

31 May 2019



Dr Gillian Miles  
Chief Executive  
National Transport Commission  
Level 15/628 Bourke Street  
Melbourne VIC 3000  
Via NTC portal

## **A RISK-BASED APPROACH TO REGULATING HEAVY VEHICLES**

Dear Dr Miles

Gas Energy Australia (GEA) appreciates the opportunity to respond to the National Transport Commission (NTC) Issues Paper released in March 2019 on A Risk Based Approach to Regulating Heavy Vehicles (Issues Paper).

GEA supports the primary purpose of the of the Heavy Vehicle National Law (HVNL) and the concept as outlined that a safe and efficient heavy vehicle journey comprises:

- a safe driver – one who is well-trained, competent, fit for duty and alert when driving
- a safe vehicle – one that is registered, roadworthy and safely loaded, and
- a suitable route – one that minimises public safety risks and excessive impacts on road infrastructure (given a heavy vehicle's mass and dimensions).

Unfortunately, GEA notes that the risk-based approach appears to be focused on the HVNL and regulations which are subservient to the HVNL such as load restraint, mass and dimension. In relation to our industry which transports dangerous goods, GEA notes the Australian Code for the Transport of Dangerous Goods by Road and Rail (the ADG Code) as applied by various state and territory laws includes risk controls mechanisms that contribute to a safe and efficient heavy vehicle journey carrying dangerous goods. This is a significant item and one that goes to the heart of our concerns. It is important that risks already covered by other legislation must be recognised and not duplicated.

When a heavy vehicle carrying dangerous goods drives on a road it is covered by laws and regulations that overlap and include emergency response requirements, for example:

- a safe driver – one who is well-trained, competent, fit for duty and alert when driving
  - Australian Road Rules (License)
  - HVNL (CoR requirements)
  - ADG Code (DG Licensing)
- a safe vehicle – one that is registered, roadworthy and safely loaded,
  - Australian Design Rules (ADR)
  - HVNL (Load restraint, mass and dimensions)
  - ADG Code (calls up Australian Standards AS 2809 which requires both prime mover and trailer specific standards)
  - Workplace Health and Safety Laws
- a suitable route – one that minimises public safety risks and excessive impacts on road infrastructure (given a heavy vehicle's mass and dimensions). and
  - HVNL (routes and permits)
  - ADG Code (Route planning)
  - Workplace Health and Safety Laws
- a emergency response requirement
  - Transport Emergency Response plan (ADG Code)

GEA is concerned with existing overlap and potential conflicts, noting that if a provision of the HVNL and a provision of the primary WHS law deal with the same thing, and it is possible to comply with both provisions, a

person must comply with both provisions. However, to the extent it is not possible for the person to comply with both provisions, the person must comply with the provision of the primary WHS Law.<sup>1</sup>

GEA suggests that addition of more “risk-based requirements” without the removal of prescriptive regulation will just increase the burden on industry and bind transport in red tape. The new rules must recognise risk controls already covered by other legislation and remove redundant regulation as part of the process. In response to the questions outlined in the issues paper GEA offers the following feedback:

**Question 1:** *Have we covered the issues with the current HVNL accurately and comprehensively? If not, what do we need to know?*

GEA believes that the interactions of other laws and regulations that apply risk controls to ensuring a safe and efficient heavy vehicle journey for dangerous goods must be recognised in any risk-based approach and not duplicated.

GEA also suggests that the issues paper does not outline clearly the proposed policy environment and risk attitude of government. This needs to be communicated as a foundation for the development of a risk-based approach to regulation of heavy vehicles.

**Question 2:** *What does the current HVNL do well? What should we keep from the current law? What do non-participating jurisdictions’ regulations, or comparable regulations from other sectors, do better than the current HVNL that we might incorporate in the new law?*

The current HVNL has gone a long way to providing consistency across jurisdictions. It needs to become fully national and develop a plan to incorporate other laws and regulations such as Dangerous Goods and Licensing.

**Question 3:** *Do you support using the proposed risk management approach to test current policy and to develop and test policy options? How can the proposed approach be improved?*

GEA urges caution in thinking that a risk can be quantified by simplified groupings. It is so often the case that likelihood and consequence are assessed against different specific risks, the results of which then amplify the risk to a level which looks for controls that aren’t required. As an example, using the Issues Paper - *Figure 18. OSOM load dislodgement example bow-tie diagram* as an example, the generic nature of the title would appear to apply to all OSOM vehicles. However, the likelihood of a collision of OSOM vehicle operating between a mine site and an engineering works in the Pilbara would be different to an OSOM vehicle delivering from Port Botany to Western Sydney for example. The consequence of the collision would differ in both circumstances dependent on the goods being carried. This is also an example of risk evaluation uncertainty that could creep into a risk-based approach to regulation.

GEA is concerned that reviews often focus on the majority of road users and fail to take into account dangerous goods and their needs which are outlined in other legislation not subordinate to the HVNL. As an example, GEA notes the recent release of the Austroads Guidelines for the Provision of Heavy Vehicle Rest Area Facilities<sup>2</sup>. The Guidelines focus on providing information about key safety features and designs for Heavy Vehicle Rest Areas which include, Safe Vehicle Movement and Access, Capacity and Parking Bay Size, Separation of Light and Heavy Vehicles, Separation of Vehicles Carrying Noisy Freight, Separation for Long-term and Short-term Users. The Guidelines do not mention or include provision for dangerous goods transport. (It was included in the NTC 2005 National Guidelines for the provision of Rest Area Facilities Final Report). The requirements for dangerous goods vehicle parking is outlined in the ADG Code.<sup>3</sup>

<sup>1</sup> [https://www.worksafe.qld.gov.au/\\_data/assets/pdf\\_file/0020/173072/vehicles-as-a-workplace-national-guide.pdf](https://www.worksafe.qld.gov.au/_data/assets/pdf_file/0020/173072/vehicles-as-a-workplace-national-guide.pdf)

<sup>2</sup> [https://austroads.com.au/\\_data/assets/pdf\\_file/0025/160648/AP-R591-19\\_Guidelines\\_for\\_the\\_Provision\\_of\\_HVRA\\_Facilities.pdf](https://austroads.com.au/_data/assets/pdf_file/0025/160648/AP-R591-19_Guidelines_for_the_Provision_of_HVRA_Facilities.pdf)

<sup>3</sup> ADG Code 7.6 – Chapter 13.1 – Procedures During Transport

GEA supports a risk management approach, assuming that load type will be included in the consequence tile but asks how granular will the NTC attempt to group risks to test and develop policy options.

**Question 4:** *Does the object or scope of the HVNL need to change? If so, how?*

GEA supports the objectives that the new law should:

- have a clear primary purpose of safety, complementing more general WHS laws
- promote the safe and efficient use of road infrastructure and assets by heavy vehicles, and
- encourage and facilitate operators to be innovative in their business and
- remove duplication with other regulation

**Question 5:** *Do you agree that national consistency is a goal that we should strive for, acknowledging it may mean compromise for participating and non-participating jurisdictions alike to be nationally agreeable?*

National consistency is critical. Where the HVNL does not directly regulate potential risk factors such as dangerous goods and driver licensing, there needs to be a capacity to bring state and territory legislation onto a common model law platform without any State or Territory derogation. Further, this needs to extend to common implementation and interpretation of the model law and regulation including education and enforcement.

**Question 6:** *Do you agree we should simplify the law by placing obligations as low in the legislative hierarchy as we can? How do we balance agility and flexibility in the law with suitable oversight when deciding where obligations should reside?*

Consultation with affected parties remains crucial. GEA supports a system that ensures consultation across all levels be it with changes to primary legislation and regulations or a ministerial process (supporting regulation), through to lower-order instruments that may be approved, by delegation from ministers and the Parliament, to an administrative body such as the Transport and Infrastructure Senior Officials' Committee or by the NHVR.

GEA does not support individual States or Territories enacting additional requirements.

**Question 7:** *How do we encourage the use of technology and data for regulatory purposes? What do operators, regulators and road managers need or want?*

GEA recommends mandating proven safety enhancements technologies in vehicles and trailers and supporting this through fleet incentivisation packages. This should also include mandating electronic work support systems for drivers and vehicle telematics for access and regulatory purposes.

GEA also recognises that information is a two-way street, and improved access to information held by licensing authorities and the police to enable operators/employers to acquit their legal obligations is important.

**Question 8:** *What areas of the current law are particularly problematic because they are process or administration focused? Can you detail the impacts?*

Flexibility is often lost in administration the further down the compliance tree you go. As an example, the NHRL recognises the National Heavy Vehicle Inspection Manual (NHVIM). The strict adherence to testing and tolerances in the manual when applied incorrectly costs industry time and money. As an example, a DG carrier took a new prime mover for an inspection. The inspection station issued a defect based on the NHVIM. The operator consulted with the manufacturer's representative who advised that if the setting requested by the inspection station were applied it would cause excessive wear and create potential safety issues. After much to-ing and fro-ing the operator had to provide the written engineering report before the inspection station would clear the 'defect'.

While on the surface laws can appear flexible, their implementation must permeate all levels as this example highlights the need for regulators to be scientifically and technologically well informed and not inadvertently create

barriers to new technology. This example also highlights that the regulator had a definitive standard for assessing compliance. A risk-based system adds complexity for both operator and regulator to assess compliance.

**Question 9:** *How could the law regulate heavy vehicles in a way that accommodates diversity, while retaining consistency and harmonisation across Australia?*

The new HVNL must recognise other legislation that is controlling risk and accommodate it into a single framework.

**Question 10:** *In a broad sense, what tools do the regulator and enforcement agencies need to respond appropriately to compliance breaches? What recourse and protections do regulated parties require?*

Regulated parties need to be confident that they can work with regulators to improve safety and address compliance issues. The regulator needs a toolbox that includes education, consultation and enforcement options that go from observation, through to enforceable undertakings and ultimately prosecutions.

**Question 11:** *How can the new HVNL help to improve safety, productivity and regulatory efficiency?*

By bringing a truly inclusive national approach to regulation without derogation.

**Question 12:** *Do you agree with the six draft regulatory principles? If not, why? Are there other principles we should consider?*

Of the six draft regulatory principles, GEA suggests that Draft regulatory principle 1 should be enhanced to recognise existing legislative controls (see amendment in red below) and further GEA notes that Draft regulatory principle 5 should result in a continuous improvement cycle whereby as significant risks become controlled others will take their place.

Draft regulatory principle 1: The future HVNL should be risk-based. The law should be developed by identifying, analysing, evaluating and establishing controls for material risks. The future HVNL should not attempt to control immaterial risks, **risks that are already controlled by other legislation** or have controls that aren't clearly contributing to risk management. Controls should be specified in terms of suitable regulatory styles.

Draft regulatory principle 2: The future HVNL should have a clear and balanced object, and provide the scope, coverage and visibility needed to manage the risks specific to Australian heavy vehicle operations. The new law should consider good regulatory practice from participating and non-participating jurisdictions, other transport modes, and elsewhere so as to be nationally agreeable and set us on a path to improved consistency.

Draft regulatory principle 3: The future HVNL should be responsive, flexible and able to readily accommodate changes to technology and business models while maintaining the right degree of oversight. Operators should be provided with flexibility to choose the most suitable compliance option, where options are appropriate. Obligations should be placed as far down the legislative hierarchy as is tolerable and should preference outcomes, in the form of harm minimisation, over inputs and process.

Draft regulatory principle 4: The future HVNL should recognise the diverse risk profile of the industry, operators and regulated parties and provide flexibility (in a harmonised manner) for those operating across vastly different domains and under different business models.

Draft regulatory principle 5: The future HVNL should target the most significant risks associated with heavy vehicle operations. The new law should support sanctions and enforcement tools that reflect the severity of the risk, and enforcement decisions must be able to be reasonably challenged.

Draft regulatory principle 6: The future HVNL should deliver better safety, productivity and regulatory efficiency outcomes and lead to continual improvement across these key performance areas.

### **Conclusion**

While GEA supports in-principle moving to a national risk-based approach to regulation, it needs be inclusive of the other regulations that govern the carriage of dangerous goods.

GEA considers it critical that government and industry work closely together to minimise the extent to which the adoption of risk-based regulations add difficulties to assessing compliance with regulation and create uncertainties related to risk evaluation. GEA also considers that pursuit of such an approach highlights the need for regulators to be scientifically and technologically well informed.

GEA looks forward to working with the NTC on this project.

Yours sincerely

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

John Griffiths  
Chief Executive Officer