161.96 / 1000 vkt | Calculated parameter using ATAP PV5 Environmental Parameter Values |
| Emissions unit cost | $67.36 / 1000 vkt | |
| Crash cost savings assumptions | | |
| Average crash rates - fatal | 0.9 crashes / 100M vkt | Calculated crash rates using crash data received from Dept. of Transport and Main Roads (QLD), Dept. of Infrastructure and Transport (SA), the Heavy Vehicles Crashes dashboard (NSW), and DataVic Road Crash Data (DataVic). |
| Average crash rates – serious injury | 4.96 crashes / 100M vkt | |
| Average crash rates – hospitalized injury | 7.28 crashes / 100M vkt | |
| Average crash rates – minor injury | 5.38 crashes / 100M vkt | |
| Value of Statistical Life (VSL) | $5.4 million / death | Value of Statistical Life Guidance Note, Office of Impact Assessment |
| Value of Serious Injury (VSI) | $ 607,355.52 / crash | ATAP, PV2 Road Transport, Crash Costs, WTP approach |
| Value of Hospitalized Injuries (VHI) | $ 117,885.37 / crash | |
| Value of Minor Injuries | $ 44,920.94 / crash | |

Conversely, a series of road damage parameters were used for cost calculations. TfNSW road damage parameters have been used in the base case (Option 4), and these parameters have been proportionally scaled up and adjusted to account for the heavier vehicles in the project cases (Options 4a and 4b). These adjustments have been informed by the NHVR Pavement Impact Comparison Calculator which was published post Consultation RIS (2023) publication. For each truck combination, weight specifications were entered into the Calculator to determine the percentage increase in road damage under Base Case 4 and Options 4a and 4b. These percentage increases were then used to escalate the TfNSW road damage parameters to calculate road damage costs in Options 4a and 4b. Given that TfNSW parameters are used across Australian jurisdictions to inform public investment appraisals, they were considered the most appropriate parameters to use in this study. TfNSW's road damage unit costs are calculated using a methodology based on research by the NTC, and include road expenditure data for the following categories:

- Road servicing and operating
- Road pavement and shoulder construction
- Bridge maintenance and rehabilitation
- Road rehabilitation
- Road safety and traffic management
- Asset extension and improvements.

It is noted that consultation was carried out to determine a more detailed impact of the proposals on road damage and asset maintenance costs; however, due to limited access to work done in this area by participating state and territory jurisdictions, and scope limitations of this Decision RIS, the escalation approach was deemed most appropriate due to the use of accepted TfNSW parameters and an escalation method rooted in reviewed pavement impact studies.

Road damage parameters underpinning the cost calculations are provided in Table 12.

**Table 12. Key road damage unit cost parameters used for cost calculations (cents per vkt)**

| Vehicle type | 4 | 4a | 4b |
|---|---|---|---|
| Rigid truck | 11.95 | 16.30 | 16.96 |
| Semi-trailer | 22.90 | 30.16 | 30.98 |
| B-double | 29.91 | 39.14 | 40.08 |
| Road train | 33.66 | 34.69 | 35.32 |

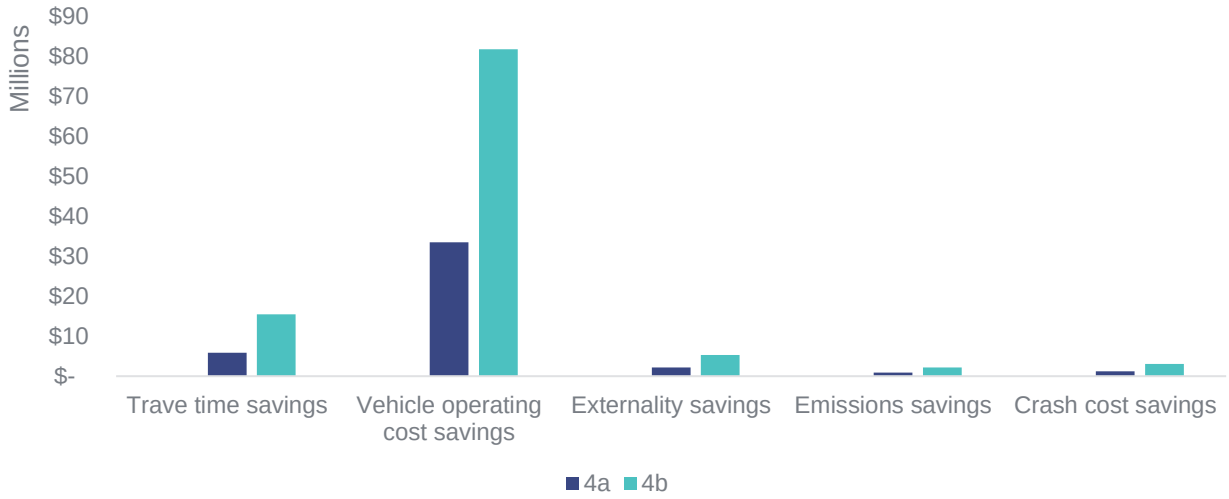
### Benefits quantified

This analysis quantifies benefits realised as a result of increased productivity and fewer kilometres travelled due to higher general mass limits. The main benefit streams include:

- Travel time savings – benefits provided by reductions in the amount of time spent on travel.
- Vehicle operating cost (VOC) savings – benefits provided by reductions in the cost of operating heavy vehicles. These costs include vehicle-based components such as fuel, tyres, oil, maintenance, etc. and take road-based factors into consideration as well, such as gradient, speed, curvature or pavement quality.
- Externality and emissions savings – benefits associated with reductions in the environmental impact of reduced vehicle kilometres travelled. Externality costs include air, noise, soil and water, and nature and landscape pollution, along with biodiversity and urban effects. Emissions costs include climate change and well-to-tank emissions.
- Crash cost savings – benefits associated with reduced estimated crashes as a result of reduced vehicle kilometres travelled.

Figure 1 presents an overview of the estimated productivity benefits associated with the two mass limit options.

**Figure 1. Productivity benefits schedule associated with increasing mass limits**

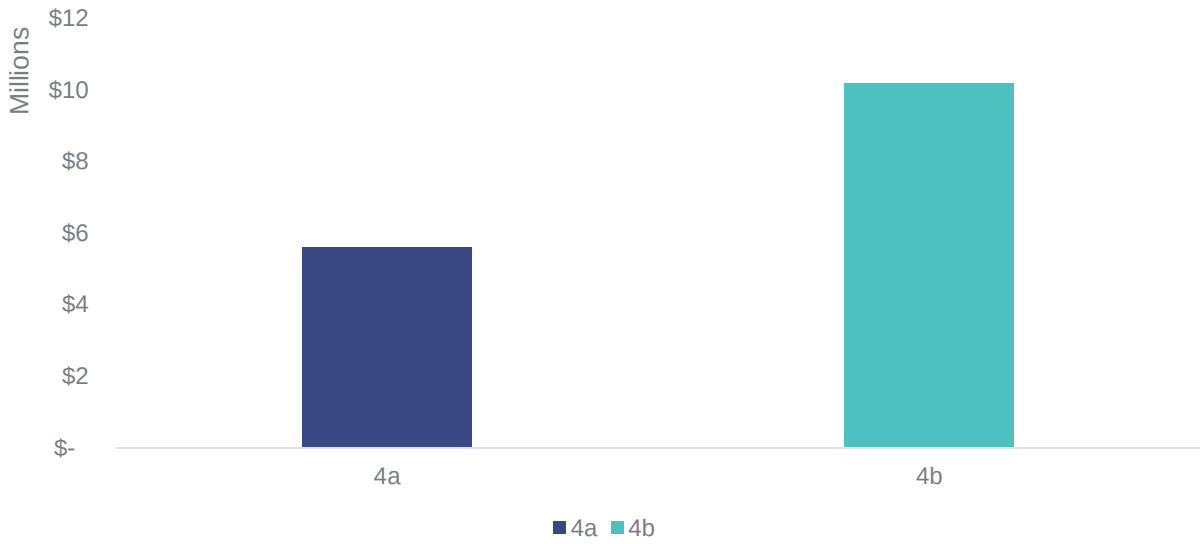



VOC savings are comprised of the largest share of potential economic benefits associated with changes to the mass limits, followed by travel time savings. This is attributed to the fact that the VOC parameters are the largest per VKT parameters in magnitude as compared to others used in the analysis. This is due to the benefit stream encompassing a wide variety of expensive vehicle-based components. Furthermore, the fact that freight vehicles tend to be lower occupancy vehicles influences the relatively lower travel time savings as compared to the VOC savings. It is acknowledged that VOC savings could be offset by an increase in road maintenance costs as a result of increased mass; however, this offsetting impact has not been adjusted onto the savings themselves. Road damage costs are calculated and reported separately in the next section.

### Road wear costs

Road wear caused by the increased mass limits is identified as the main cost impact of CML replacing GML. Although there are road wear savings associated with fewer vehicle kilometres travelled, the impact of the additional mass outweighs these savings.

**Figure 2. Total incremental road wear costs associated with increasing mass limits**




As shown in Figure 2, road wear costs associated with Option 4b are approximately 82 per cent higher than those associated with Option 4a. This can be attributed to Option 4b including an allowance for Euro VI in addition to the increase in mass associated with CML replacing GML. As noted in the assumptions, this cost profile is based on a theoretical steady state where all heavy vehicles are Euro VI compliant.

### Summary of quantitative analysis

The results of the quantitative analysis are presented using two key metrics:

- Estimated incremental road wear costs – this is the estimated increased cost impact of running heavier trucks on the freight network as a result of the new GML (replacing CML), as compared to Base Case 4.
- Estimated incremental productivity benefits – these are benefits realised as a result of increased productivity and fewer kilometres travelled due to a higher GML, as compared to the Base Case 4.

**Table 13. Summary of results (2024 dollars)**

| Option | Incremental productivity benefits ($M) | Incremental road wear costs ($M) |
|---|---|---|
| 4 | - | - |
| 4a | $ 44.7 | $ 5.6 |
| 4b | $ 107.8 | $ 10.2 |

The results in Table 13 show that there is significant potential for productivity benefits to be achieved from a new GML replacing CML, with both options resulting in estimated benefits that are significantly larger than the increase in road wear costs. This indicates that the reforms are likely to deliver economic benefits that are greater than the costs associated with damage to infrastructure due to heavier vehicles.

It is acknowledged that the absolute value of the incremental road wear costs in Table 13 is significantly less than those calculated in the Consultation RIS (2023). As discussed earlier in this chapter – that is substantially due to Ministers approving ADR 80/04 (Euro VI) mass increases in the period between the Consultation RIS (2023) and development of this Decision RIS. With that mass increase, and those costs no longer part of Options 4a and 4b, the absolute value of the estimated costs have decreased. That being said, as mentioned in early in Chapter 5.3.4, refinement of road damage cost parameters has resulted in these costs representing a higher proportion of the NPV, as compared to the benefits (i.e., the benefits to cost ratio is lower in this Decision RIS, as compared to the Consultation RIS (2023).

Option 4a results in certain vehicles (for e.g. tri-axle semi-trailers), receiving only partial benefit due to a portion of the additional mass allowed under the new higher GML being taken up by Euro VI technology. It is noted that heavy vehicles with a smaller number of axle groups could receive diminished productivity benefits if their CML limits are equal to or smaller than Euro VI mass.

Option 4b ensures that each vehicle is able to take advantage of the full mass offered at CML. The allowance of Euro VI in Option 4b is an important driver of benefits realisation as it ensures that future uptake of cleaner technology will not come at a cost of lost productivity.

It is important to note that while there is a clear potential for productivity benefits to be achieved through greater mass limits, the impact on road wear has been challenging to estimate. Although accepted parameters have been used to estimate road damage costs, a more robust jurisdiction-specific network analysis that considers pavement types, gradients, and quality could provide further clarity on the exact impact of the additional weight on road assets. For this reason, headline NPV and BCR figures are not calculated as part of this analysis to avoid misrepresenting the potential impact.

The results do not necessarily mean that these options are the most efficient way of addressing mass-related efficiencies in the freight supply chain. As mentioned above, this analysis is subject to limitations regarding data availability, with high-level assumptions made regarding the proportion of fleet impacted by the reform, vehicle type, uptake of additional available mass, and compliance with Euro VI. If uptake of the increased mass limits is lower than expected, this would lower both the benefits and costs. If the ratio of costs and benefits does not change significantly, it is likely that benefits would exceed costs even if the uptake is lower. Competitive pressure between operators is likely to drive an optimal level of uptake over time.

**Sensitivity testing**

The main results do not account for vehicles that are currently operating under CML and therefore might not incur the productivity benefits of Options 4a and 4b. This is due to a lack of accurate information on the size of this unimpacted cohort. The only data point that has been made available for this analysis is the number of current prime movers nominated in the mass modules as of 2023 – 51,286.[31] Accreditation for the mass module under the NHVAS allows vehicles increased mass at CML or HML, and in practice, the relative take-up of CML and HML across these vehicles is not known. Further, in practice the usage may be dynamic for fleet operators to adjust to different mass allowance to meet specific freight tasks. Assuming an average vehicle utilisation rate of 80 per cent, and that 30 per cent of

[31] Figure provided by the NHVR.

nominated prime movers take up the accreditation to solely operate at CML[32], an estimated 12,300 prime movers will not receive productivity benefit from the mass proposal as they are already enrolled in CML.

Assuming a weighted annual average VKT of 30,800 km[33] per prime mover, it is estimated that prime movers currently enrolled in the NHVAS mass modules for sole access to CML account for roughly 380 million VKT (around 28 per cent of the fleet impacted by Options 4a and 4b). As per the assumptions and approach used in the mass analysis, this proportion should be excluded from the impacted fleet as they will not be impacted by Options 4a and 4b.

Due to a lack of detail on how current sole CML users are distributed across truck types and mass-constrained commodities, this sensitivity analysis assumes a uniform distribution across the entire impacted fleet defined earlier in this section. This adjustment leads to the following results:

**Table 14. Summary of sensitivity results (2024 dollars)**

| Option | Incremental productivity benefits ($M) | Incremental road wear costs ($M) |
|---|---|---|
| 4 | - | - |
| 4a | $ 31.2 | $ 4.0 |
| 4b | $ 77.2 | $ 7.3 |

This sensitivity test shows that accounting for current CML operators reduces the benefits and costs due to a smaller impacted fleet; however, these reductions are proportional. The ratio between benefits and costs remains the same, and the magnitude of incremental impact decreases. This approach and its results imply that if current CML VKT are underestimated in this sensitivity, the benefits incurred will also be smaller; however, they will continue to outweigh the costs. Conversely, if CML VKT are overestimated, then benefits and costs will be larger; however, the ratio between the two will remain constant.

It is noted that there is potential for administrative savings to be realised by operators currently operating at CML. These fees include:

- **Statutory fees payable to the NHVR:** These would be fees for maintaining accreditation ($101) and per heavy vehicle ($37).[34]
- **The cost of periodically procuring the services of an NHVR-registered NHVAS auditor:** Operators must engage a NHVAS auditor, nominally once each accreditation period (two years). This cost is at prices set by the market and vary with an operator's

[32] Operators who enrol in the mass module to operate at HML are out of scope as this proposal does not impact HML.
[33] Calculated using annual VKT figures for rigid and articulated trucks from the SMVU (2020).
[34] 2023-2024 fee values, National Heavy Vehicle Accreditation Scheme, NHVR, https://www.nhvr.gov.au/safety-accreditation-compliance/national-heavy-vehicle-accreditation-scheme/fees

accreditation scope. For a single vehicle operator, an audit fee may be as low as $600.[35] This amount would increase by multiples for businesses with more expansive operations and large vehicle fleets.

- **The cost of complying with the accreditation standards themselves:** There are the practical measures taken by an operator to ensure their heavy vehicles are operating within mass limits – such as weighing them. Aside from just meeting accreditation standards, complying with mass limits remains an obligation under HVNL primary duties and mass requirements – so it is assumed that this cost would be substantially unchanged for an operator who discontinued their accreditation.

### 5.3.5 Concluding comments and recommended option

Impact analysis conducted as part of this Decision RIS demonstrates a significant potential for productivity benefits to be achieved through increasing general mass limits under Option 4a and 4b.

While a technical jurisdiction-specific network analysis could provide more detailed estimates of road damage impacts, it is also noted that there are a host of benefits, such as administrative cost savings, associated with enrolment in NHVAS, and emissions benefits associated with ADR 80/04 (Euro VI) that have not been included in this analysis due to data/information or scope limitations. Further it is noted that while this analysis assumes a complete uptake of the allowable weight under CML by the impacted fleet, if the uptake is partial this will not only reduce the estimated productivity benefits, it will also reduce road wear costs. In the absence of access to detailed network-wide road damage analysis that suggests otherwise, it is therefore assumed that the benefits of increasing mass limits are likely to outweigh the costs.

The results of this impact analysis also indicate that option 4b provides greater productivity benefits by retaining the additional mass allowances for ADR 80/04 compliant vehicles provided for in the *Heavy Vehicle (Mass, Dimension and Loading) National Amendment (Emission Control) Regulation 2024*.

It is understood that increased general mass limits will increase road funding and maintenance requirements and that there will be flow on implications for the road user charge.

It is also noted that changing the GML to current CML will likely impact notices and permits, which will need to be reviewed and amended. This will also impact non-HVNL states such as Western Australia, where current GML settings match HVNL states, presenting an opportunity for these states to align with the HVNL.

As a result of these conclusions, the NTC recommends Option 4b as the preferred option.

- **Option 4b**: Establish a new GML in the HVNL by increasing the current GML by up to five per cent to match the current CML. An additional mass allowance is provided for ADR 80/04 (Euro VI) vehicles for their higher tare weights, which translates to an up to five per cent increase to GVM, so there is no productivity loss for Euro VI vehicles.

[35] Anecdotal information as supplied by an operator.

## 5.4 Option 5a: Increase general access vehicle height limits

One policy option was proposed in the Consultation RIS (2023) to increase general access vehicle height limits, compared to the Base Case:

- **Option 5a: Height increase for general access vehicles from 4.3 m to 4.6 m.** Under this option, the general access vehicle height limit for heavy vehicles is increased by 0.3 m to 4.6 m.

The proposal is to increase standard height limit from 4.3 m to 4.6 m. All heavy vehicles subject to the current standard 4.3 m height limit would be subject to a 4.6 m limit, were the proposal approved and implemented. It is noted that this proposal won't be applied to some heavy vehicles – e.g., the HVNL restricts double decker buses to 4.4 m height. This will remain unchanged. Any heavy vehicle subject to a height condition (under permits or notices) would need to comply with that condition – regardless of whether that condition is lesser than or greater than the 4.6 m HVNL general access limit.

While it is noted that the HVNL currently has provisions for 4.6 m semi-trailers, this proposal is aimed at complementing this provision subject to meeting conditions to mitigate against increased rollover propensity similar to those that currently exist for 4.6 m semi-trailers operating under the current HVNL provisions.

Preliminary analysis was included in the Consultation RIS (2023) to provide a high-level overview of key impacts of the proposal. This included a qualitative multi-criteria analysis to consider the potential for the proposal to impact on bridges and other infrastructure. Limited quantitative analysis was also conducted to consider the administrative savings associated with fewer permit requirements.

In line with stakeholder feedback and to expand on the impact analysis conducted as part of the Consultation RIS (2023), a case study has been developed to better understand potential impacts of the proposal. Stakeholder feedback is summarised below, followed by the NTC response and updated impact analysis.

### 5.4.1 Stakeholder feedback

Stakeholders provided mixed support for Option 5a, with most stakeholders calling for further analysis to understand the risks and potential impacts of the proposal.

Smaller industry stakeholder groups including those from the agricultural industry were generally supportive of the proposal, pointing to potential productivity benefits – for example, in enabling a three-level mezzanine height trailer to be viable for livestock, or for parcel haulers on main highways.

Other groups, including larger peak bodies, were supportive of the proposal; however, they raised concerns over potentially reduced road safety outcomes due to increased risk of rollover, and damage to overhead infrastructure including bridges, powerlines, and trees. Concerns were also raised regarding the ability for mapping software to identify routes that would allow the use of higher vehicles. For example, if mapping software was not updated, then an operator may be routed along a part of the network where an unknown low bridge or other infrastructure may require a driver to backtrack or detour to reach their destination, with additional time and costs associated with this. One peak body suggested that to mitigate against potential safety risks, measures should be taken to understand and to counter rollover risk, while others called for further assessment of potential reductions in infrastructure access limits.

Participating state and territory jurisdictions also provided a mixed response. Some supported the proposal in principle, subject to an assessment of the risk of vehicle rollovers, and damage to infrastructure, powerlines, overhead cables, and trees, which could result in significant costs.

Other participating state and territory jurisdictions responded negatively to the proposal, pointing to an increased potential for vehicle rollover, and impacts on road and roadside infrastructure and lower clearance vegetation. This view was shared in police feedback.

One jurisdiction highlighted that many states and territories have structures with a clearance of less than 4.6 m. It was noted that there would be a likely increase in the number of infrastructure strikes, as the proposal would likely result in a greater number and proportion of the heavy vehicle fleet operating at 4.6 m. It is acknowledged that this risk already exists, with the Victorian submission on the HVNL Consultation RIS (2023) noting that the reported cost to taxpayers of a single bridge strike is approximately $100,000.[36] This is presumed to include direct costs but exclude broader costs (such as productivity and inconvenience costs), and is therefore expected to be an underestimate.[37] Similarly, South Australia Police has reported an average of two powerline/telecommunication line strikes per month. However, it is noted that the increase as a result of Option 5a was not able to be identified, and a call for empirical evidence as part of this stakeholder consultation did not result in learnings.

Another jurisdiction pointed to the limited analysis of impacts on productivity, vegetation management, infrastructure strikes, and cost to police, and disagreed with the proposed option on this basis.

Local government representatives strongly disagreed with the proposal, arguing that the risks to infrastructure and road safety would appear to outweigh any productivity benefit that may be derived from an increase in vehicle heights.

The NHVR supported, in principle, the height limit increase to 4.6 m for general access vehicles; however, it suggested that further consideration would need to be given to the impact of infrastructure constraints and vehicle centre of gravity to understand likely rollover risk.

**Summary of survey results – Option 5a**

In relation to Option 5a, stakeholders were asked the survey question “Regarding the proposal to increase height limits for general access vehicles from 4.3 m to 4.6 m, which of the following statements best describes your view?”

Eighty-four stakeholders from across several industry groups and sectors responded to this survey question. Key findings are as follows:

[36] Montague St displaced as Melbourne’s most-struck bridge, Big Rigs, < https://bigrigs.com.au/2022/01/31/montague-st-displaced-as-melbournes-most-struck-bridge/>

[37] Reforms to Heavy Vehicle National Law Consultation Regulation Impact Statement, Confidential Submissions from the Department of Transport and Planning Victoria

- Of the 20 responses from business representatives, 55 per cent indicated that this proposal will provide some form of benefit for their operations.
- Of the 32 responses from drivers, 44 per cent indicated that this proposal will provide some form of benefit for their operations. (Note: 13 per cent of these drivers did not respond to this question)
- Of the 19 responses from owner-operators, 63 per cent indicated that this proposal will provide some form of benefit for their operations. (Note: 5 per cent of these owner-operators did not respond to this question)
- Of the 13 responses from other respondents, 54 per cent indicated that this proposal will provide some form of benefit for their operations.

Respondents were also able to provide comments on the proposal. Common themes arose within the responses. These are outlined below:

- Some drivers and business representatives commented that only a minor benefit would be experienced from this proposal. Most stakeholders in compliance related positions and some owner-operators commented that they already operate with increased height (for oversized machinery and livestock freight) and have already made provisions for this increased height; therefore, the significant benefit gained from this proposal would be likely to be related to reductions in administrative burden.
- Some stakeholder responses expressed that many locations, vehicle servicing sites and customer sites would face height restrictions; and this option would make these sites now inaccessible. Furthermore, certain commodity freight such as fuel tankers or refrigerated freight cannot take advantage of the increased heigh limits due to mass constraints or restrictions on customer sites. Stakeholder comments also expressed safety concerns around increased rollover risk and damage to existing infrastructure and stated a preference for keeping their vehicles 4.3 m high regardless of this proposal.

For further information on survey results, please see Appendix C.

### 5.4.2 NTC response

Two key issues raised by stakeholders regarding impacts on infrastructure and increased safety risk of increased vehicle heights are addressed.

Feedback from stakeholders on the Consultation RIS (2023) emphasised that the potential impact on infrastructure could be high, with flow on impacts for road managers. In response, a case study has been included to provide a high-level assessment of the potential impact of an increase in general access vehicle height to 4.6 m on road infrastructure and vehicle access. The case study methodology has been selected over a cost-benefit analysis or another form of analysis due to limited availability of complete data relating to road infrastructure constraints. This approach provides a high-level indication of the potential impact of a height increase on road infrastructure and vehicle access. The case study aims to provide a better representation of the potential impact of Option 5a, building upon the qualitative multi-criteria analysis and administrative savings estimates presented in the Consultation RIS (2023). The qualitative impact analysis is detailed in Section 5.4.3, below.

Stakeholders also emphasised that there are likely to be considerable safety risks associated with the proposal including potential for increased vehicle rollover, with some stakeholders only conditionally supporting the proposal, subject to the inclusion of safety conditions. While quantitative analysis has not been possible to assess the potential impact of the proposal in terms of vehicle rollover, the NTC has considered these issues further, and two key eligibility conditions for the 4.6 m height increased have been suggested. These are for eligible heavy vehicles to be fitted with vehicle and/or rollover stability functions. These functions are defined in Australian Design Rules (ADRs):

1. For motor vehicles (i.e. prime movers, rigid trucks): ADR 35/06 Commercial Vehicle Brake Systems (and any later versions)
2. For trailers: ADR 38/05 Trailer Brake Systems (and any later versions).

Vehicle and rollover stability functions are required by these ADRs on new heavy vehicles. The rules were phased in starting July 2019 with full application from January 2022.

Effectiveness of these technologies for heavy vehicles was assessed by the US National Highway Transport Safety Administration (NHTSA) in a 2015 study. A summary of findings is:

- Roll stability function is effective in:
    - 37-53 per cent reduction of rollover crashes
    - 2 per cent reduction in loss of control crashes
- Electronic stability function is effective in:
    - 40-56 per cent reduction of rollover crashes
    - 14 per cent reduction in loss of control crashes.

The ADRs require applicable heavy vehicles (trucks and trailers) to be fitted with both roll and electronic stability functions (i.e., jointly). The electronic stability function results above are most applicable to heavy vehicles supplied to and operating in Australia.

In order to address the rollover risk issue, the NTC has sought technical advice from the NHVR in relation to the magnitude of the risk and options to mitigate against it, which is being undertaken at the time of this report.

### 5.4.3 Impact analysis

Preliminary analysis was included in the Consultation RIS (2023) to provide a high-level overview of key impacts of the proposal. This included a qualitative multi-criteria analysis to consider the potential for the proposal to impact on bridges and other infrastructure. Limited quantitative analysis was also conducted to consider the administrative savings associated with fewer permit requirements.

#### Qualitative analysis

Multi-criteria qualitative analysis conducted to assess Option 5a in the Consultation RIS (2023) concluded that the proposal had the potential to improve productivity by increasing volumetric loads for some freight tasks without the associated regulatory burden of applying for individual permits. However, the analysis acknowledged that there were some safety concerns regarding rollover stability and a risk of strikes to infrastructure. This qualitative analysis was consistent with stakeholder feedback.

A summary of the qualitative analysis as presented in the Consultation RIS (2023) is provided below (Table 15). See Appendix B for a description of the approach to the MCA and an overview of impact categories.

**Table 15. Summary of the impacts of Option 5a against the base case**

| Overall Impact | Public Safety | Efficiency and Productivity | Regulatory burden to industry | Regulatory Costs to government | Asset Management | Flexibility and responsiveness |
|---|---|---|---|---|---|---|
| **Improvement.** | **Negative Impact**. Increased risk of crashes common to higher vehicles (e.g., increased rollover risk) due to more over-height vehicles.<br><br>Further, there would be more road safety risks if road infrastructure were struck in a manner that puts debris on the surrounding roads and pathways. | **Improvement.** Proposed option is assumed to increase take-up of up to 4.6m high vehicles, which increases volumetric load capacity.<br><br>However, it is noted that there could be indirect impacts (accrued by the public) including productivity costs and personal inconvenience if roads were to be closed at greater frequency due to increased risk of overhead infrastructure strikes. | **Improvement.** Reduced regulatory requirements for 4.3-4.6m height vehicles. | **Improvement**. Reduced number of permits. Potentially less administration associated with current Notices. | **Negative Impact**. Increased risk of damage to roadside infrastructure from assumed greater uptake of 4.3-4.6m vehicles and associated costs. These are direct impacts (which road managers must address through public funding) which include the repair costs of the damaged infrastructure.<br><br>Further, introduction of cost component associated with the increased requirement for signage and other warning mechanisms for drivers. | **Improvement**. Removal of requirements simplifies and improves flexibility for operators. |

It is also noted that the proposal may bring high costs to road managers, including due to the need to assess road networks and sign-post road infrastructure with insufficient height clearance. Feedback from road managers on this option has suggested that these additional costs will be created by the effects of a greater number of 4.6 m high heavy vehicles operating on their roads because of the proposal being approved and implemented. However, these mitigations are not novel as there are already large numbers of 4.6 m high heavy vehicles operating. As such, road managers have incurred some of these costs already and future costs would not be attributable solely to outcomes of this proposal.

### Quantitative analysis

Due to limited information available to assess the impacts of potential height limit increases across the road network, in the Consultation RIS (2023), **quantitative analysis** of the proposal focused on the reduction in regulatory costs to industry and burden to government. It was assumed that under Option 5a, 4.6 m height permits would no longer be required as 4.6 m high vehicles would have general access, contributing to a regulatory burden saving for industry.

While it is noted that access for 4.6ım high heavy vehicles is already provided by a notice or permit, the proposal offers key advantages over these mechanisms. Permits require road manager consent and inevitably result in greater road network restrictions as compared to Option 5a. This benefit associated with administrative savings is a key benefit of the proposal. Analysis in the Consultation RIS (2023) suggested that the proposal could result in administrative savings for operators who have applied for permits for moving freight in vehicles over 4.3 m but no more than 4.6 m high. Based on the cost of access permits at the time ($83), these savings were estimated to amount to **$95,000** in the financial year ending 2023. However, it should be noted that operational costs to permit applicants associated with delays to their business operations while waiting for permit approval, and the burden this imposes on having to plan their operations sufficiently in advance of the likely permit decision, are potentially much greater than what has been quantified here.

Additional analysis has been conducted which provides a case study of a high-level assessment of the proportion of bridges that may be constraints on access to the state road network of four states under Option 6a.

The case study is provided below.

## Case study: Proportion of bridges that may constrain access on the state road network of key HVNL states under Option 6a

A case study has been developed to provide a high-level assessment of the potential impact of an increase in general access vehicle height to 4.6 m on road infrastructure, and vehicle access for operators across several key HVNL states that may choose to uptake the additional 0.3m. An increase in general access height limits would be likely to increase the risk of damages to bridges and overhead structures on the road network. Productivity benefits and the associated road wear costs of increased height for heavy vehicles have not been quantified due to a lack of available data or information on uptake of the extra height for productivity gains.

This case study investigates the proportion of these bridges and overhead structures that would become restricted under Option 6a due to minimum height clearances. In this scenario, current freight routes may be impacted and there may be additional costs for road managers in assessing their current road network for high-risk infrastructure.

#### Approach and limitations

The approach to developing the case study is as follows:

- The potential impacted fleet was identified

- Available height clearance data from available jurisdictions was collated on bridges and overhead structures
- Spatial plotting was used to map bridges and overhead structures to understand how the network may be impacted
- Parts of the network and freight routes that may be impacted by an increase in vehicle height were investigated
- Qualitative analysis was carried out on the impact of restricted bridges and overhead structures on operators.

Due to the availability and completeness of data, the analysis is subject to a series of limitations and assumptions. These include:

1. Height data used in this case study is the most recent publicly available data; however, its comprehensiveness is subject to the data collection methodology used by each of the jurisdictions.

2. Data on bridges[38] and the minimum height clearances was available for all HVNL states except Queensland[39] (where data was only available for the city of Brisbane), however, importantly this data only captured bridges and overhead structures on state-owned networks.

3. To target the impact of the proposal, the impacted fleet was identified by method of transport – i.e., containerised, liquid bulk, solid bulk. Solid bulk commodities have been assumed to be most likely to benefit from Option 5a. The following transport methods have been excluded from the analysis:
   - Liquid bulk – these commodities are typically mass constrained, and therefore cannot take on more weight regardless of the increase in volumetric capacity.
   - Containerised commodities – these commodities are typically shipped in containers with standardised dimensions.

4. The *Road Freight Movements (2014)* ABS dataset has been used as it provides historical data on freight movements within HVNL states and distinguishes between methods of transport for each commodity group. Although established freight movement patterns are unlikely to have changed since 2014, there is a risk that throughput data from this period might not reflect the current volumes.

[38] Note, Bridges include road bridges, rail bridges, pedestrian bridges, overpasses, underpasses, tunnels and gantries. Other overhead structures include lights, signage and wires etc.

[39] Data sources:
- NSW bridge data - NSW Government – 'NSW State Roads Vertical Clearances' (2024)
- VIC bridge and other overhead structures data - VIC roads – 'Height clearance on roads' (2024)
- SA bridge data - Government of South Australia, Department of Infrastructure and Transport – 'Height Clearances On and Under Structures' (2023)
- TAS bridge data - Tasmanian Government – 'Height clearance under overhead structures map' (2024)

5. Due to the absence of accurate and current freight route data by origin and destination, it is challenging to accurately estimate the changes in travel time that an operator may experience, therefore this analysis has not been included.

**Case study results**

If vehicle operators were to uptake the increase in general access vehicle height limits under this proposal, certain roads and bridges would be 'restricted' – i.e., these vehicles would no longer fit under the minimum vehicle height clearance without the risk of bridge strikes or collisions with overhead structures. Consequently, operators may need to detour from current routes to accommodate the additional height. This may result in additional VKTs and travel times for operators, contributing to disbenefits in terms of travel time savings, vehicle operating costs, emissions, externalities, and higher risk of crashes due to the increased risk associated with more time spent on roads. Where operators are required to spend additional time on the road, this has the potential to offset any productivity benefits gained through the increased volumetric capacity.

In order to capture the impact of Option 5a, bridges and overhead structures greater than 4.3 m were identified and plotted across the road network. Structures lower than 4.3 m have been excluded from the analysis as these are currently lower than general access height in the base case and are not considered to be impacted by the proposal.

Based on data available for state roads, it was found that under this proposal:

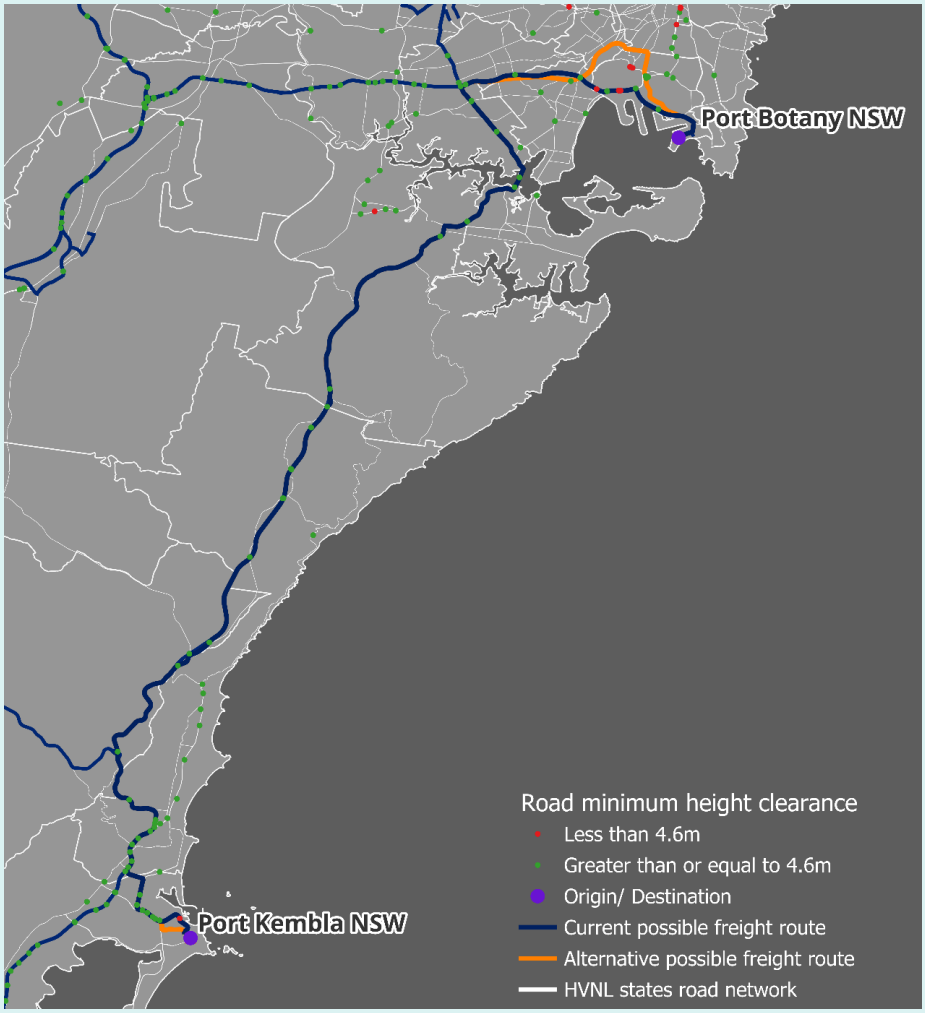
- 12 per cent of bridges (138) in Tasmania would be restricted
- 5 per cent of bridges (1057) in New South Wales would be restricted
- 3 per cent of bridges and overhead structures (854) in Victoria would be restricted
- Less than 1 per cent of bridges (422) in South Australia would be restricted.

These figures highlight that, in select HVNL states, a relatively small proportion of bridges and roads with overhead structures on state-owned networks would experience height constraints. Spatial analysis of bridges and overhead structures across South Australia, Victoria, and Tasmania shows that most of the restricted bridges and overhead structures are concentrated within urban areas. Conversely, restricted bridges and overhead structures in New South Wales are relatively spread across both urban and non-urban areas along key national freight routes.

The concentration of height constrained bridges in urban areas could imply that operators performing long haul or non-urban freight movements using national key freight routes in regional areas would be largely unaffected; however, there is potential for first and last-mile movements within urban areas to be impacted.

As an example of a height restriction resulting in a detour, this case study investigates the impact of bridges and overhead structures for a select freight route between Port Botany and Port Kembla in NSW to provide an indication of how general access freight may be impacted in an urban setting. The freight route between Port Botany and Port Kembla for a general access vehicle is approximately 95km and passes under several bridges and other overhead structures, four of which have 4.3 m clearance or below. This example has referenced the Key Freight Routes identified by the Commonwealth, while also accounting for heavy vehicle access defined by NHVRs National Network maps for 4.6 m high vehicles.

Typically, as an operator leaves Port Botany, they would follow Botany Road and then take Foreshore Road and turn onto the M1 highway, passing through Sydney Kingsford Smith Airport and three tunnels with a minimum height clearance less than 4.6 m; the airport tunnel and extended airport tunnel on General Holmes Drive (both 4.52 m) and the tunnel under Cooks River (4.36 m). However, under this proposal an operator would instead have to continue along Botany Road and turn off at Gardeners Road to eventually turn onto the M8 highway and circumvent the tunnels that have now become inaccessible for a 4.6 m high vehicle under Option 5a. Similarly, an operator would need to avoid the railway bridge on Old Ports Road with a minimum height clearance of 4.5 m and instead take Five Islands Road to reach Port Kembla. As such, the proposal to increase the height of general access vehicles would require 4.6 m vehicles to detour, and travel along an alternate route, adding an additional 3km to their trip, contributing to increased vehicle operating costs and travel time. The additional distance may be outweighed by the productivity benefits derived from the increased volumetric capacity; however, this would change on an ad hoc basis and would depend on the detour, commodities and mass carried, traffic conditions, etc. The map below plots the example route described above:




**Summary**

This case study indicates that Option 5a is likely to impact a small proportion of bridges and overhead structures across the freight network on state road networks. The impact on council-owned and regional road networks, however, is unknown due to the lack of asset data. Height constraints are most significant in urban areas where a potential need may arise for an operator to detour from their current freight routes to avoid bridges with minimum height clearances of 4.3 m which no longer accommodate the increase in general access vehicle height limits.

Where general access vehicles would be restricted by bridges and other overhead structures on key freight routes, there would be a cost component associated with the requirement for road managers to place signage and other tools to warn drivers. Failing to do so would cause significant risk of damage to infrastructure and create road and community safety risks, with a higher likelihood of adverse events such as bridge strikes.

It is noted that operators are well-informed about the routes they take, and about limitations associated with said routes. If operators know a number of well-frequented routes to be height constrained, they are unlikely to uptake higher vehicles that would struggle with access under these structures unless there were clear and large productivity benefits to be gained. Road managers may also face pressure to assess and expand current signage and improve existing infrastructure to accommodate this proposal because of safety obligations to operators.

### 5.4.4 Concluding comments and recommended option

The proposal to increase the general access height limit received a mixed response from industry. It was generally accepted that there are productivity and red-tape benefits from increasing the general access vehicle height limit to 4.6 m, and there are already vehicle types operating at 4.6 m high, such as livestock vehicles, car carriers and curtain siders (or 'taut liners').

However, jurisdictions and some industry stakeholders expressed concerns in relation to increasing the general vehicle height limit to 4.6 m. These concerns focused on road clearance and an increased risk of overhead infrastructure and vegetation strikes, and increased vehicle rollover risk.

To address the rollover risk issue, the NTC has sought technical advice from the NHVR in relation to the magnitude of the risk and options to mitigate against it.

In relation to the risk of overhead infrastructure and vegetation strike, most jurisdictions are of a view that these risks can be adequately managed using existing controls. The key exception is Tasmania, which has a significant percentage of structures with clearances of 4.6 m or less, and accordingly considers that increasing the vehicle height limit creates an unacceptable risk. Given that few trucks cross the Bass Strait, the impact on the reform if it is not applied in Tasmania is low.

As such, the NTC recommends that Option 5a is supported, subject to technical analysis of safety risks and the identification of effective and practical rollover risk controls that may be applied as safety conditions:

- **Option 5a: Height increase for general access vehicles from 4.3 m to 4.6 m.** Under this option, the general access vehicle height limit for heavy vehicles is increased by 0.3 m to 4.6 m.

## 5.5 Option 6a: Length increase for general access vehicles from 19 m to 20 m

One policy option proposed in the Consultation RIS (2023) was to increase general access vehicle length limits, compared to the Base Case:

- **Option 6a: Increase prescribed length limit to 20 m for vehicles currently limited to 19 m length** Under this option, for general access, the length limit for prescriptive heavy vehicles currently limited to 19 m length is increased by one metre to 20 m.

Option 6a did not specify how the extra metre in vehicle length could be applied to the vehicle. Preliminary impact analysis was included in the Consultation RIS (2023) to highlight the potential impacts, costs and benefits of the proposal. A qualitative assessment of this proposal on public safety, efficiency and productivity, regulatory costs to government, asset management and flexibility and responsiveness was completed. The Consultation RIS (2023) also qualitatively investigated the impact of the option with regard to potential safety concerns, risk of damage to roadside infrastructure and additional network assessment costs for road managers. The previous quantitative analysis of this option in the Consultation RIS (2023) was limited to determining the administrative savings associated with fewer permit requirements.

The analysis in this Decision RIS has been replaced by case studies to address stakeholder feedback, and key findings are presented in subsections below, and in the NTC response.

### 5.5.1 Stakeholder feedback

Stakeholders are broadly supportive of Option 6a.

Industry stakeholders are generally supportive of the proposal to increase length for 19 m general access vehicles, acknowledging the benefits particularly for volume constrained freight operators, with several highlighting that there are already a significant number of 20 m vehicles on the roads.

Peak heavy vehicle industry bodies provide strong support, calling for additional elements of the proposal to be included, i.e.:

- The B-double length limit of 26 m should also be increased to 27 m as part of the proposal.
- Any additional vehicle length should be used to improve driver comfort by providing an additional metre in the prime mover (sleeper cab), with some suggesting that this should be a condition of the proposal.

In some cases, smaller industry players also raised or provided support for these proposed additional elements, with particular emphasis on the use of the additional metre in the sleeper cab of the vehicle. A small number of heavy vehicle industry groups and individuals disagreed with the proposal, citing concerns with swept path effects and vehicle stability, claiming that 19 m vehicles are already unable to stay in marked lanes in many instances.

Some participating state and territory jurisdictions and local governments have expressed concerns that increasing the length of general access vehicles may potentially create difficulties manoeuvring within the geometric constraints of a road, impacting on road performance. At intersections there may be increased risks associated with the swept path that may result in damage to road lighting poles, signs and traffic signals. The length of

heavy vehicles affects the distance and time required for faster vehicles to overtake heavy vehicles, which may adversely affect road safety outcomes, particularly on undivided roads. Participating state and territory jurisdictions also flagged the increased risk of short-stacking[40] at intersections and level crossings, which is the risk of queuing at an intersection or signal, with the rear of the combination extending into a through lane.

Participating state and territory jurisdictions generally supported the proposal in principle, with conditions. These conditions broadly aim to mitigate against or better outline the risks associated with longer vehicles accessing the network. Conditions suggested by participating state and territory jurisdictions include:

- Vehicles 20m long would need to have safety features including blind spot information systems, side underrun protection, and advanced braking systems, cabin strength and conspicuity markings.
- Analysis of vehicle swept path and road infrastructure damage, including:
  - Analysis of swept paths to assess potential risks and impacts, including the risk of longer vehicles encroaching on footpaths or cycle lanes when travelling through intersections.
  - Full network-wide traffic and infrastructure assessment to determine the impact on the state-controlled network.
  - The number and impact of vehicles that meet the proposed 20m length limit criteria but do not comply with current PBS standards need to be assessed, and relevant Austroads road design guidance will need to be reviewed.
- Some participating state and territory jurisdictions provided comment on the use of the additional length for sleeper cabs. One argued that this would minimise the productivity benefit, and in the urban context and smaller jurisdictions, it may not provide an overall benefit to drivers. While another jurisdiction supported the consideration of vehicle length increases to allow for larger sleeping berths in prime movers.

While not raised as an option in the Consultation RIS (2023), one jurisdiction commented on the potential for B-double length to be increased from 26 m to 27 m, strongly disagreeing with the suggestion, and setting out a range of requirements and issues that would need to be addressed if this proposal were raised in the future.

Representatives from local government did not support the proposal, citing risks to road infrastructure as the biggest concern. These groups argued that if the option to increase heavy vehicles to 20 m long was progressed, a thorough assessment of the suitability of vehicles moving across the network, including the local road network would need to be undertaken.

The NHVR supported the length limit increase to 20 m for general access vehicles, noting that this would be utilised by industry to support increased length to the sleeper cab to support driver well-being and improve productivity in the use of trailers.

[40] Short-stacking is where the road conditions require a long heavy vehicle to stop after passing over a crossing or intersection, with the rear of the vehicle remaining withing the bounds of the crossing or intersection, disrupting unencumbered movement of other vehicles or trains through the crossing or intersection.

**Summary of survey results – Option 6a**

In relation to Option 6a, stakeholders were asked the survey question, “Regarding the proposal to increase length limits for general access vehicles from 19 m to 20 m, which of the following statements best describes your view?”.

84 stakeholders from across several industry groups and sectors responded to this survey question. Key findings are as follows:

- Of the 20 responses from business representatives, 70 per cent indicated that this proposal will provide some form of benefit for their operations.
- Of the 32 responses from drivers, 63 per cent indicated that this proposal will provide some form of benefit for their operations. (Note: 13 per cent of these drivers did not respond to this question)
- Of the 19 responses from owner-operators, 74 per cent indicated that this proposal will provide some form of benefit for their operations. (Note: 11 per cent of these owner-operators did not respond to this question)
- Of the 13 responses from other respondents, 54 per cent indicated that this proposal will provide some form of benefit for their operations.

Respondents were also able to provide comments on the proposal. Common themes arose within the responses, these are outlined below:

- Some comments were that the preferred application of the increased length allowance would be longer sleeper cabins by drivers and owner-operators, who believe it will greatly increase driver comfort and reduce fatigue, instead of increasing carriable footage.
- Drivers and other respondents within compliance roles commented that an increase in general access length limits provides the opportunity to add more safety features to their vehicles (e.g. bull bars or docking buffers) which are typically forgone under current length limits due to compliance issues. Similarly, this proposal will also lead to a reduction in requirements for gazette notices, permits and PBS certifications, therefore reducing compliance issues for operators.
- Lastly, some respondents commented that this proposal may be more relevant or should also be applied to B-double configurations.

For further information on survey results, please see Appendix C.

### 5.5.2 NTC response

Stakeholders provided diverse views on how an extra metre in length could be applied, with some arguing that it should be used to increase the width of a sleeper cabin, and others focused on increased trailer length for increased payload.

In response to participating state and territory jurisdictions comments on risks involved with longer vehicles, the NHVR is currently undertaking a technical analysis to determine what controls would be necessary to mitigate against safety risks associated with increasing heavy vehicle length to 20 m – with a focus on risk arising from any increase in swept path. Potential mitigating conditions may include:

1. Dimensional controls. Amendments to HVNL internal dimension requirements would be necessary to allow for heavy vehicles to be designed and built to the increased 20 m length. There are several dimension requirements that could be amended to accommodate that outcome, such as prime mover wheelbase and the 'S-dimension' (which is the wheel base for a dog trailer and is the distance between the king pin and the centre of the rear of the axle group for a semi-trailer). These will be developed in a way to minimise adverse effects (i.e. any increase in) swept path.

2. Side underrun barriers. These are physical barriers fitted to the sides of heavy vehicles, forming a barrier against any road users or vehicles passing beneath a heavy vehicle and being struck by its wheels. They have been mandated by the Australian Design Rules for heavy motor vehicles built to greater than 2.50 m (i.e. up to 2.55 m) width.

With regards to participating state and territory jurisdictional concerns regarding short-stacking, the NTC assesses the risk to be negligible, as currently 20 m and longer length vehicles operate on the broader road network.

Further, in response to stakeholder feedback on the proposed option to increase the general access vehicle length limit from 19 m to 20 m, two case studies have been developed:

- **Longer sleeper cab berth** – This case study aims to provide an indicative estimate of the proportion of the freight movements that could potentially benefit from a longer sleeper berth and improved amenities.
- **Increased trailer length** – This case study aims to estimate the productivity benefits associated with the potential reduction in vehicle kilometres travelled (VKT) that could be achieved from providing additional length to vehicle trailers.

These case studies aim to provide a better representation of the potential impact of the proposal, building on the multi-criteria analysis and administrative savings estimates presented in the Consultation RIS (2023). The impact analysis is detailed in 5.5.3 below.

### 5.5.3 Impact analysis

**Qualitative analysis**

Multi-criteria analysis conducted to assess Option 6a in the Consultation RIS (2023) concluded that the proposal had the potential to improve productivity by increasing volumetric loads for some freight tasks without the associated regulatory burden of applying for individual permits. However, the analysis acknowledged that there were some safety concerns regarding damages to roadside infrastructure.

A summary of the qualitative analysis presented in the Consultation RIS (2023) is provided below. See Appendix B for a description of the approach to the MCA and an overview of impact categories.

**Table 16. Summary of the impacts of Option 5a applied to longer trailers and longer sleeper cabin against the base case**

| Overall Impact | Public Safety | Efficiency and Productivity | Regulatory burden to industry | Regulatory Costs to government | Asset Management | Flexibility and responsiveness |
|---|---|---|---|---|---|---|
| **Scenario of increased trailer length**<br><br>**Improvement.** | **Negative Impact**. Increased risk of crashes for 20m vehicles due to expanding access to road network. | **Improvement**. Proposed option is assumed to increase take-up of 20m long vehicles which increases volumetric load capacity. | **Improvement**. Reduced regulatory requirements for 20m long vehicles. | **Improvement.** Reduced number of permits. | **Negative Impact**. Increased risk of damage to road infrastructure from assumed greater uptake of 20m vehicles. | **Improvement**. Simplifies and improves flexibility for operators. |
| **Scenario of longer sleeper cabin**<br><br>**Improvement** | **Improvement**.<br><br>Potential for drivers to have better rest, reducing safety risk of fatigue and decreased risk of crashes | **Neutral** | **Improvement.**<br><br>Increased driver comfort with longer sleeper cabs improves driver experience | **Neutral** | **Neutral** | |

## Quantitative analysis

Due to limited information available to assess the impacts of potential length increases across the road network, in the Consultation RIS (2023), previous quantitative impact analysis of this proposal was limited to determining the administrative savings associated with fewer permit requirements and a reduction in administrative burden for industry. Increasing general access length limits could lead to savings for operators on the cost of permits and time savings due to the reduction in operator compliance burden associated with permit applications and reductions in inefficiencies associated with processing times. It was assumed that under Option 6a, 20 m length permits would no longer be required as 20 m long vehicles would have general access, contributing to a regulatory burden-saving for industry.

Analysis in the Consultation RIS (2023) suggested that the proposal could result in administrative savings for operators who have applied for permits for moving freight in vehicles over 19 m but no more than 20 m long. Based on the cost of access permits at the time ($83), these savings were estimated to amount to **$15,000** in the financial year ending 2023.

Feedback from stakeholders on the Consultation RIS (2023) emphasised that the potential impact on infrastructure could be high, with flow-on impacts for road managers, with calls for further analysis to assess the impact. Two studies reported in submissions analysed the

impacts of longer vehicles on swept path movements.[41] Engineering modelling of swept paths undertaken for the ATA and reported in their submission did not support the concerns raised about safety and roadside infrastructure damage. Given the small size of the dimensional increase, overall length was not considered to be a major hurdle by the ATA and modelling of five 20 m combinations showed positive safety results in line with Performance Based Standards Level 1 performance standards. This conclusion is also supported by NHVR analysis of swept path impacts reported in their submission. This analysis compared the use of 19 m and 20 m vehicles; it was found that there is minimal difference between the performance of the two vehicles. Therefore, concerns around longer vehicle swept paths will most likely not become an issue.

However, road managers may still face additional costs to assess their networks to determine high risk parts of the road network; signpost restrictions for longer vehicles at intersections, stacking distances at rail crossings and other areas of the road network might need to be assessed.

**Considerations for developing Case Studies for Option 6a**

As noted in 5.5.2, two case studies have been developed to address stakeholder feedback – one that investigates the use of the proposal for longer sleeper bed berths, and another that investigates the use of the proposal for increased trailer length (and therefore increased productivity).

In practice, if an operator were to uptake the entire additional metre in the trailer this would preclude them from adding an additional metre to the sleeper cab. The opposite holds true for sleeper cabs. There could also be scenarios where operators use a proportion of the additional length for longer sleeper cabs, and the rest for productivity gains.

Industry preference for applying the length increase to the trailer or the cabin is unclear, and likely uptake for each scenario by the market is unknown. Both case studies therefore assume that the entirety of the additional length is taken up for the two respective uses. Given that the extent of uptake of the proposal is unknown, it is challenging to estimate the implications of the proposal on increased load uptake by volumetrically constrained operators, and consequently the resulting productivity benefits and road damage costs. We have also assumed that these scenarios are mutually exclusive; however, in reality a variety of combinations of these options could be taken or the extra length could be applied for other vehicle functions or to other parts of the heavy vehicle configuration.

Furthermore, while jurisdiction feedback on the need for detailed costs profile calculations has been acknowledged, estimating costs associated with the proposal has been challenging. In addition to ATA and NHVR modelling suggesting that damage to infrastructure due to increased swept path will be limited, there is also limited data on length-related safety implications such as frequency of incidents as a result of insufficient clearance at level crossings or slower lane changing.

For the above reasons, a case study approach has been adopted as an appropriate approach to provide additional context and evidence to test the options.

[41] National Transport Commission, Submissions, <https://www.ntc.gov.au/submission/951>

## Case study for Option 6a: Potential impact of longer sleeper cabin berth

This case study highlights the impact where an operator has chosen to apply the 1m increase in the 19m general access vehicle to the sleeper cab of the heavy vehicle. An additional 1 m in the sleeper cabin would allow for improvements in the space and amenities available in the sleeper cab, which may allow for better comfort and sleeping conditions, helping to reduce fatigue and fatigue-related crashes.

**Approach and limitations.**

The approach to developing this case study is as follows:

- The potential impacted fleet was identified
- Gathered historical Origin and Destination VKTs by SA3 from the Road Freight Movement (2014) (RFM) ABS census dataset
- Spatial analysis was conducted to calculate the straight-line distance between the centroids of each Origin and Destination SA3 pair
- Identified freight movements that are long distance to calculate the proportion of the impacted fleet that may benefit from this proposal.

This analysis is subject to a series of assumptions and limitations:

1. Typically, most sleeper cabs are fitted in prime movers. Given that the proposal aims at increasing general access dimensions for 19m long vehicles only, the primary impacted combinations are likely to be semi-trailers; a single trailer tri-axle vehicle (semi-trailer) configuration has been identified as the representative heavy vehicle.
2. Long distance trips are defined as any journey greater than 500km or an interstate journey (Road Transport Long Distance Operations Award, 2020)
3. It has been assumed that all operators uptake the increase in general access length limits by adding an additional 1m to the prime mover.
4. Origin and destination data from the RFM is used, which provides historical freight movements by Origin and Destination SA3s. The base year of this data (2014) limits this analysis to a high-level and may not reflect new freight routes that have been established since 2014.
5. Historical VKT was extracted for our impacted fleet from the RFM.
   - VKTs taken from the RFM were escalated and scaled to 2024 figures utilising a CAGR of 1.8 per cent derived from the BITRE research report *Australian aggregate freight forecasts – 2022 update (2022).* Tonnage was escalated from the SMVU's base year (2014) to 2024. The percentage increase in tonnages reflects the percentage in increase in VKTs.
6. Due to the lack of available freight route distance data, straight-line distances were calculated to approximate route distances
7. Centroids of each origin and destination SA3 were used as proxy point coordinates for this case study as the RFM does not provide exact locations of the ODs within the SA3s.

**Case study results**

RFM data was used to determine how the fleet moves between origins and destinations within HVNL states. Analysis shows that:

- Articulated trucks constitute 44 per cent of all freight movements across HVNL states
- Single trailer tri-axle vehicles constitute 45 per cent of articulated truck freight movements across HVNL states.

In relation to the entire fleet:

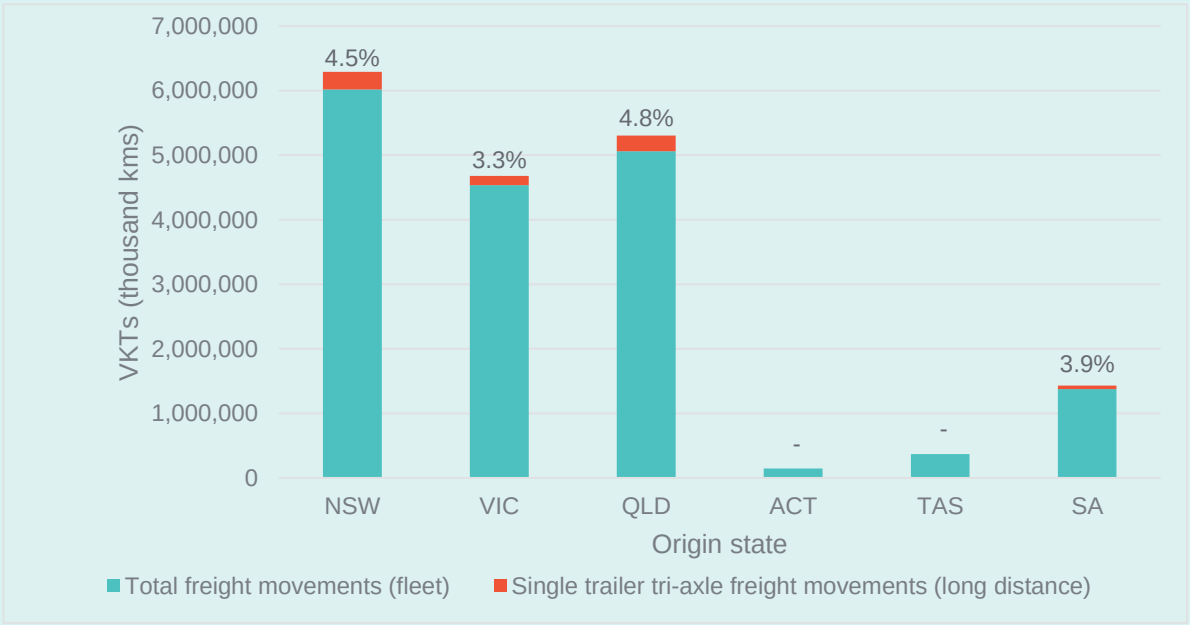
- Single trailer tri-axle vehicles constitute 20 per cent of all freight movements across HVNL states.

However, the benefits of larger sleeper cabs will most likely be realised by operators whose freight movements are considered to be long distances and therefore will require mandated rest stops. It was found that:

- 20 per cent of single trailer tri-axle vehicles freight movements are considered long distance
- 4 per cent of all freight movements are long distance and were performed by single trailer tri-axle vehicles.

The analysis has shown that semi-trailers, which are the vehicles most likely to benefit from increased sleeper cab length, support a relatively small proportion of the long-distance freight task in terms of distance travelled – approximately 4 per cent of the overall freight task in 2024. The chart below reflects how this is distributed across states, with the highest proportion in QLD.

**Figure 3. Proportion of semi-trailer freight movements that could potentially benefit from an additional 1 m added to the sleeper cabin by origin state in 2024**



Option 6a may be used for longer trailers, and consequently increased productivity gains, as detailed in the case study below.

## Case study for Option 6a: Potential impact of an increase in vehicle trailer length

This case study applies to cases where an operator decides to use the 1 metre length increase to a 19 m general access vehicle trailer. Overall vehicle length is a driver of freight vehicle productivity, particularly for those vehicles with loads that are volumetrically constrained *(Austroads, 2012).* The analysis aims to quantify the maximum possible productivity benefit if the uptake was consistent across all possible vehicles. This case study aims to quantify the potential reduction in vehicle kilometres travelled (VKT) that could be achieved from providing additional length to vehicle trailers. Productivity benefits are realised as a result of increased volumetric capacity due to an increase in vehicle trailer length; however, only commodities that are volumetrically constrained are able to take advantage of a greater payload.

**Approach and limitations**

The approach to developing this case study is as follows:

- The potential impacted fleet was identified
- Extracted latest VKT figures for volumetrically constrained commodities from the Survey Motor Vehicle Use (2020) (SMVU) ABS census dataset
- Determined the reduction in VKT between the base case and Option 6a
- Calculated incremental productivity benefits associated with increased general access vehicle length limits.

This analysis is subject to a series of assumptions and limitations:

1. Given that the proposal aims at increasing general access dimensions for 19 m long vehicles only, the primary impacted combinations are likely to be semi-trailers with dimensions 19 m by 2.5 m by 4.3 m (LxWxH) in the base case.

2. The productivity analysis was conducted utilising the SMVU, which provides historical tonnages and VKT freight data by state and commodity group. This dataset was used as it provides the most up to date information on freight movements that can be filtered for certain volumetrically constrained commodity groups carried by semi-trailers.

3. To address the limitation of out-of-date data, historical tonnage and VKTs for our impacted fleet from the SMVU were escalated from 2020 to 2024 figures utilising the same method as the sleeper cabin case study.

4. The average payload per truck taken from the SMVU is for all articulated truck types, not just semi-trailers.
   - This may overestimate the average payload per truck and therefore underestimate the reduction in VKTs, which produces a conservative estimate of productivity benefits. However, due to the lack of available alternative data for these representative vehicles the SMVU average payload per trip for articulated trucks have been used.

**Table 17. Average payload per trip (HVNL states) – Base Case**

| | NSW | VIC | QLD | SA | TAS | ACT |
|---|---|---|---|---|---|---|
| Average payload per trip for articulated trucks (tonnes) | 23.5 | 23.6 | 26.2 | 26.6 | 25.5 | 19.0 |

5. The productivity analysis has also been limited to commodities that are volumetrically constrained. A list of all commodity groups is provided in the SMVU. The following three commodity groups have been identified as being volumetrically constrained:
   - Food and live animals
   - Manufactured goods
   - Miscellaneous manufactured articles
6. No road infrastructure costs associated with an increase in vehicle length are quantified within this case study.
7. Under the base case, the volumetric dimensions of a semi-trailer were calculated as 83.5m$^3$.
   - Total VKTs, number of trips and VKT per trip were calculated using 2024 escalated tonnages and VKTs
8. Under the option case, it is assumed that the impacted fleet uptake the full additional metre in length, increasing the volumetric dimensions of a semi-trailer to approximately 90.5m$^3$ with dimensions 13m x 2.4m x 2.9m (LxWxH)
   - The percentage increase in volume in the option case was applied to calculate the average payload per trip under the new general access length limit (see table below)
   - Total VKTs, number of trips and VKT per trip were calculated using 2024 escalated tonnages and VKTs

**Table 18. Average payload per trip, by HVNL state (Option 6a Case)**

| | NSW | VIC | QLD | SA | TAS | ACT |
|---|---|---|---|---|---|---|
| Average payload per trip for articulated trucks (tonnes) | 24.8 | 24.8 | 27.5 | 28.0 | 26.8 | 20.0 |

**Case Study Methodology**

This case study determined the reduction in VKTs from an additional metre in general access length limits to estimate the associated incremental productivity benefits.

Assuming that all operators in the impacted fleet uptake the full additional metre under the proposed increase in general access length limits, the estimated potential reduction in VKT that could be achieved through the proposal has been calculated as follows:

$$VKT\ (base\ case) - VKT\ (option\ case)$$

Based on the analysis, calculations suggest that there could be a theoretical estimated potential reduction in VKTs of approximately 8 per cent for the impacted fleet carrying

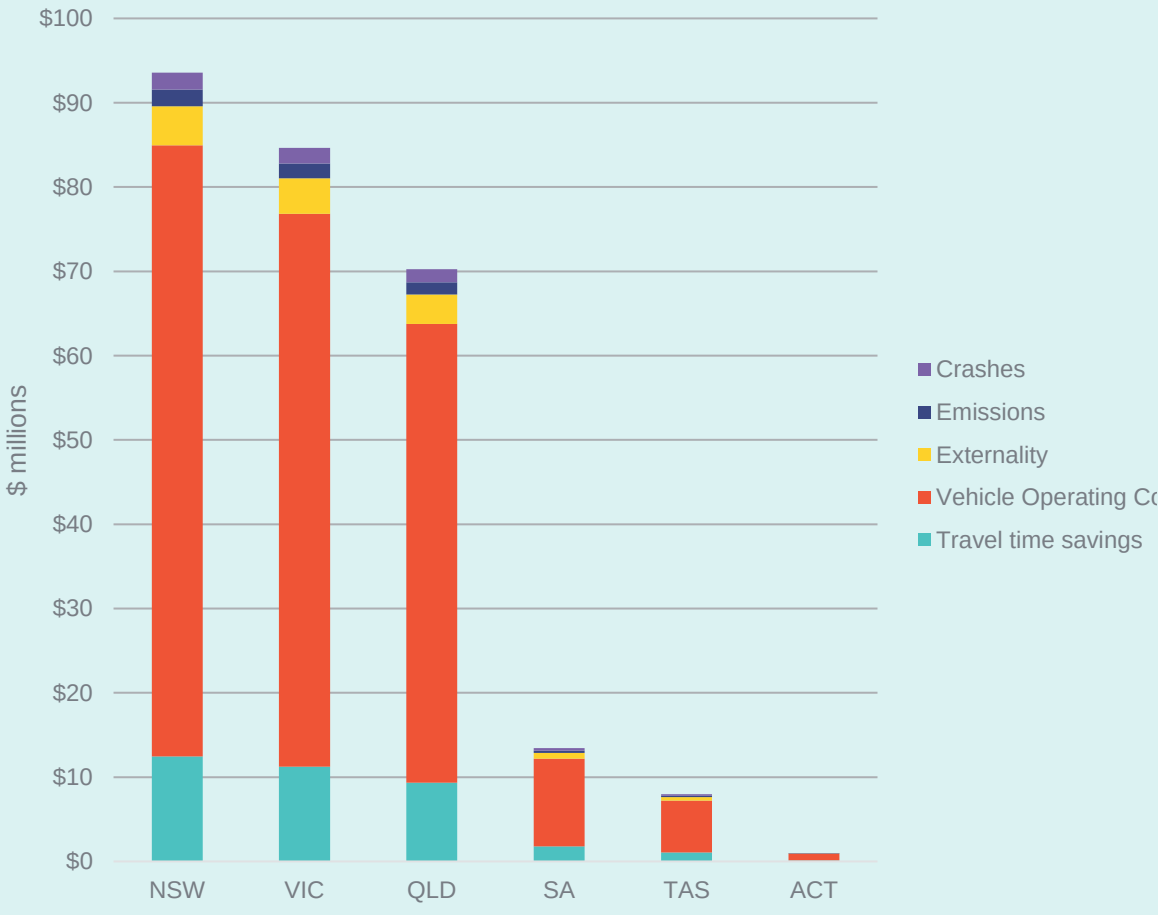
volumetrically constrained commodities. If an operator chooses to apply the 1 metre to the trailer of a 19 m general access vehicle, this ultimately means that the volumetric capacity of these vehicles will be increased, allowing them to carry more tonnage per trip. Therefore, a reduction in VKTs travelled can be seen between the base case and option case as fewer trips need to be made to transport the same tonnage due the increased tonnage capacity. The following productivity benefits have been quantified through this analysis using parameter values used in the mass analysis (described in detail previously in Section 5.3.4).

- Travel time savings
- Vehicle operating cost savings
- Externality cost savings
- Emissions cost savings
- Crash cost savings

**Case study results**

The following estimated incremental benefits are realised by all vehicles within the impacted fleet carrying volumetrically constrained commodities and it is assumed that these operators uptake the full additional metre under the increased general access vehicle length limits. In other words, this case study highlights the estimated potential benefit that can be realised for the respective benefit streams.

**Figure 4. Productivity benefits of Option 6a**



As seen in Figure 4 above, the majority of incremental productivity benefits can be attributed to travel time savings and vehicle operating costs with the highest total incremental productivity benefits being experienced by operators registered in NSW, VIC and QLD due to larger VKT volumes. This highlights that under this option, if the additional metre is added to the trailer configuration for semi-trailers carrying volumetrically constrained commodities, productivity benefits could be experienced.

This case study demonstrates greater efficiency for operators as the increase in volumetric capacity results in larger tonnages that can be carried per trip, therefore benefiting operators. This reduction in trip numbers will also lead to less maintenance and operational costs of heavy vehicles for operators, improved longevity of the freight fleet, a reduction in the impact on the environment and potentially fewer crashes and injuries because of less time spent on roads. Potential road infrastructure costs are not quantified due to a lack of data on the impact of increased vehicle trailer length on road wear costs.

Note, in order to provide robust estimates for the productivity benefits in these case studies, granular and up to date data on freight tonnages and VKTs for heavy vehicles configurations that are currently 19m long and are carrying commodities that are volumetrically constrained would be needed. Information would also be required on the percentage of operators that would uptake the additional metre in length for the vehicle trailer and how much of the additional metre they would use on increasing vehicle trailer length. Data on additional road wear costs associated with length would also be required. Furthermore, an extensive network analysis on the costs of potential safety concerns and damage to roadside infrastructure would be required as it is difficult to identify an average cost for incidents involving intersections or roadside infrastructure as they would need to be assessed on a case-by-case basis. To understand the real impact of this proposal if the additional length was added to the vehicle trailer, a benefit to cost ratio would need to be derived so that the options feasibility could be compared.

Further data would also be required to quantify the benefits and costs associated with a longer sleeper cabin. A longer sleeper cabin will allow for better amenities which could potentially reduce truck driver fatigue and fatigue related crashes. For robust analysis, the potential benefits associated with improved amenities, including a theoretical causal link to fatigue risk and management and ultimately crash risk, would have to be quantified. To calculate the proportion of the fleet that is performing long distance trips, precise data on route origin and destination point coordinates as well as route distances would also be needed. Up to date data on freight tonnages and VKTs between origins and destinations for existing and new freight routes would also be required to replace the RFM data currently used. Like the productivity case study, information on the percentage of operators that would uptake the additional metre in length for the sleeper cabin and how much of the additional metre would also need to be gathered. The costs of installing or refitting current sleeper cabins in prime movers or purchasing a new prime mover with a larger sleeper cabin and the associated road wear costs would also have to be accounted for in this analysis.

### 5.5.4 Concluding comments and recommended option

An increase to maximum vehicle length (from 19 m to 20 m) is supported by most stakeholders, with the high-level case studies in this Decision RIS demonstrating that there is benefit to the proposal both in terms of freight productivity if the additional length was included in the trailer, and driver comfort and amenity if the additional metre was included in the prime mover (sleeper cab). However, it is noted that the case studies do not provide a comprehensive or holistic analysis of the potential impact of this proposal. Instead, it

provides a high-level understanding of the estimated potential benefits of Option 6a for operators.

The key operational impediment to the length increase is the potential impact on vehicle swept path. The wider the swept path, the higher the risk of damage to roadside infrastructure and other road users when a truck is turning at an intersection. To address these concerns, the NTC has sought technical advice from the NHVR on the potential to control swept path and this work is in progress. Early indications are that practical controls, in the form of internal dimensions, are feasible and can keep swept path generally consistent with current 19 m long vehicle fleet performance.

As such, the NTC recommends that Option 6a is supported, subject to technical analysis and identification of suitable controls that manage vehicle swept path and the associated safety and infrastructure damage risks.

- **Option 6a: Increase the prescribed length limit to 20 m for vehicles currently limited to 19 m long.** Under this option, for general access, the length limit for prescriptive heavy vehicles, which are currently limited to 19 m long, is increased by one metre to 20 m.

## 5.6 Recommended access policy reforms

Recommendations in relation to access policy reforms are set out below.

**Recommendation 9:** Increase the current General Mass Limits (GML) to match the current CML (inclusive of the ADR 80/04 (Euro VI) mass limit increase approved by ministers), repeal the current CML, and make no changes to HML.

**Recommendation 10:** Increase the general access heavy vehicle height limit from 4.3 m to 4.6 m, subject to technical analysis by the NHVR to confirm appropriate controls to reduce rollover risks.

**Recommendation 11:** Increase the general access heavy vehicle length limit from 19 m to 20 m, subject to technical analysis by the NHVR to confirm suitable swept path controls.

## 5.7 Implementation

The implementation of the recommendation to increase general mass limits to the level of CML would include:

- Consideration of road wear costs in road user pricing work and road maintenance funding under the FFA
- Updates to prescribed limits for all applicable vehicle types
- Education and communication of key changes with industry and road managers, including guidance materials.

A streamlined process for operators currently participating in the current NHVAS mass module who may wish to make changes to their engagement with the scheme due to the new GML should be considered by the NHVR.

The implementation actions for recommendations to increase general access vehicle height to 4.6 m and length from 19 m to 20 m will be determined in further detail once the technical analysis by the NHVR is complete, and any conditions (if applicable) are tested and approved.  It is expected that similar to the mass increase changes, the main implementation activity will be education and communication of the changes with industry and road managers.

See chapter 7 for details of how these reforms will be evaluated.

# 6 Enhanced accreditation

**Key points**

- The purpose of this chapter is to outline the impact of the proposed regulatory settings to support a new National Audit Standard (NAS) and the handling of NAS requirements under the new law.
- It is the NTC's recommendation that new provisions are introduced to primary law to enable a new NAS to be developed and require Ministers to approve the NAS.

## 6.1 Purpose of this chapter

This chapter examines options regarding proposed regulatory settings to support a new National Audit Standard (NAS) and the handling of NAS requirements under the new law. The following options proposed in this chapter are directly linked to the August 2023 Decision RIS:

- Recommendation 8: To support mutual alignment pathways and scheme robustness, a NAS should be developed by the regulator and approved by ministers.
- Recommendation 6a: which establishes an enhanced NHVAS.

The need for a NAS is also evident due to restructured arrangements for alternative compliance and accreditation under the Decision RIS:

- Recommendation 2a: Ministers will no longer be required to approve accreditation business rules.

Considering this change, Decision RIS (2023) Option 2b further specified that as part of enhancements to accreditation, ministers would be empowered to approve a NAS to be applied as part of the enhanced National Heavy Vehicle Accreditation Scheme (NHVAS) as other eligible schemes and third parties.

The option's intent is summarised below, followed by an overview of stakeholder feedback and potential impact. Recommended accreditation policy reforms are presented in Section 6.2.4.

### 6.1.1 Background

Under the HVNL, accreditation allows heavy vehicle operators to demonstrate compliance with safety and operational standards. Accreditation schemes like the NHVAS provide requirements, specifications, and guidelines for operators to qualify for accreditation and remain qualified. Suitably accredited operators can apply to access alternative fatigue management regimes and exemptions from certain inspections via the appropriate mechanisms and channels.[42] However, issues identified in the NHVAS include perceptions of its lack of robustness and inconsistencies in application, leading to calls for improved regulation of accreditation and improved auditors.

[42] For instance, exemptions for certain inspections are delivered through State-based registration schemes in some jurisdictions.

While the HVNL provides the overarching legal framework, specific details about the NHVAS, including audit frequencies, processes, and requirements, are typically detailed in guidelines and regulations supporting the HVNL implementation. This means that while the HVNL establishes the legal basis for the NHVAS, the practical details of audit requirements are often found in accompanying documents and resources provided by the regulator which administers both the HVNL and the NHVAS. Under the current HVNL regulatory framework, NHVAS auditing requirements are only referenced in the Standards and Business Rules, with the regulator also providing oversight through the relevant NHVAS Audit Framework and Auditor Code of Conduct. Ministers currently approve the NHVAS Standards and Business Rules.

## 6.2 Options to enhance operator assurance and accreditation

Recommendation (8) of the Decision RIS (2023) was approved by ministers in June 2023:

> *That, to support mutual alignment pathways and scheme robustness, a national audit standard be developed by the regulator and approved by ministers.*

The Consultation RIS (2023) tested an option to consider whether NAS requirements should also be included in regulations. This option was compared with the base case. Options tested in the Consultation RIS (2023) were as follows:

- **Base Case 7:** A NAS is prescribed in primary law, to be approved by ministers. No requirements in regulations.[43]
- **Option 7a:** A NAS is prescribed in primary law. Broad NAS requirements are included in regulations.

Both the Base Case and Option 7a align with recommendation 8, endorsed by ministers as part of the Decision RIS.

Base Case 7 prescribes a NAS in primary law only. To simplify the law, the regulations do not specify any standards or requirements for the NAS. This option allows the NHVR to maintain flexibility in developing the NAS and any guidance documents that outline operational details.

Under Base Case 7, ministers would no longer approve accreditation business rules. Instead, the law should empower ministers to approve the NAS developed by the NHVR to ensure proper oversight.

Option 7a offers a different approach that sets regulatory requirements for NHVAS audits. Under this option, broad NAS requirements would be included in regulations, and the NHVR would be required to develop the NAS in line with these requirements. The HVNL would define a NAS approved by ministers, with regulations outlining the general requirements for developing the NAS.

Following the Consultation RIS (2023) publication, drafters from the Parliamentary Counsel (PC) have identified that creating NAS regulations may result in unnecessary duplication, as ministers must also approve a NAS in law. PC advised that ministerial approval of a NAS

[43] While this remains consistent with the Base case 7 as presented in the Consultation RIS (2023), the wording has been updated to clarify meaning.

provides the same level of oversight as a NAS broadly defined in regulations, and therefore, requiring approval of both is duplicative and overly prescriptive.

The full extent of the impact of incorporating NAS requirements into regulations has yet to be realised. However, potential impacts are forecast below.

### 6.2.1 Impact analysis

**Base Case 7:**

**Benefits:**

- **Flexibility:** This approach would allow more flexibility in adapting and updating NAS standards without undergoing the legislative changes required within the HVNL framework.
- **Tailored Approach:** Standards can be more closely tailored to the specific needs and realities of the heavy vehicle industry, potentially leading to more practical and effective NAS requirements.
- **Speed of Implementation:** Implementing standards outside of the HVNL might be faster, as it could bypass some bureaucratic processes associated with legislative changes.

**Costs:**

- **Lack of Uniform Enforcement:** Without the legislative weight of the HVNL, enforcement may lack uniformity and potentially be less effective across different state and territory jurisdictions.
- **Regulatory Fragmentation:** Operating outside the HVNL could lead to a fragmentation of standards if not all states and territories align with the NHVR's guidelines. This would be mitigated by the fact that participants would need to be accredited and subject to standards and requirements imposed by the regulator.
- **Reduced Transparency:** Operating outside the formal legislative framework might reduce transparency and public input into the standard-setting process; consultation would be required.

**Option 7a:**

**Benefits:**

- **Enhanced Safety and Uniformity**: Establishing broad regulations can improve safety standards and uniformity across all participating state and territory jurisdictions, reducing accidents and enhancing public safety.
- **Clarity and Compliance**: Clear, consistent regulations help ensure that all operators and auditors understand compliance requirements.
- **Regulatory Oversight**: Embedding the standards within the HVNL ensures strong governmental oversight and enforcement, potentially leading to higher compliance rates.

**Costs:**

- **Increased Operational Costs**: Operators may face higher costs due to the need for new technologies, systems, and training to comply with broader regulations.

- **Complexity in Implementation**: The broad scope of regulations may be difficult to implement effectively, particularly in the initial stages.
- **Potential for Over-regulation**: There is a risk of over-regulation, which could stifle innovation and efficiency within the industry.

Option 7a was considered further during the Consultation RIS (2023) discussions, and its potential impacts were discussed. However, a full quantitative analysis was not feasible or practical due to a lack of data and difficulty quantifying or forecasting dollar impacts.

The NTC agrees that the anticipated benefits of 7a do not outweigh the foreseeable associated costs and supports an alternative pathway in which the regulator has the flexibility, reflexivity, and scope to develop a NAS outside of strict regulations and over a phased period. The development of a NAS outside of regulations would be subject to consultation with key government stakeholders whom the regulator considers relevant.

### 6.2.2 Stakeholder feedback

Stakeholders were supportive of both the Base Case and Option 7a.

Some stakeholder groups, including the police, peak industry bodies, participating state and territory jurisdictions, and industry groups, supported Option 7a with neutral support for the Base Case. These stakeholders suggested that the current audit system is flawed and that including NAS requirements in regulations would create certainty and improve the scheme's effectiveness by creating more stringent guidelines.

However, several industry bodies and government agencies, including a peak industry body, one jurisdiction, and the NHVR, expressed disagreement with this proposal. The jurisdiction disagreed with the proposal on the basis that a NAS can be carried out effectively through existing mechanisms, such as a ministerially approved NAS document referenced by the HVNL and developed and carried by the NHVR.

Importantly, the NHVR does not support Option 7a, stating that it would require preserving an inflexible static instrument to outline auditing requirements and that inflexible instruments often result in an inflexible regulatory framework. Additionally, the NHVR believes that its board is best placed to consider appropriate auditing requirements and a workable framework.

### 6.2.3 NTC response

While stakeholders provided some support for Option 7a, industry, one jurisdictional stakeholder, and the NHVR, strongly supported retaining the Base Case as it supports operational flexibility and a controlled roll-out of new NAS requirements that will significantly impact operators and auditors.

Additionally, PC has recommended that including broad NAS requirements in regulations would not add value; instead, it would create unnecessary prescriptions and an inflexible regulatory instrument that does not support the goal of streamlining the HVNL. Furthermore, the broad regulatory requirements proposed in 7a replicated the fundamental auditing principles under ISO 19011. As the regulator has agreed that its NAS will adhere to this standard and that ministers can approve the NAS under law, duplicating these broad requirements in regulation does not add value or increase ministerial oversight or governance. The NTC generally agrees with this view.

### 6.2.4 Recommended enhanced accreditation policy reforms

Recommendations in relation to enhanced accreditation policy reforms are set out below.

**Recommendation 12:** That the required provisions for the National Audit Standard (NAS) be introduced into the primary law only.

### 6.2.5 Implementation

The NHVR will implement Base Case 7 and has agreed to develop the NAS in accordance with international ISO 19011 principles.

As the national regulator, the NHVR will be responsible for the NAS's ongoing evaluation, including monitoring the effectiveness and reliability of the audit program. See chapter 7 for further details of how this reform will be evaluated.

# 7 Evaluation

**Key points**

- The purpose of this chapter is to describe the approach to evaluating reforms recommended in this Decision RIS, including an evaluation of the implementation process and reform outcomes.

## 7.1 Approach

It is anticipated that two forms of evaluation will be required:

- An evaluation of the implementation process by the NHVR
- An evaluation of reform outcomes by the NTC

### 7.1.1 Process evaluation (12 months to five years)

As the key delivery agency, it will be the NHVR's responsibility to monitor and evaluate the effectiveness of the process of implementing the recommended reforms. It is anticipated that a process evaluation should be undertaken within 12 months to five years of implementation.

As per the NHVR's *Monitoring and Evaluation of Regulatory Activities (MERA)*[44] Framework, a process evaluation investigates how the regulatory activity is delivered. The evaluation may consider alternative delivery methods and assess whether regulatory activities are being executed as intended.

Key focus questions may include:

- Has the reform package been implemented as planned?
- Should the reform package be continued, expanded, modified, discontinued?
- Could the process used to deploy the reform be transferred or recreated on a bigger scale or different location?
- Are there better ways to achieve the same result?
- Can resources be allocated more efficiently in the future?

The NHVR could consider these questions in relation to the three areas of implementation as described above: system and process updates, industry education and communication and training for authorised officers.

It is recommended that the process monitoring, and evaluation framework developed to evaluate the reforms, aligns with the key principles underpinning the MERA Framework.

A monitoring and evaluation plan should be developed by the NHVR in the implementation of the reform package in consultation with key stakeholders to identify requirements necessary to undertake the evaluation.

[44] NHVR (2022), *Monitoring and Evaluation of Regulatory Activities.*

### 7.1.2 Outcomes evaluation (5+ years)

It is recommended that the NTC undertake an outcome evaluation after five years to evaluate whether the reforms have delivered key outcomes as intended.

As per the NTC's *National Transport Reforms Evaluation Framework*[45], an outcome evaluation should examine whether the reform has led to changes and how these outcomes compare to what was originally intended prior to the reform being implemented. The reviewer should consider how the reform meets anticipated objectives including time saving for operators, reduced regulatory burden, improved compliance, and more targeted enforcement.

Key focus questions may include:

- What are the actual changes (outcomes) delivered by the reform (and for different impacted groups)?
- How do the actual changes (outcomes) compare to what was originally intended or reflected in the reform logic?
- When are outcomes being realised and how does this compare with what was originally intended?
- How has the reform contributed to broader transport objectives of government?

An evaluation plan should be prepared by the NTC in consultation with key stakeholders prior to or during implementation of proposed reforms to enable suitable baseline information and data to be collected. Availability of data and information to determine the realisation of benefits can be a challenge, and therefore consideration should be given to consultation with stakeholders to seek relevant information, as well as potentially the development of a planned research methodology. A planned research methodology would help to build a better evidence base for the evaluation including potentially developing data sources that aren't currently collected.

Stakeholders consulted as part of the evaluation could include freight operators, peak industry bodies, enforcement agencies (police and NHVR) and government agencies.

[45] NTC (2023), *National Transport Reforms Evaluation Framework.*

# 8 Conclusions

**Key points**

- This Decision RIS has been prepared to assist ITMM in considering options for future improvements to the HVNL.
- This Decision RIS makes several recommendations as to key policy reforms for consideration by ministers.
- Several issues which fall outside the scope of this Decision RIS were raised by stakeholders in submissions to the Consultation RIS (2023). These issues have been responded to by the NTC to provide stakeholders with an update and explain next steps.

## 8.1 Summary of recommendations

This Decision RIS has been prepared to inform transport ministers in considering options for future improvements to the HVNL in line with reforms agreed to be progressed by ministers in August 2022.

This Decision RIS builds on the findings of a Consultation RIS released in October 2023 for public consultation. The Consultation RIS (2023) considered options to improve fatigue management and increases to general mass and dimension limits for heavy vehicles, as well as changes to the NAS to build on the proposed changes to heavy vehicle accreditation that was presented in the previous Decision RIS (2023).

Analysis of proposed options, balanced with feedback from stakeholders provided on the Consultation RIS (2023), has led the NTC to make several recommendations for consideration by ministers. These are set out in the callout box below.

**Recommendation 1:** That the requirements for the Work Diary (WD) be changed to:

a) Make recording the day of the week on the daily sheet not subject to an offence under the HVNL

b) Make recording the total work and rest hours on the daily sheet not subject to an offence under the HVNL

c) Introduce a default for the 'hours option' in the WD that is the standard hours for a solo driver of a fatigue regulated heavy vehicle.

**Recommendation 2:** Consolidate the following offences under 'Recording information under the national regulations – general' (s296):

a) How information is to be recorded (s301) – noting that some requirements will be removed from the law altogether and covered in the WD instructions only

b) Failing to record specific information regarding odometer reading (s298)

c) Time zone of a driver's base must be used (s303).

**Recommendation 3:** Remove s308(1)(b)(ii) and s308(1)(c) so that a found or returned WWD, after a replacement has been issued, is no longer required to be returned to the

Regulator, noting that a driver will still be required to notify the Regulator using the approved form and to cancel any unused daily sheets in the WWD.

**Recommendation 4:** Remove requirements relating to returning an existing WWD with an application for a new one (s339(3)) and replace these with a new requirement for a driver to cancel any unused daily sheets in the existing WWD.

**Recommendation 5:** Remove s308(2) and s339(4), which contains the requirements relating to what the Regulator will do with returned WWD.

**Recommendation 6:** That the definition of a fatigue regulated heavy vehicle (as defined in the HVNL) remains unchanged.

**Recommendation 7:** Remove s590(1)(b) of the HVNL, to broaden the application of formal warnings by Authorised Officers as a compliance tool for fatigue record-keeping breaches and other breaches under the HVNL.

**Recommendation 8:** That the HVNL include provisions to enable formal education as an additional enforcement option for Work Diary administrative offences, subject to confirming a pathway that minimises implementation and ongoing administration costs to participating jurisdictions, police agencies and industry.

**Recommendation 9:** Increase the current General Mass Limits (GML) to match the current CML (inclusive of the ADR 80/04 (Euro VI) mass limit increase approved by ministers), repeal the current CML, and make no changes to HML.

**Recommendation 10:** Increase the general access heavy vehicle height limit from 4.3 m to 4.6 m, subject to technical analysis by the NHVR to confirm appropriate controls to reduce rollover risks.

**Recommendation 11:** Increase the general access heavy vehicle length limit from 19 m to 20 m, subject to technical analysis by the NHVR to confirm suitable swept path controls.

**Recommendation 12:** That the required provisions that allow for a National Audit Standard (NAS) be introduced into the primary law only.

## 8.2 Reform next steps

If approved, the changes to the HVNL can be prepared.

Upon completion of the NHVR technical analysis for proposed increases to general access vehicle height and length is complete, further impact analysis on any proposed conditions will be required.

## 8.3 Matters for future consideration

Several issues which fall outside the scope of this Decision RIS were raised by stakeholders in submissions to the Consultation RIS (2023). These issues either have a separate stream of work associated with them, or it is the NTC's view that these should be considered further in future work programs. Key issues raised are described in the table below.

## Table 19. Out of scope matters for future consideration

| Issue raised | NTC response |
|---|---|
| **Electronic work diaries** | Use of electronic work diaries (EWDs) and the merits and burdens associated with mandating EWDs was raised and discussed frequently by stakeholders in submissions to the Consultation RIS (2023). The majority of stakeholders who discussed use of EWDs were supportive of the transition away from the written work diary, suggesting that use of EWDs would be a positive step for road safety and fatigue management if used correctly. Strong support for EWDs is demonstrated by participating state and territory jurisdictions, police and the NHVR stakeholders. Fewer industry groups provide comment on EWDs; however, multiple industry groups including one heavy vehicle peak industry body, and representatives from other industry and smaller driver/operators also provided support for a transition to EWDs.<br><br>However, not all industry players are supportive. One peak body representing agricultural road transport businesses cautioned against mandatory EWDs given the potential cost to operators, and impacts caused by inconsistent network coverage in regional and rural areas.<br><br>Approval for the NTC to consider this issue would be required by ITMM (or ITSOC if responsibility was delegated). |
| **High monetary penalties under the HVNL** | As part of delivering a new HVNL that is risk-based and proportionate to harm, the NTC is carrying out a comprehensive review of all HVNL monetary penalties, as well as demerit point amounts and infringeability of offences (the Penalties Review). The Penalties Review will involve an assessment of severity impact for safety risks associated with each offence. Key criteria, including unfair commercial advantage, frustration of enforcement, false and misleading conduct, undermining confidence in the regulatory framework, and systemic behaviour, are also considered as part of this assessment. The Penalties Review will involve close consultation with industry, jurisdiction agencies, regulators, and police. It is intended that the Review will be finalised, ready for a draft amendment bill in December 2024. |

# Appendix A. Stakeholder engagement record

The below lists the submissions received by the NTC in response to the Consultation RIS (2023):

- AgForce Queensland Farmers Limited
- Alex Barrett
- Australian Livestock and Rural Transporters Association (ALRTA)
- Australian Local Government Association (ALGA)
- Australian Logistics Council (ALC)
- Australian Lot Feeders' Association (ALFA)
- Australian Rail Track Corporation (ARTC)
- Australian Trucking Association (ATA)
- Bonaccord Group
- Brad Mull
- Bus Industry Confederation (BIC)
- Bus Victoria
- C Wong
- Commercial Vehicle Industry Association of Australia (CVIAA)
- Coulton Transport
- Department for Infrastructure and Transport (South Australian Government)
- Department of State Growth (Tasmanian Government)
- Department of Transport and Main Roads (Queensland Government)
- Department of Transport and Planning (Victorian Government)
- Dr Arnold McLean
- Gas Energy Australia (GEA)
- Grain Trade Australia (GTA)
- Heavy Vehicle Industry Australia (HVIAA)
- Kate Austin
- Ku-ring-gai Council
- Local Government Association of Queensland (LGAQ)
- Mark Bott
- Michael Strickland
- Municipal Association of Victoria (MAV)
- National Farmers' Federation (NFF)
- National Heavy Vehicle Regulator (NHVR)
- National Road Transport Association (NatRoad)
- Nick Twidale
- Office of the National Rail Safety Regulator (ONRSR)
- Peter Goudie
- Queensland Farmers' Federation (QFF)
- Queensland Police Service
- Queensland Transport and Logistics Council (QTLC)
- Rod Hannifey
- South Australian Freight Council (SAFC)
- South Australia Police (SAPOL)
- South Australian Road Transport Association (SARTA)
- Stuart Greig
- Tasmanian Transport Association (TTA)
- Transport Canberra and City Services (ACT Government)
- Transport for NSW and NSW Police Force (NSW Government)
- Transport Workers' Union (TWU)
- Trevor Warner
- Truck Industry Council (TIC)
- Victoria Police
- Victorian Transport Association (VTA) and Queensland Trucking Association (QTA)

### Stakeholder engagement post-public consultation

Following analysis of all submissions received throughout public consultation, the NTC continued to engage with a number of government and industry organisations in support of developing the Decision RIS, and to inform its recommendations.

Primarily, the NTC continued to meet most weeks with its government working group, in drafting the Decision RIS. This group includes representation from all Australian road transport departments, the National Heavy Vehicle Regulator, state police, the Australian Local Government Association and Transport Certification Australia.

Additionally, there was ongoing engagement with the NHVR in conducting thorough technical assessments in response to stakeholder feedback. This included analysis of potential increases in vehicle length and height, and exploring options to mitigate any risks identified by stakeholders.

The NTC also maintains its Reform Advisory Committee (RAC+) for the purpose of engagement with industry. Since hosting an in-person workshop with RAC+ members in Melbourne on 3 November to work through the options detailed within the Consultation RIS, the NTC convened this group a further five times (as of 21 June 2024).

Specific to the development of the Decision RIS, the NTC presented for discussion to RAC+ members a preliminary assessment of submission feedback across all Consultation RIS options (December 2023), as well as the results from the C-RIS supplementary survey (February 2024), which ran between December 2023 and January 2024.

Additional ad-hoc meetings with industry representatives, RAC+ and others, were convened to help further inform supporting detail within the Decision RIS.

Furthermore, the NTC convened meetings with senior government officials, most notably Infrastructure and Transport Senior Officials' Committee (ITSOC) Deputies. These meetings aimed to refine policy recommendations, particularly in the areas of fatigue management and access, in order to gain support from participating State, Territory and Commonwealth governments.

# Appendix B. Multi-criteria analysis methodology

The impacts of most proposed options are assessed and compared using a qualitative, multi-criteria impact analysis. This approach is commonly used where full monetisation of costs and benefits are not appropriate or possible, consistent with the OIA cost-benefit analysis (CBA) guidelines.

For some options, use of the multi-criteria analysis has not been possible. Where this is the case, explanation is provided, and an alternative approach is taken.

The NTC selected six impact categories for multi-criteria analysis, modelled on the C-RIS (2020) and D-RIS (2023). The impact categories are as follows:

a) **Public safety** – Having safe vehicles on Australian roads is a fundamental accepted standard under existing regulation and will continue to be under any changes to fatigue management, changes to mass and dimension for general access vehicles, or assurance of the accreditation schemes for alternative compliance.

b) **Productivity and efficiency** – The performance of the freight supply chain operating on Australian roads is critical to Australia's future economic success and competitiveness.

c) **Regulatory burden to industry** – Changes to fatigue management regulation have the potential to create additional administrative burden on the heavy vehicle industry. If costs are too high, there may be detrimental effects to the sustainability of heavy vehicle businesses.

d) **Regulatory costs to government** – Changes to fatigue management regulation and the introduction of a NAS will have some upfront and ongoing costs to government. These costs need to be proportionate to the benefits.

e) **Asset management** – Road infrastructure has large investment and maintenance costs, and road networks support safe and efficient movement of people and goods.

f) **Flexibility and responsiveness** – The heavy vehicle industry is operating in a dynamic environment with rapid advances in technology and business practices. Any modern regulatory framework needs to be sufficiently flexible to adapt to realise opportunities.

Table 20 provides further information about the criteria used in the analysis. This assessment is conducted at a national level, considering all participating states and territories that have applied the HVNL.

**Table 20. Assessment criteria for each Decision RIS impact category**

| Impact Category | Assessment Criteria |
|---|---|
| a) Public Safety | ▪ Ensures responsibility sits with the party best able to manage the risk<br>▪ Addresses emergent safety risks that may not have been specifically identified or considered. |

| | | |
|---|---|---|
| | | ▪ Enables targeted compliance and enforcement options, including sanctions and penalties for non-compliance<br>▪ Provides community assurance that heavy vehicle safety risks have been comprehensively addressed<br>▪ Supports industry to develop and invest in safer technology and safer management practices. |
| b) | Productivity and Efficiency | ▪ Enables more efficient scheduling and business practices<br>▪ Enables industry to develop and deploy innovative technology and practices to lower costs<br>▪ Reforms apply regulatory requirements equitability across the industry and support competition. |
| c) | Regulatory burden to industry | ▪ Results in low upfront and ongoing compliance, administrative and delay costs<br>▪ Provides clear and consistent regulatory expectations to industry about its responsibilities and what is required to comply<br>▪ Supports an approach that is consistent across all jurisdictions. |
| d) | Regulatory costs to government | ▪ Minimises upfront structural, organisational, and regulatory change to implement the model, including a minimal impact on existing processes and minimal regulatory layers<br>▪ Supports efficient ongoing administrative and operational processes. |
| e) | Asset Management | ▪ Ensures the impact on road infrastructure – including bridges, other structures and pavements – is sustainable and services the needs of all road users, including all general access and restricted access heavy vehicles<br>▪ Minimises the impact on community amenity. |
| f) | Flexibility and responsiveness | ▪ Allows flexibility for industry by focusing on safety outcomes, minimizing prescriptive requirements<br>▪ Allows flexibility for government in addressing emerging safety risks<br>▪ Reflects and supports the diversity of the heavy vehicle industry across different freight tasks, geographical areas, and scale and type of operations. |

### Individuals and groups likely to be affected

To assess the impacts of the reform options it is important to identify the individuals and groups affected by the reform. Table 21 outlines the key groups and individuals that are likely to be affected by the reform options.

**Table 21. Groups impacted by each Decision RIS impact category**

| Impact Category | | Group impacted |
|---|---|---|
| g) | Public Safety | ▪ Heavy vehicle drivers and other road users (who may be killed or injured) including vulnerable road users such as cyclists, motorcyclists and pedestrians.<br>▪ Chain of responsibility parties |

| | | |
|---|---|---|
| | | ▪ General public (through wider costs of crashes)<br>▪ Public and private providers of transport, emergency response, health, infrastructure, and insurance services (secondary beneficiaries)<br>▪ Enforcement agencies, including police and the NHVR. |
| h) | Productivity and Efficiency | ▪ Heavy vehicle drivers, operators, and businesses<br>▪ Off-road chain of responsibility parties (reduced costs of moving goods)<br>▪ General public (through reduced costs of moving goods). |
| i) | Regulatory burden to industry | ▪ Heavy vehicle drivers, operators, and businesses<br>▪ Off-road chain of responsibility parties. |
| j) | Regulatory costs to government | ▪ Australian Government<br>▪ State and territory governments<br>▪ Local Government<br>▪ Enforcement agencies, including police and the NHVR. |
| k) | Asset management | ▪ State and territory governments<br>▪ Local governments and other road managers<br>▪ Heavy vehicle drivers, operators, and businesses<br>▪ the Australian community. |
| l) | Flexibility and responsiveness | ▪ Heavy vehicle drivers, operators, and businesses<br>▪ Off-road chain of responsibility parties<br>▪ Vehicle suppliers<br>▪ Vehicle safety (and other) technology suppliers. |

## Assessing the options

**Table 22. Scale for the comparative advantage or disadvantage of options**

| Significant negative impact | Negative impact | Neutral | Improvement | Large improvement |
|---|---|---|---|---|
| The option would most likely result in a **large decline** compared with the baseline option. | The option would most likely result in **some (limited or moderate) decline** compared with the baseline option. | The option would most likely have a **negligible impact** compared with the baseline option. | The option would most likely result in **some (limited or moderate)** improvement compared with the baseline option. | The option would most likely result in a **large improvement** compared with the baseline option. |

# Appendix C. Consultation RIS (2023) survey results

Please see overleaf.


National
Transport
Commission
HVNL Consultation RIS
Survey Results

# Overview

The Consultation Regulatory Impact Statement (Consultation RIS) for the Heavy Vehicle National Law (HVNL) explores various options for modifying the HVNL.

In addition to the formal submissions received from stakeholders, the NTC published a **short survey** to complement the feedback process and provide an alternative avenue for input. This survey was specifically tailored for engagement with heavy vehicle operators, presenting a series of specific questions related to the fundamental assumptions and options outlined in the Consultation RIS. The stakeholders' participation in the survey is deemed crucial, as the responses collected played a pivotal role in refining and enhancing the proposed options. Furthermore, the insights obtained was instrumental in conducting a more in-depth analysis of the comparative costs and benefits associated with these options, ultimately contributing to the development of the Decision Regulation Impact Statement (D-RIS).

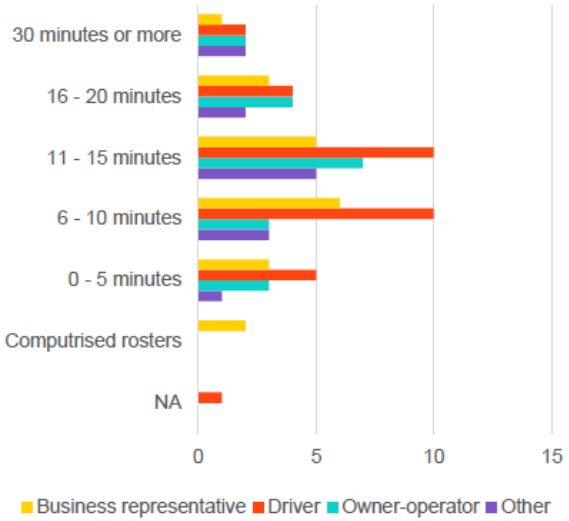
The survey is divided into two parts, with the initial section including general enquiries about the nature of the of the business and industry. The subsequent section involves questions addressing the assumptions laid out in the Consultation RIS. The responses have been carefully analysed and a summary for each of the survey questions is provided. Eighty-four respondents completed the survey provided by the NTC. These respondents have been grouped into 4 position types; Business representative (23.8%), Driver (38.1%), Owner-operator (22.6%) and Other* (15.5%). An overview of these respondent categories is provided in the table below.

| Respondent category | Number of respondents | Respondent industries | Transport locations | | | Number of operator vehicles | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Interstate | Intrastate | Local | 1 | 2 to 10 | 11 to 20 | 21 to 50 | 51 to 100 | 101 to 200 | 200+ | NA |
| Business representative | 20 | Parcels, Dangerous goods, General freight, Waste, Construction/ landscape products, Containers, Refrigerated, Buses, Specialist tanker and logistics, Training, Biproduct/ carcasses and pet food production, Refrigerated freight | 8 | 6 | 6 | 0 | 1 | 1 | 2 | 1 | 4 | 8 | 3 |
| Driver | 32 | Dangerous goods, General freight, Primary production/ farming, Waste, Oversize, Construction/ landscape products, Mixed, Containers, Mining, Refrigerated freight, Furniture removal, Logging, Buses | 15 | 8 | 9 | 0 | 6 | 5 | 5 | 3 | 3 | 2 | 8 |
| Owner-operator | 19 | General freight, Primary production/ farming, Oversize, New machinery and agricultural supplies, General, Construction, Primary produce, Grain, Mining, Livestock, Maintenance services, Meat, General agricultural machinery and farm supplies, ICT | 7 | 8 | 4 | 9 | 8 | 0 | 0 | 0 | 0 | 0 | 2 |
| Other* | 13 | Compliance, Government, Multi Modul National, General freight, Primary production/ farming, Rural transport, Grocery, Training | 6 | 3 | 4 | 0 | 3 | 0 | 2 | 0 | 0 | 4 | 4 |
| **Total** | **84** | | **36** | **25** | **23** | **9** | **18** | **6** | **9** | **4** | **7** | **14** | **17** |

** Other includes Compliance related roles, Government, Equipment Design etc*

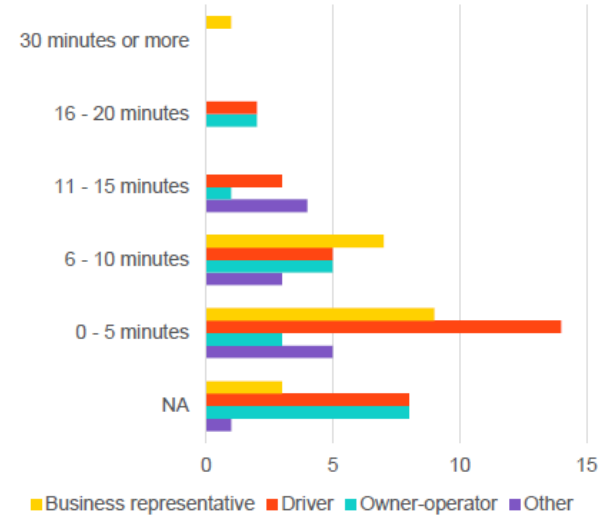
# Question 1-3 responses

**1) Could you estimate the amount of time a driver will spend daily completing a written work diary?**



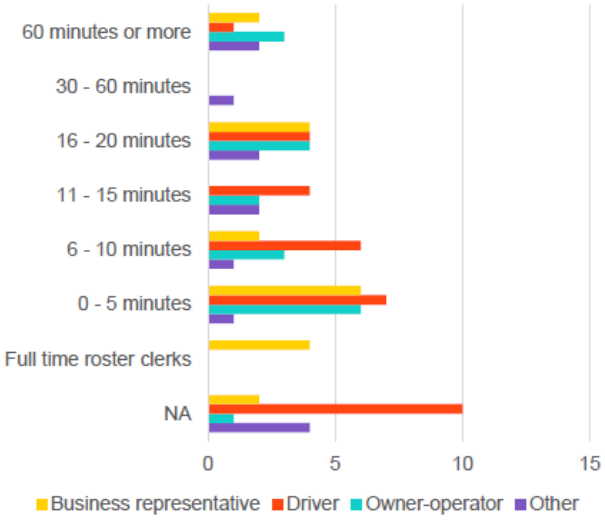

As illustrated above, most drivers anticipate that it would take approximately 6 - 15 minutes to complete a written work diary. Business representatives, owner-operators and other positions also hold similar views. Business representatives have also indicated the use of computerised rosters. A few responses have specified that a driver may spend more than 30 minutes a day filling out a written work diary, however, the majority of responses for each respondent category lies within the 5 - 20 minute range.

**2) Could you estimate the amount of time a driver will spend daily completing an electronic work diary (compared to the written work diary)?**




As illustrated above, most drivers anticipate that it would take approximately 0 - 10 minutes to complete an electronic work diary. However, quite a few drivers and owner-operators have indicated that they don't have an electronic work diary available or have never used one in the past. Overall, the majority of responses for each respondent category lies within the 0 - 10 minute range.

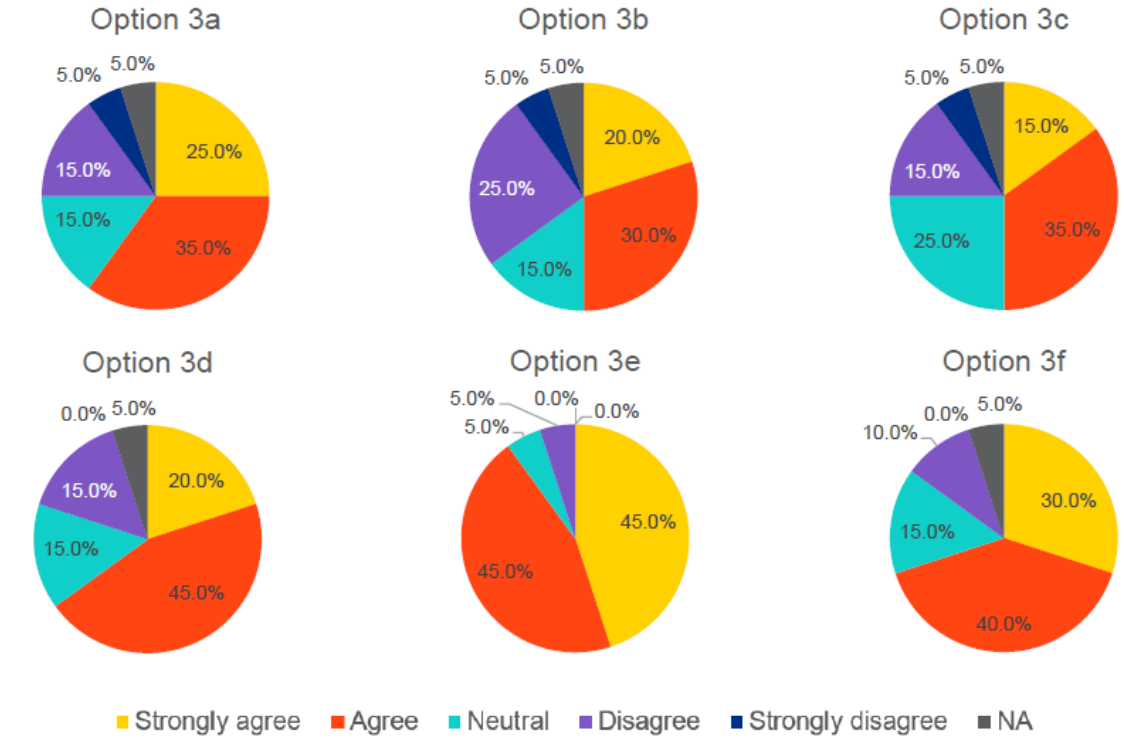
**3) How much time is spent by a record keeper in your business managing work diary records (per driver per day)?**




As illustrated above, a wide range of responses have been provided for this survey question. The majority of responses show that record keeping takes anywhere between 0 - 20 minutes. However, some drivers are either not involved in the record keeping process or have not indicated a response. A few respondents have indicated that time spent on managing work diary records can exceed 60 minutes. Business representatives have also specified the use of full time roster clerks.

# Option 3 responses: Business representative

**Q: Which of the fatigue enforcement options do you agree would deliver a fairer regulatory approach?**

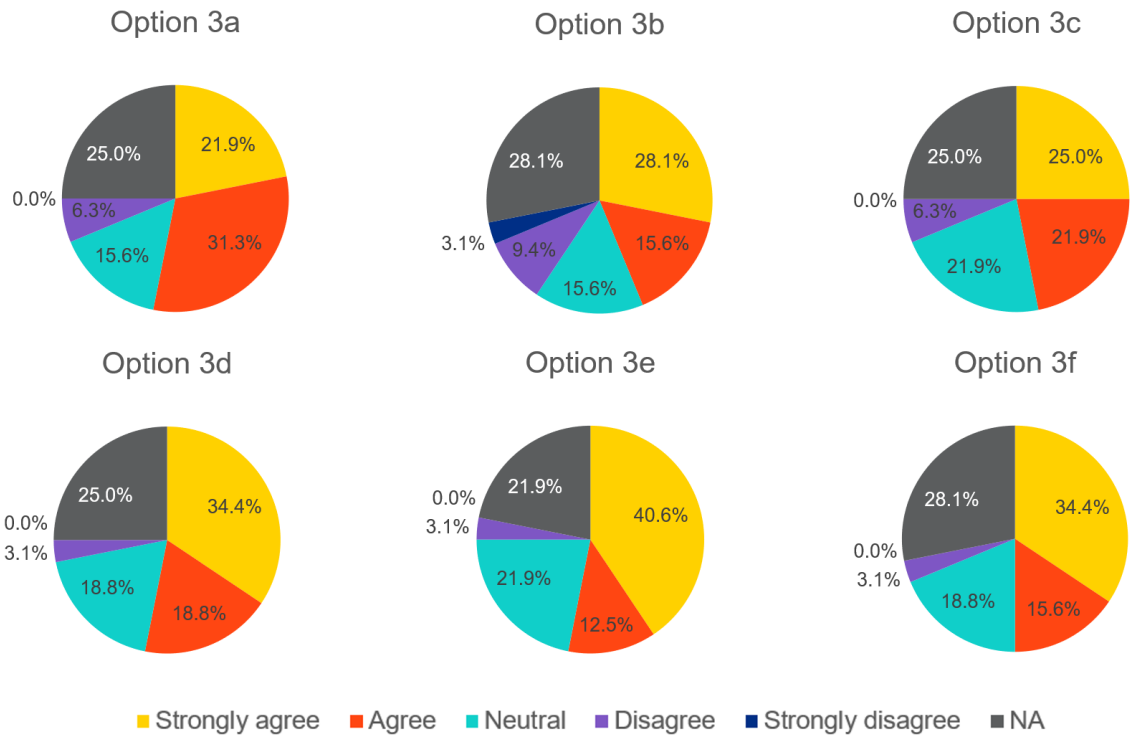



The following figures highlight that business representative responses are largely in support of Option 3a-3f. Twenty business representative stakeholder responses were collected from this survey, noting that respondents could select multiple options. Their response to each option is as follows:

- **Option 3a:** 60% of business representatives either agreed or strongly agreed that this option provides a fairer regulatory approach, with 20% in disagreement. (Note: 5% of business representatives did not respond to this option)
- **Option 3b:** 50% of business representatives either agreed or strongly agreed that this option provides a fairer regulatory approach, with 30% in disagreement. (Note: 5% of business representatives did not respond to this option)
- **Option 3c:** 50% of business representatives either agreed or strongly agreed that this option provides a fairer regulatory approach, with 20% in disagreement. (Note: 5% of business representatives did not respond to this option)
- **Option 3d:** 65% of business representatives either agreed or strongly agreed that this option provides a fairer regulatory approach, with 15% in disagreement. (Note: 5% of business representatives did not respond to this option)
- **Option 3e:** 90% of business representatives either agreed or strongly agreed that this option provides a fairer regulatory approach, with 5% in disagreement.
- **Option 3f:** 70% of business representatives either agreed or strongly agreed that this option provides a fairer regulatory approach, with 10% in disagreement. (Note: 5% of business representatives did not respond to this option)

# Option 3 responses: Drivers

**Q: Which of the fatigue enforcement options do you agree would deliver a fairer regulatory approach?**

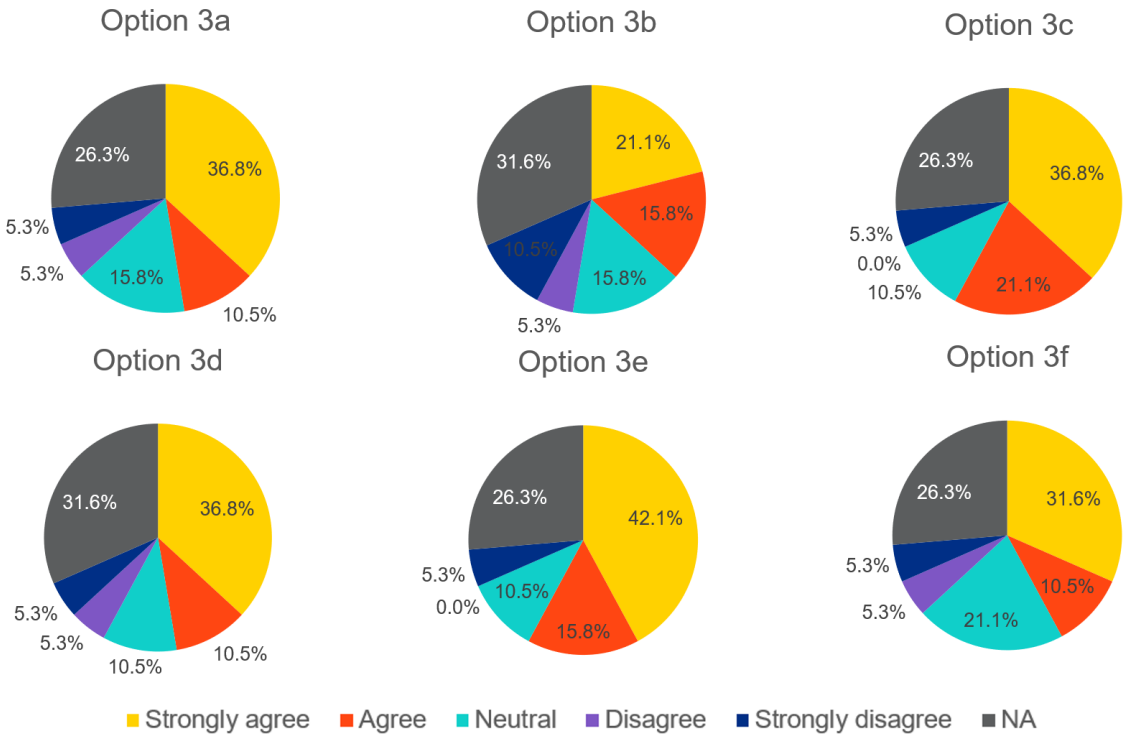



The following figures highlight that drivers' responses are largely in support of Option 3a-3f. Thirty-two driver stakeholder responses were collected from this survey, noting that respondents could select multiple options. Their response to each option is as follows:

- **Option 3a:** 53.1% of drivers either agreed or strongly agreed that this option provides a fairer regulatory approach, with 6.3% in disagreement. (Note: 25% of drivers did not respond to this option)
- **Option 3b:** 43.8% of drivers either agreed or strongly agreed that this option provides a fairer regulatory approach, with 12.5% in disagreement. (Note: 28.1% of drivers did not respond to this option)
- **Option 3c:** 46.9% of drivers either agreed or strongly agreed that this option provides a fairer regulatory approach, with 6.3% in disagreement. (Note: 25% of drivers did not respond to this option)
- **Option 3d:** 53.1% of drivers either agreed or strongly agreed that this option provides a fairer regulatory approach, with 3.1% in disagreement. (Note: 25% of drivers did not respond to this option)
- **Option 3e:** 53.1% of drivers either agreed or strongly agreed that this option provides a fairer regulatory approach, with 3.1% in disagreement. (Note: 21.9% of drivers did not respond to this option)
- **Option 3f:** 50% of drivers either agreed or strongly agreed that this option provides a fairer regulatory approach, with 3.1% in disagreement. (Note: 28.1% of drivers did not respond to this option)

# Option 3 responses: Owner-operator

**Q: Which of the fatigue enforcement options do you agree would deliver a fairer regulatory approach?**

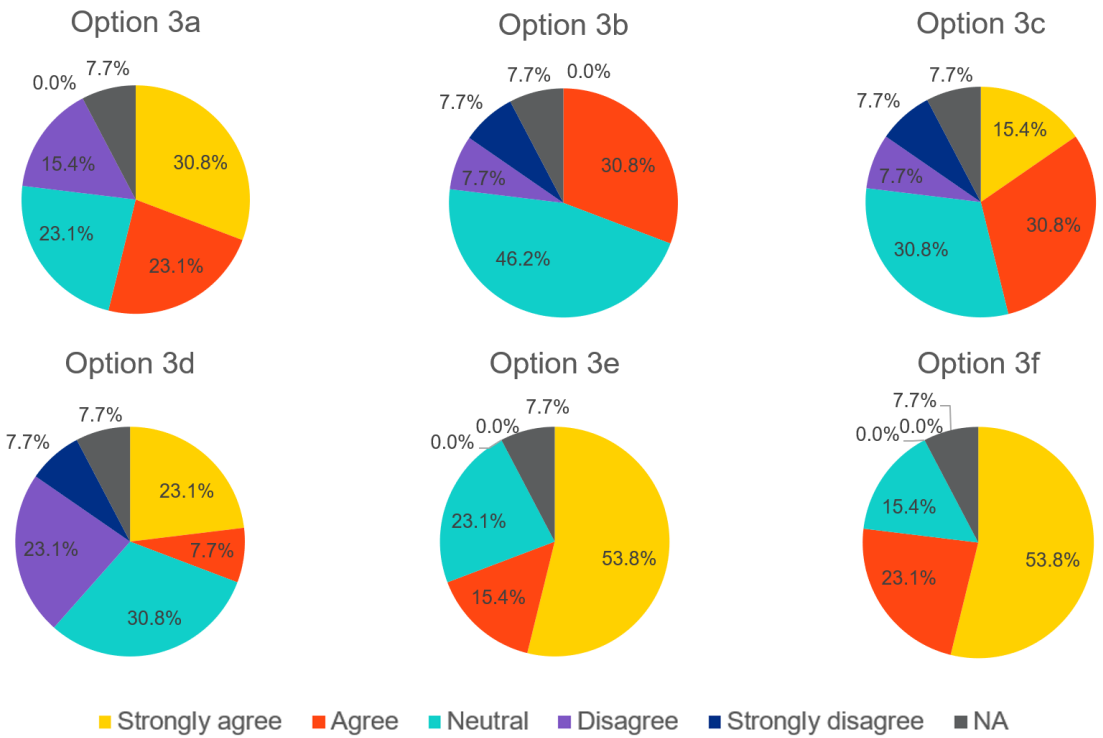



The following figures highlight that owner-operator responses are largely in support of Option 3a-3f. Nineteen owner-operator stakeholder responses were collected from this survey, noting that respondents could select multiple options. Their response to each option is as follows:

- **Option 3a:** 47.4% of owner-operators either agreed or strongly agreed that this option provides a fairer regulatory approach, with 10.5% in disagreement. (Note: 26.3% of owner-operators did not respond to this option)
- **Option 3b:** 36.8% of owner-operators either agreed or strongly agreed that this option provides a fairer regulatory approach, with 15.8% in disagreement. (Note: 31.6% of owner-operators did not respond to this option)
- **Option 3c:** 57.9% of owner-operators either agreed or strongly agreed that this option provides a fairer regulatory approach, with 5.3% in disagreement. (Note: 26.3% of owner-operators did not respond to this option)
- **Option 3d:** 47.4% of owner-operators either agreed or strongly agreed that this option provides a fairer regulatory approach, with 10.5% in disagreement. (Note: 31.6% of owner-operators did not respond to this option)
- **Option 3e:** 57.9% of owner-operators either agreed or strongly agreed that this option provides a fairer regulatory approach, with 5.3% in disagreement. (Note: 26.3% of owner-operators did not respond to this option)
- **Option 3f:** 42.1% of owner-operators either agreed or strongly agreed that this option provides a fairer regulatory approach, with 10.5% in disagreement. (Note: 26.3% of owner-operators did not respond to this option)

# Option 3 responses: Other

**Q: Which of the fatigue enforcement options do you agree would deliver a fairer regulatory approach?**




The following figures highlight that compliance related and other positions responses are largely in support of Option 3a-3f. Thirteen stakeholder responses from compliance related or other positions were collected from this survey, noting that respondents could select multiple options. Their response to each option is as follows:

- **Option 3a:** 53.8% of these stakeholders either agreed or strongly agreed that this option provides a fairer regulatory approach, with 15.4% in disagreement. (Note: 7.7% of these stakeholders did not respond to this option)
- **Option 3b:** 30.8% of these stakeholders either agreed or strongly agreed that this option provides a fairer regulatory approach, with 15.4% in disagreement. (Note: 7.7% of these stakeholders did not respond to this option)
- **Option 3c:** 46.2% of these stakeholders either agreed or strongly agreed that this option provides a fairer regulatory approach, with 15.4% in disagreement. (Note: 7.7% of these stakeholders did not respond to this option)
- **Option 3d:** 30.8% of these stakeholders either agreed or strongly agreed that this option provides a fairer regulatory approach, with 30.8% in disagreement. (Note: 7.7% of these stakeholders did not respond to this option)
- **Option 3e:** 69.2% of these stakeholders either agreed or strongly agreed that this option provides a fairer regulatory approach, with no responses in disagreement. (Note: 7.7% of these stakeholders did not respond to this option)
- **Option 3f:** 76.9% of these stakeholders either agreed or strongly agreed that this option provides a fairer regulatory approach, with no responses in disagreement. (Note: 7.7% of these stakeholders did not respond to this option)

# Response to increase in length limits

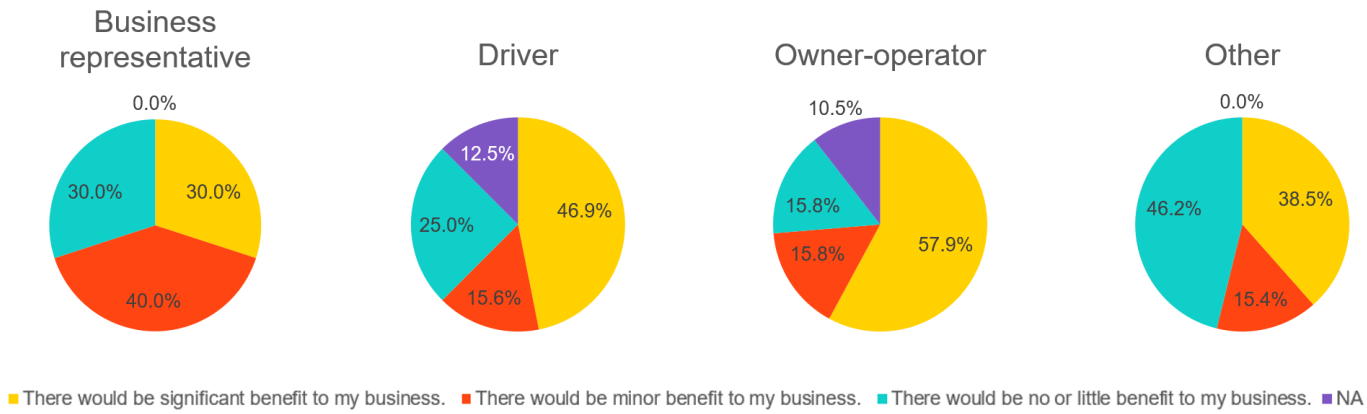
**Q: Regarding the proposal to increase length limits for general access vehicles from 19m to 20m, which of the following statements best describes your view? Please use the text box below to provide detail.**

The following figures below indicate that the majority of all respondent categories believe that increasing length limits for general access vehicles to 20m will be relatively beneficial for their operations:

- Of the 20 responses from business representatives, 70% indicated that this proposal will provide some form of benefit for their operations.
- Of the 32 responses from drivers, 62.5% indicated that this proposal will provide some form of benefit for their operations. (Note: 12.5% of these drivers did not respond to this question)
- Of the 19 responses from owner-operators, 73.7% indicated that this proposal will provide some form of benefit for their operations. (Note: 10.5% of these owner-operators did not respond to this question)
- Of the 13 responses from other respondents, 53.8% indicated that this proposal will provide some form of benefit for their operations.

Respondents were also able to provide comments on the proposal. Common themes arose within the responses, these are outlined below

- Respondents mentioned that the preferred application of the increased length allowance would be wider sleeper cabins by drivers and owner-operators, who believe it will greatly increase driver comfort and reduce fatigue. Some support has also been shown by drivers for increased trailer length to increase carriable footage.
- Drivers and other respondents within compliance roles have expressed that an increase in general access length limits provide the opportunity to add more safety features to their vehicles (e.g., bull bars or docking buffers) which are typically forgone under current length limits due to compliance issues. Similarly, this proposal will also lead to a reduction in requirements for gazette notices, permits and PBS certifications; therefore, reducing compliance issues for operators.
- Lastly, respondents have indicated that this proposal may be more relevant or should also be applied to B-double configurations.



# Response to increase in height limits

**Q: Regarding the proposal to increase height limits for general access vehicles from 4.3m to 4.6m, which of the following statements best describes your view?**

The following figures below indicate that the majority of all respondent categories believe that increasing length limits for general access vehicles to 20m will be relatively beneficial for their operations:

- Of the 20 responses from business representatives, 55% indicated that this proposal will provide some form of benefit for their operations.
- Of the 32 responses from drivers, 43.8% indicated that this proposal will provide some form of benefit for their operations. (Note: 12.5% of these drivers did not respond to this question)
- Of the 19 responses from owner-operators, 63.2% indicated that this proposal will provide some form of benefit for their operations. (Note: 5.3% of these owner-operators did not respond to this question)
- Of the 13 responses from other respondents, 53.8% indicated that this proposal will provide some form of benefit for their operations.

Respondents were also able to provide comments on the proposal. Common themes arose within the responses. These are outlined below:

- Most drivers and business representatives have indicated that only a minor or no or little benefit will be experienced from this proposal. Most stakeholders in compliance related positions and some owner-operators indicated that they already operate with increased height (for oversized machinery and livestock freight) and have already made provisions for this increased height; therefore, the significant benefit gained from this proposal is likely to be related to reductions in administrative burden.
- Most stakeholder responses indicate that they will be unable to take advantage of the increase to general access vehicle height limits. All respondent categories have expressed that many locations, vehicle servicing sites and customer sites face height restrictions; which makes these sites now inaccessible. Furthermore, certain commodity freight such as fuel tankers or refrigerated freight cannot take advantage of the increased heigh limits due to mass constraints or restrictions on customer sites. Some stakeholders also expressed safety concerns around increased rollover risk and damage to existing infrastructure and have stated a preference for keeping their vehicles 4.3m high regardless of this proposal.