



11 November 2019

Mr Peter Harris  
Chair, Heavy Vehicle National Law Review Expert Panel  
National Transport Commission  
Level 3, 600 Bourke Street  
Melbourne, VICTORIA, 3000

Dear Mr Harris

**Re: Submission – Effective enforcement**

The National Farmers' Federation (NFF) welcomes the opportunity to provide a submission on the National Transport Commission's issues paper 'Effective enforcement'. We also look forward to engaging further with the Review.

The NFF is the peak national body representing farmers and, more broadly, agriculture across Australia. Operating under a federated structure, individual farmers join their respective state farming organisation and/or national commodity council. These organisations form the NFF. The NFF is committed to advancing Australian agriculture by developing and advocating for policies that support the profitability and productivity of Australian farmers. This includes road rules that support efficient domestic supply chains which, in turn, contribute to the international competitiveness of Australian agriculture.

As the peak industry body representing Australian agriculture, the NFF has a significant interest in the outcome of the HVNL Review. Agriculture is worth nearly \$60 billion annually to the Australian economy. Essential to the productivity of our industry is the ability of farmers to move machinery and freight on public roads in a safe, efficient and timely fashion.

For these reasons, the NFF welcomes a comprehensive review of the HVNL, including of its foundational principles. This submission builds on the key asks in our first submission, *'A risk-based approach to regulating heavy vehicles'*.

**Principles of Effective Enforcement**

It is our view that enforcement of the HVNL should be

- 1) Consistent between jurisdictions and between enforcement parties;
- 2) Proportionate to the severity of the incident; and
- 3) Based on rules which are reasonable and easy to understand.

Consistency between jurisdictions, achieved through harmonisation, was one of key reasons for the development of the Heavy Vehicle National Law. We consider this should remain a central focus of the new law. Having to abide by different regulations in different jurisdictions can impose a heavy burden on operators and businesses reliant on heavy vehicles that cross jurisdictional borders, including farm businesses. It can increase

administration costs, reduce transport efficiency and contribute to confusion regarding which rules apply and where they apply.

Feedback from NFF members has also raised questions regarding the proportionality of penalties imposed under the current HVNL. We support enforcement mechanisms which are risk-based. Minor and trivial offences which do not pose significant risks should not be responded to with severe punishment.

*Recommendation 1: Penalties and sanctions should be proportionate to the behaviour which they target.*

We note that NTC consultations in 2013 found that one of the main reasons for noncompliance was a limited understanding of the law.<sup>1</sup> This aligns with feedback we have received. In our submission on ‘Safe people and practices’ we outlined some of the confusion surrounding implementation of new Chain of Responsibility (CoR) rules. The language used in the CoR – that parties must do what is ‘reasonably practical’ to ensure transport activities relating to a heavy vehicle are safe<sup>2</sup> – leaves many small operators uncertain as to what behaviour is legal. We acknowledge the tension inherent in non-prescriptive legislation – it is difficult to strike the right balance between providing regulated parties with flexibility to implement rules in ways that meet the intent of the law and best suit their particular circumstances, and providing them with certainty. Our solution to this tension is to ask that where the HVNL leaves regulated parties with a level of discretion in meeting their responsibilities, generic rules and guidance documents be provided so that these parties have guidance on how to meet the high-level standards.

It is also important that rules are easy to understand for those carrying out enforcement activities. Problems with enforcement often arise because the party responsible for enforcing the law is not familiar with the particular details. Further information around these problems is provided below.

## **Education**

As acknowledged in the issues paper, the current HVNL relies heavily on roadside enforcement to detect noncompliance.<sup>3</sup> It is therefore important that roadside enforcement is carried out efficiently and effectively. We provide two case studies below which demonstrate the need for improvements in roadside enforcement.

### **Case Study 1**

A driver was stopped by police in Queensland. After inspecting his work diary, the officer informed the driver that he was acting in contravention of the HVNL because his work diary had not been filled out. The driver told the officer that, since he was operating within 160km of his home base and undertaking a primary production activity, he was exempt from recording his activities in his work diary. The officer stated that the driver was incorrect. The driver then produced from his glovebox a laminated copy of the *National Primary Production Work Diary Exemption Notice*, which ‘extends the statutory exemption to work diary requirements for drivers of fatigue-related heavy vehicles who are carrying primary produce work within a 160km radius of their base’. (<https://www.nhvr.gov.au/files/201510-0201-primary-production-work-diary-exemption-fact-sheet.pdf>) Upon reading the exemption notice, the officer admitted his mistake and let the driver proceed on his journey.

<sup>1</sup> National Transport Commission 2019, Effective Enforcement, p. 22

<sup>2</sup> s 26C of the HVNL

<sup>3</sup> National Transport Commission 2019, Effective Enforcement, p. 34

**Case Study 2**

A driver in Queensland was delivering livestock from a feedlot to an abattoir. The job required him to drive without a load from his depot to the feedlot. During the journey from the feedlot to the abattoir he was pulled over by a police officer and his work diary was inspected. The officer told the driver that he was not compliant with the HVNL because the *National Primary Production Work Diary Exemption Notice* does not cover the initial journey from the depot to the feedlot. This is incorrect. The trip from the driver's base is, in fact, covered by the exemption (<https://www.nhvr.gov.au/files/201510-0201-primary-production-work-diary-exemption-fact-sheet.pdf>).

The case study provided in the issues paper – where a NSW driver was issued defect and infringement notices for having a bug deflector installed on his vehicle, despite there being no legal basis for these notices<sup>4</sup> – illustrates the same point.

These case studies demonstrate that the effectiveness of roadside enforcement is being impeded because the parties tasked with carrying out enforcement activities do not fully understand the law which they are enforcing. This places an unnecessary burden on the drivers who are targeted by these officers and also diverts resources away from behaviour which is actually illegal and posing a risk.

We therefore support the recommendation of NatRoad that the NHVR develops an education course for enforcement officers so that drivers are less likely to be targeted for non-existent offences<sup>5</sup>. This would have the additional benefit of making actual offences more likely to be detected, since these behaviours are where enforcement resources would be refocused.

*Recommendation 2: The NHVR should develop an education course for enforcement officers so that drivers are less likely to be targeted for non-existent offences.*

**Telematics**

NFF considers telemetry-based access as having the potential to reduce the administrative burden on operators. In our submission to the issues paper 'Easy access to suitable routes' we drew attention to the fact that permits provide road managers with information about vehicle movements. We argued that telematics gives road managers the ability to monitor vehicle movements without requiring permits. This would reduce the administrative burden for all involved.

Telematics systems currently recognized within the Intelligent Access Program (IAP) (the only existing regulatory program using telematics outside e-diaries) are too expensive for many small operators. Many primary producers own trucks which they drive on public roads only a few times each year. It is uneconomic for these operators to pay a significant monthly fee for an IAP certified telematics system. This point is recognized in the NTC's 'Review of Regulatory Telematics Report':

<sup>4</sup> National Transport Commission 2019, Effective Enforcement, p. 35

<sup>5</sup> National Transport Commission 2019, Effective Enforcement, p. 35

*‘The primary barrier to industry taking up IAP is cost. For the large majority of transport operators in Australia, IAP does not provide a positive economic return because the entry and ongoing costs of certification outweigh the productivity benefits ... Telematics service providers advised that TCA charge a service provider an operational fee of \$39 per month and the service provider then charge their clients a service fee around \$80 to \$250 per month’.<sup>6</sup>*

This means that the minimum cost for IAP certified telematics is \$119 per month. Given the clear benefits of telematics-based access, we recommend that the new HVNL recognise other types of telematics besides those certified for IAP. The Road Infrastructure Management application, for example, costs only \$10 per month and generates data on vehicle identity, location and time.<sup>7</sup> This sort of telematics still allows road managers to monitor vehicle movements on their network – in turn allowing them to improve planning, investment decision making and asset maintenance – but it is not prohibitively expensive for small operators. We would also draw attention to mid-level telematics such as the Telematics Monitoring Application (TMA), which provides identifiable, evidentiary quality information.

### **The Role of Technology and Data**

We acknowledge the role of technology and the data it generates in allowing for more effective enforcement. As acknowledged in the issues paper, roadside enforcement is ‘resource intensive and relies on probabilistic detection’.<sup>8</sup> The ability to monitor driver behaviour through, for instance, telematics, may lead to more efficient and well-targeted outcomes. Recognizing less expensive forms of telematics and various other technologies, such as seeing machines, in the HVNL would allow some of these benefits to be realised. We therefore agree that a recast HVNL should not stifle technological innovation.

However, we recommend against technology being mandated or prescribed in the HVNL. The new law should be technology neutral. While the use of technology can benefit road users – telematics for enforcement, fatigue monitoring devices for improved management of driver fatigue, etc. – it is not suited to the circumstances of all operators. For this reason we caution against an over-reliance on technology-oriented enforcement. Improving traditional enforcement mechanisms should be the priority.

The NFF has concerns with some of the language used in Draft Regulatory Principle 4 and the following language in particular: ‘Data and technology with demonstrable safety or efficiency benefits should be encouraged under the law, not ignored or, perversely, discouraged or prohibited.’ A law which encourages certain technologies is not technology-neutral. Encouragement implies incentive, which implies advantage for users of certain technologies over those who do not use them.

*Recommendation 3: The new HVNL should be technology-neutral. It should acknowledge a broader range of technologies than it currently does (including cheaper variants of telematics) but it should not disadvantage drivers who do not utilise technology for regulatory purposes. It should not mandate the use of any technology.*

<sup>6</sup> National Transport Commission 2018, Review of Regulatory Telematics, p. 38

<sup>7</sup> National Transport Commission 2019, Effective Enforcement, p. 32

<sup>8</sup> National Transport Commission 2019, Effective Enforcement, p. 15

Should you have any questions with regards to this submission please do not hesitate to contact Prudence Gordon, General Manager, Trade and Economic at [pgordon@nff.org.au](mailto:pgordon@nff.org.au) or on 02 6269 5666.

Yours sincerely

A handwritten signature in blue ink that reads "Tony Mahar". The signature is written in a cursive, flowing style.

**TONY MAHAR**  
CEO