

9 December 2016

Mr Paul Retter  
Chief Executive Officer  
National Transport Commission  
Level 15/628 Bourke Street  
Melbourne VIC 3000  
Via NTC portal

## **REVIEW OF HVNL INVESTIGATIVE AND ENFORCEMENT POWERS DISCUSSION PAPER – OCTOBER 2016**

Dear Paul

Gas Energy Australia (GEA) appreciates the opportunity to respond to the National Transport Commission *Review of Heavy Vehicle National Law (HVNL) investigative and enforcement powers* – Discussion Paper - October 2016. GEA supports the principles outlined in the Discussion Paper and the options proposed by the NTC. That said, there are some key issues which should be considered during the implementation of these powers.

In relation to the following specific sections of the Discussion Paper, GEA offers the following comments.

### **5.3 Is there a need to simplify the HVNL information-gathering powers?**

GEA supports Option 3: Maintain current approach: retain the new information-gathering power for the primary duty only; retain the existing information-gathering provisions in Sections 569 and 570 of the HVNL and address any practical issues through the development of operational guidelines and training.

It is important to note that operators with centralised offices have information not accessible to every employee. It is for this reason that it is appropriate for a company representative suitably informed to also be able to provide appropriate documentation and information as required by an investigating officer. Consequently, Gas Energy Australia **recommends** when simplifying HVNL information-gathering powers, centralised management systems are recognised and accounted for.

### **6.3 Is there a need to simplify the HVNL powers of entry, search and seizure? 6.4 Are the limits on the exercise of powers where injury or death occurs necessary?**

GEA members carry class 2 dangerous goods on the road. As such they operate under the umbrella of the Australian Code for the Transport of Dangerous Goods by Road & Rail and the Model Work Health and Safety laws enacted in each State and Territory. It is in this context that GEA is concerned the current wording may give enforcement officers lacking appropriate training, the false impression they can gain entry to dangerous situations beyond their capability and expose themselves to the risk of harm.

GEA suggests that given the complexity of ensuring safety for enforcement personnel, the simplification of HVNL powers should recognise that in instances where these issues overlap, such as an overturned bulk gaseous fuels tanker or when searching for documents or information in a premises that is a major hazard facility, that the requirements of workplace health and safety laws would take precedence in these circumstances. As a result, GEA **recommends** in relation to powers of entry, search and seizure, health and safety laws should take precedence.

## Other issues

The Discussion Paper goes on to asks if there are any additional issues with the HVNL investigative and enforcement powers provisions that have not been identified in this Discussion Paper. GEA suggests that while the Discussion Paper explores enforcement powers and additional remedies, it should also consider rectification and redress processes.

By way of example GEA refers to a previous case study supplied to the NTC during the Heavy Vehicle Roadworthiness Program Consultation Regulatory Impact Statement - January 2015.

### Case Study – cross border uniformity.

A heavy vehicle on route to a 3 week overhaul, transited from NSW to a workshop in Queensland. An oncoming vehicle threw a stone which cracked the windscreen. The vehicle was shortly thereafter stopped by a roadside inspection and a NSW infringement notice issued requiring the defect to be cleared within 2 weeks. The workshop conducting the overhaul was not certified to clear an infringement issued in another jurisdiction (in this case NSW).

The vehicle owner had to postpone the overhaul and clear the defect with a NSW authorised repairer.

COST – approximately 2 man days plus vehicle costs were incurred in clearing a defect with respect to jurisdictional requirements before it could commence its overhaul.

ISSUE – Consistency in application is a prerequisite for national operators to manage their fleet maintenance through their network of service providers. In this case the issue is defect rectification

Consequently, GEA **recommends** that the alignment of investigative and enforcement powers should also include rectification and redress processes such that an inter-jurisdictional operator could clear defects and address sanctions from their main base of operations.

## Conclusion and recommendations

GEA supports the Discussion Paper's general approach and recommends the following.

- When simplifying HVNL information-gathering powers, centralised management systems are recognised and accounted for.
- The powers of entry, search and seizure recognise and give precedence to Health and Safety laws.
- The review of and investigative and enforcement powers should also include rectification and redress processes.

GEA looks forward to continuing to work with the NTC to continue to improve the productivity, safety and environmental outcomes from transport in Australia.

Yours sincerely



John Griffiths  
Chief Executive Officer  
Gas Energy Australia