

**Submission to:** National Transport Commission

**Title:** Draft Heavy Vehicle National Law and  
Regulatory Impact Statement

**Date:** 6<sup>th</sup> May 2011



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## 1. Introduction

This submission details the views of the members of the Australian Trucking Association (ATA) on the proposed heavy vehicle national laws released for public comment by the National Transport Commission.

Providing the national regulator with workable national laws is a critical matter for the road transport industry. Accordingly, the ATA is committed to working with governments, the NTC, and the National Heavy Vehicle Regulator (NHVR) to settle workable fair laws in as timely a manner as possible. The ATA supports the HVNL carrying forward the productivity and intent of the Model Provisions and ensuring that local productivity schemes are maintained.

## 2. Australian Trucking Association

The ATA was originally established in 1989 as the Road Transport Forum and is the peak national body uniting and representing the interests of the Australian trucking industry.

Membership of the ATA's General Council comprises the peak state and sector based trucking associations, some of the nation's largest transport enterprises and representatives of small fleet owners and owner drivers.

## 3. Recommendations

Our commentary has been categorised into the following sections:

1. Drafting of HVNL
2. External Review of Decisions
3. Access, Higher Mass, and IAP
4. TruckSafe
5. Chain of Responsibility
6. Reasonable Steps Defence
7. Compliance & Enforcement
8. Fatigue
9. Mass, Dimension & Load Restraint
10. NHVAS
11. Over Mass / Over Dimension
12. Restricted Access Vehicles
13. Registration
14. Vehicle Standards

The ATA's recommendations are noted below. Commentary providing justification and explanation is provided under section 4.

## 3.1. Recommendations

### Recommendation 1

The ATA recommends the package of HVNL not be submitted to the Australian Transport Council Ministers until another round of public comment is concluded.

The ATA recommends that extensive redrafting of the HVNL occur to rectify errors and omissions, and to improve the understanding of the provisions.

### Recommendation 2

The ATA recommends the early airing of the attendant processes to support a workable legislative framework for the National Regulator.

### Recommendation 3

The ATA recommends the Crown be bound by all of the HVNL capacities and for Crown entities to be subject to normal penalties that parties in the chain of responsibility may face.

### Recommendation 4

The ATA recommends administration fees should be set by the Australian Transport Council, not by the NHVR.

### Recommendation 5

The ATA recommends both internal and external review of decisions by road asset managers be available to applicants.

### Recommendation 6

The ATA recommends the vagaries of HML be resolved in the HVNL thereby delivering the lost benefits promised since 1999.

### Recommendation 7

The ATA recommends the original national model relating to HML eligible vehicles be incorporated into the HVNL.

The ATA further recommends that states must justify any departures from the related policy, and must put plans in place to allow HML access within five years.

### Recommendation 8

The ATA recommends the RIS proposal, to retain the model law in relation to destruction of sensitive IAP data, be adopted.

### Recommendation 9

The ATA recommends the model provisions regarding route compliance certificates be retained and that route compliance certificates are not permitted as an access condition of a notice or permit.

### Recommendation 10

The ATA recommends the resolution 'The power to issue access conditions in the HVNL to allow for route compliance certificates if required by a road manager. The mutual recognition provision will not be required.' should not be adopted.

### Recommendation 11

The ATA recommends the resolution 'The regulator, and the road manager when consenting to access, will have the power to impose conditions.' should not be adopted. The ATA further recommends any local road condition should appear within the NHVR notice, not be a separate document by a road agency.

**Recommendation 12**

The ATA recommends the resolution that IAP ‘...will not be included as a specific requirement for HML access in the HVNL. The HVNL will allow for the imposition of IAP conditions as access conditions.’ should not be adopted.

The ATA recommends HML should be granted to vehicles with RFS as initially intended.

**Recommendation 13**

The ATA recommends the resolution ‘The model law will be included in the HVNL.’ regarding access to HML for vehicles with RFS be adopted.

**Recommendation 14**

Further information is required to enable the ATA to formulate an opinion on this item.

**Recommendation 15**

Further information is required to enable the ATA to formulate an opinion on this item.

**Recommendation 16**

The ATA recommends the resolution ‘The HVNL will expressly provide that any information that suggests that a non-compliance report has been made cannot be released to the participating operator.’ be amended to reflect that a non compliance report must be released to the participating operator.

**Recommendation 17**

The ATA recommends the resolution ‘The variation will be included in the HVNL to allow 28 days to provide personal information when requested by the relevant person.’ be expanded to include “without unreasonable delay and before 28 days has lapsed.”

**Recommendation 18**

The ATA recommends the clauses regarding IAP included in the HVNL are reviewed to ensure the wording in the HVNL does not conflict with other sections of the HVNL.

The ATA also recommends the validity of the implied current presumption that IAP information is evidence should be reviewed with independent legal opinion, in light of the admission that requiring IAP information to be accurate, up-to-date and complete “may not be possible to satisfy”.

**Recommendation 19**

The ATA recommends the resolution regarding breaches by TCA that ‘This will not be included in the HVNL as TCA is a government owned entity’ should not be adopted.

**Recommendation 20**

The ATA recommends the resolution ‘The HVNL will include the standard conditions from the Schedule but will also allow the regulator to specify other conditions, including access conditions required by road managers.’ should not be adopted.

The ATA recommends the resolution should be appropriately considered in a RIS, and an inclusion to the HVNL that the NHVR be required to approve or disapprove road agency access conditions should be added.

**Recommendation 21**

The ATA recommend the NHVR recognise research that TruckSafe accredited operators are twice as safe as non-accredited operators, and research that no vehicles in TruckSafe were found with major defects.

The ATA recommends the HVNL recognise TruckSafe and provide regulatory benefits afforded to accredited operators under NHVAS.

**Recommendation 22**

The ATA recommends the HVNL and National Regulator are provided with the powers to deliver the full benefits of a truly national chain of responsibility accountability processes.

**Recommendation 23**

The ATA recommends a provision providing an obligation on enforcement staff to notify the registered operator and/or owner of any offences, be included into the HVNL, allowing the “three strikes” policy to become redundant as a result.

**Recommendation 24**

The ATA recommends the resolutions in the Appendix regarding Section 12 – Speeding chain of responsibility should be adopted.

**Recommendation 25**

The ATA recommends that reasonable steps defence be considered for strict liability registration offences against drivers

**Recommendation 26**

The ATA recommends that a driver following the direction of an enforcement officer should be protected from prosecution of any breach that arises by following the direction.

**Recommendation 27**

The ATA recommends the RIS proposal, regarding the retention of the model law provisions for reasonable steps defence to prevent driving while fatigued, should be adopted.

**Recommendation 28**

The ATA recommends the resolution ‘The reasonable steps defence will be available to drivers and operators for all breaches in the HVNL.’ should be adopted.

**Recommendation 29**

The ATA recommends sanction space in the current model provision not be vacated in the HVNL.

**Recommendation 30**

The ATA recommends the model law provision, that the application of sanctions against a driver’s driver licence for M,D&LR offences to be an optional court decision only, should be included in the HVNL.

The ATA recommends that states should not have the ability to impose driver licence sanctions for M,D&LR offences.

**Recommendation 31**

The ATA recommends the RIS proposal, that compliance with a registered industry code of practice is prima facie evidence of compliance, should be adopted.

**Recommendation 32**

The ATA recommends that the model provision regarding vehicle registration sanctions for M,D&LR offences, and its use being limited to court actions associated with severe breaches, should be included in the HVNL.

**Recommendation 33**

The ATA recommends the RIS proposal, providing a ‘reasonable steps’ defence to operators in relation to the obligation to carry accreditation documents, should be adopted.

**Recommendation 34**

The ATA recommends the RIS proposal, for drivers to be required to carry relevant permits, but not be required to carry notices, should be adopted.

The ATA also recommends that such information should be recognised in hard or soft form, including being accessible at the roadside via a web-based solution.

**Recommendation 35**

The ATA recommends the RIS proposal, to return goods seized for evidentiary purposes when no longer required as evidence or as part of an investigation, should be adopted.

**Recommendation 36**

The ATA recommends the RIS proposal, to allow an operator to elect to receive monetary compensation as an alternative to the repair of goods damaged by an enforcement officer's unreasonable exercise of their powers, should be adopted.

The ATA also recommends that the option to elect to receive monetary compensative should be the choice of the person so affected.

**Recommendation 37**

The ATA recommends the RIS proposal, to retain the model law in relation to places where enforcement officer powers may be exercised, should be adopted.

**Recommendation 38**

The ATA recommends the RIS proposal, to retain the model laws in the HVNL in relation to authorised officers directing a vehicle to remain stationary until a breach is rectified, should be adopted.

**Recommendation 39**

The ATA recommends the HVNL should prohibit any sanction against heavy vehicle registrations for unpaid fines linked to unrelated non-vehicle related fines.

**Recommendation 40**

The ATA recommends the RIS position, that it be an offence to remove a defect label from a vehicle, should be adopted.

The ATA restates that, where any on-road offence is detected where the heavy vehicle is linked to the offence, the registered operator of the heavy vehicle and/or the owner of the heavy vehicle is notified of the offence.

**Recommendation 41**

The ATA recommends financial penalties should apply to IAP service providers where cooperation with reasonable auditor requests for materials is not forthcoming.

**Recommendation 42**

The ATA recommends Appendix A, 3. Compliance and enforcement, Item 4, Clause 57 should be clarified with industry before being adopted.

**Recommendation 43**

The ATA recommends that Appendix A, 3. Compliance and enforcement, Item 19, Clauses 41 and 42 should be clarified with the industry before being adopted.

**Recommendation 44**

The ATA recommends the resolution 'The variation will be adopted so that the HVNL includes oral saliva testing for prescribed [proscribed?] drugs as part of the test for assessing a driver's fitness to drive. If a roadside drug test result is available it may be used for the purpose of deciding whether the driver is fit to drive' should be rejected.

The ATA recommends the HVNL should rely on current state-based legislation regarding road side oral saliva drug testing.

**Recommendation 45**

The ATA recommends that Appendix A, 3. Compliance and enforcement, Item 26, Clause 150 should be clarified with the industry before being adopted.

**Recommendation 46**

The ATA recommends that Appendix A, 3. Compliance and enforcement, Item 45, Clauses 147 through 153 should be clarified with the industry before being adopted.

**Recommendation 47**

The ATA recommends that Appendix A, 3. Compliance and enforcement, Item 46, Clause 155 should be clarified with the industry before being adopted.

**Recommendation 48**

The ATA recommends the NHVR takes independent legal advice to ensure the proposed revision does not diminish liability if actions of persons administering or enforcing the HVNL are other than good faith.

**Recommendation 49**

The ATA recommends the resolution 'The model law is to be adopted in the HVNL' and 'The offences which are specified as offences in the model law which incur demerit points will also incur demerit points under the HVNL. This means that only offences relating to actual breaches of driving hour requirements of driving while impaired by fatigue will incur demerit points.' should be rejected.

The ATA recommends that the HVNL adopt the originally promised fatigue reform policy whereby the application of demerit points only apply to the most serious fatigue breaches, and only on the specific decision of the courts to apply such a penalty in the specific circumstance.

**Recommendation 50**

The ATA recommends that only correctly trained authorised officers should be able to issue defect notices.

**Recommendation 51**

The ATA recommends that where fatigue is presently administered under transport law, this is maintained.

The ATA also recommends that both NT and WA should retain their OH&S regime of managing fatigue, and the HVNL should not disadvantage NT and WA operators and cross-border operations in these areas.

**Recommendation 52**

The ATA recommends the RIS position, supporting the short rest defence under standard hours fatigue management, should be adopted.

**Recommendation 53**

The ATA recommends the split rest defence under BFM is retained, and consideration given to making this an allowed action.

**Recommendation 54**

The ATA recommends the model law 100+ km rule for work diary use be retained, and we support the policy that parties not using work diaries must keep equivalent records.

The ATA also recommends the NHVR ensures the obligation to keep records is clear.

**Recommendation 55**

The ATA recommends an inclusive consultation process with the ATA to ensure current Advance Fatigue Management (AFM) becomes more useable for the industry.

The ATA recommends being provided with the opportunity for further dialogue regarding the concerns surround AFM and the proposed way forward. AFM accredited operators should also be involved in this dialogue.

**Recommendation 56**

The ATA recommends the intended relationship of coexistence and recognition between OH&S and road transport laws be retained in the HVNL.

**Recommendation 57**

The ATA recommends the resolution 'There will be no exemption in the HVNL allowing a driver to drive a heavy vehicle for domestic or personal reasons in breach of driving hour requirements.' is not acceptable and that further review by the NHVR is required.

**Recommendation 58**

The ATA recommends that, in the event a consensus ATC decision is not reached, the HVNL implement the NSW/QLD position on calculation of time.

**Recommendation 59**

The ATA recommends that Appendix A, 4. Fatigue Chain of Responsibility, Item 27, Clause 72(4) should be clarified with the industry before being adopted.

**Recommendation 60**

The ATA recommends that the resolution 'The HVNL will provide that the holder of an approval for an EWD may apply for a variation or cancellation of the approval. This is necessary as only the holder of the approval should be applying to vary or cancel the approval.' should be adopted.

**Recommendation 61**

The ATA recommends that the requirement for an applicant to declare prior accreditation sanctions should not be adopted.

**Recommendation 62**

The ATA recommends that the NHVR clarifies the variation proposed in Appendix A, 4. Fatigue Chain of Responsibility, Item 55, where one jurisdiction had included a method for calculating the average number of vehicles that are loaded or unloaded at a premise, does not expand the meaning or application.

**Recommendation 63**

The ATA recommends the NHVR states and ensures that the variation proposed does not add burden.

**Recommendation 64**

The ATA recommends the NHVR identify the proposed change is justified, safe and fair.

**Recommendation 65**

The ATA recommends the use of GCM be reviewed as it appears GVM is intended.

**Recommendation 66**

The ATA recommends a national schedule for all GA vehicles up to 50 tonnes, and revised schedules for CML and HML keeping the same axle spacings for the additional mass allowances, and similar arrangements for B-double access while also voiding the clear spacing rule used in some agencies.

**Recommendation 67**

The ATA recommends the resolution 'This variation will not be included in the HVNL as this matter is best addressed in enforcement practices.' regarding the provision of a method determining wheel loads, axle loads, total mass and use of weighing devices should not be adopted.

The ATA recommends the currently nationally agreed guideline setting down measuring adjustment, methodologies and site requirements should be referenced/noted in the HVNL.

**Recommendation 68**

While the ATA recommends the resolution 'The HVNL will include a single definition of "load" which will include all goods and people in the vehicle, all things carried for the normal operation of the vehicle and personal items.' should not be adopted. The ATA further recommends the definition of "load" be corrected in the HVNL.

The ATA recommends the matter regarding towing restrictions be specifically addressed in a RIS as it imposes a new requirement which has not been assessed.

The ATA recommends protection from double jeopardy be provided and clearly identified in the HVNL.

**Recommendation 71**

The ATA recommends penalties for NHVAS business rules should not be applied. The ATA further recommends that offences which involve NHVAS are reported to the registered scheme operator.

The ATA also recommends that CML and HML mass limits are recognised as the permissible mass limit if an offence is detected.

The ATA recommends the NHVAS be operated using sound accreditation practices including robust audit and review. The ATA further recommends as an alternative the NHVAS be dismissed, with more relevant arrangements implemented for granting permission to access regulatory benefits.

**Recommendation 72**

The ATA recommends the resolution 'The HVNL should regulate accreditation (along with the NHVAS business rules). Accreditation includes important rights and responsibilities and should be covered by legislation.' be further explored for clarity. The ATA further recommends that TruckSafe be recognised in the HVNL.

**Recommendation 73**

The ATA recommends the NHVR determine if the NHVAS is to become an operator licensing scheme, and if so, that a RIS be released for comment.

**Recommendation 74**

The ATA recommends the RIS position, regarding mutual recognition of pilot and escort drivers and moving to a logical cost effective uniform future solution based upon risk management and skills recognition, should be adopted.

**Recommendation 75**

The ATA recommends permits be available for oversize and/or overmass non-load carrying trailers.

**Recommendation 76**

The ATA recommends the resolution 'The variation will be adopted in the HVNL.' regarding warning lights to be permanently wired should not be adopted.

**Recommendation 77**

The ATA recommends the resolution 'This will not be included in the HVNL. Instead, the HVNL will follow the Victorian approach.' relating to Victoria's non-implementation of the provision to exempt vehicles towing agricultural implements for rear mirrors should be rejected. The ATA recommends the current exemption be included in the HVNL.

**Recommendation 78**

The ATA recommends the resolution 'The model law will be adopted in the HVNL , with reference to Vehicle Standards Bulletin VSB 12 (as per AVSR 119).' should be rectified by drafting clear provisions.

**Recommendation 79**

The ATA recommends the RIS position, that enhancements to RAV permits allowing non-operators to hold RAV permits for access to their premises by prescribed vehicle types, should be adopted.

**Recommendation 80**

The ATA recommends that Appendix A, 11. Restricted access vehicles, Item 4 Clause 19, Item 5 Clause 12, and Item 7 Clause n/a should be clarified with the industry before being adopted.

**Recommendation 81**

The ATA recommends the resolution 'The model law will be included in the HVNL. An IAP condition can be imposed as an access condition if route or area restrictions are required by the road owner.' should be appropriately considered in a RIS, or should not be adopted.

**Recommendation 82**

The ATA recommends the Federal Interstate Registration scheme be continued unless no-cost and non-loss transition is provided for, and the scheme productivity benefits are maintained.

**Recommendation 83**

The ATA recommends the RIS position, to allow the use of personalised/custom number plates, should be adopted.

**Recommendation 84**

The ATA recommends goods-carrying vehicles should be subject to registration, and that agricultural devices carrying out this role in place of trucks be subject to access and road user charges.

**Recommendation 85**

The ATA recommends the mutual recognition by road agencies of inspections by authorised officers in other states.

The ATA further recommends exemptions from periodic inspections where maintenance programs meeting the standards and robustness of TruckSafe are in place, and that these programs be classed as prima facie evidence of reasonable steps, and that intercepts that detect defects may trigger a compliance audit.

The ATA also recommends that random and targeted roadworthiness inspections focus on known safety issues.

The ATA recommends that, in consultation with the ATA, a formal review of periodic inspections be conducted.

**Recommendation 86**

The ATA recommends the RIS position, that both buyer and seller be required to notify the registration authority of the transfer to protect their legal obligations, should be adopted.

**Recommendation 87**

The ATA recommends that, in consultation with the ATA, there should be ongoing discussions regarding the provisions for written off vehicles.

**Recommendation 88**

The ATA recommends that, in consultation with the ATA, there should be ongoing discussions regarding the provisions for disclosure of information.

**Recommendation 89**

Based upon current knowledge, the ATA recommends the mandating of spray suppression devices be discontinued.

The ATA further recommends road agencies attend to pavements to ensure water lying on roads is minimised.

**Recommendation 90**

The ATA recommends the clear spacing rule is not included in the HVNL, as bridge formula controls are adequate.

**Recommendation 91**

The ATA recommends mutual recognition of vehicles exempted under another law or by another jurisdiction should be adopted.

## 4. Commentary

### 4.1. Drafting

#### 4.1.1. Drafting of the HVNL

The ATA and its specialist legal advisers have spent extensive time reviewing the draft HVNL seeking to ensure the already agreed national policies in the Model National Provisions are carried forward successfully. It is acknowledged that creating the HVNL from the 13 packages of Model Provisions has been a complex drafting program.

We have identified 245 matters where we believe constructive dialogue between our specialists would assist the delivery of the best possible HVNL. We note that several of these arise from attempting to blend definitions with different meanings in the individual model packages to a common meaning (for example the definition of load), or trying to simplify a series of definitions but losing meaning in the process such as attempting to apply the term GVM to both motor vehicles and trailers. Further, some of the sections within the draft HVNL are quite open to interpretation, or are simply incorrect.

In addition, we have engaged external Special Counsel to assist us with ensuring our feedback to you on the HVNL is the best we can provide. Part of this legal advice is attached under *Attachment A – Legal Counsel Comments*.

The ATA strongly supports the intent and the intended outcome of the HVNL. However, the ATA is unable to support the draft HVNL as provided in the RIS, as numerous amendments are required to reflect the model provisions.

The changes required are such that another round of public consultation may be required prior to asking Ministers to endorse the draft HVNL.

#### **Recommendation 1**

**The ATA recommends the package of HVNL not be submitted to the Australian Transport Council Ministers until another round of public comment is concluded.**

**The ATA recommends that extensive redrafting of the HVNL occur to rectify errors and omissions, and to improve the understanding of the provisions.**

#### 4.1.2. Release of associated regulations to HVNL

There are also a number of other linked processes still to be aired relating to matters like engineering signatories, mutual recognition of vehicle modification plates, and protection of local productivity initiatives within the permit and notice schemes. These matters need to be aired as part of the legislative framework so that the necessary linkages are made.

#### **Recommendation 2**

**The ATA recommends the early airing of the attendant processes to support a workable legislative framework for the National Regulator.**

#### 4.1.3. Binding the Crown

Currently we note the HVNL does not bind the Crown in all of its capacities, nor does it provide for penalties for such offences. This is not fair when those entities may compete with parties bound by the HVNL. The ATA believes the Crown should be bound in all of its capacities and also subjected to the standard penalties.

#### **Recommendation 3**

**The ATA recommends the Crown be bound by all of the HVNL capacities and for Crown entities to be subject to normal penalties that parties in the chain of responsibility may face.**

#### **4.1.4. RIS 8.22 - Administrative fees**

The RIS proposes that cost recovery administration fees should be set and applied by the NHVR. The ATA understands cost recovery of administration fees is necessary; however, it is inappropriate for any agency to set its own administration fees. Cost recovery administration fees should be set by the Australian Transport Council after the completion of appropriate industry consultation.

#### **Recommendation 4**

**The ATA recommends administration fees should be set by the Australian Transport Council, not by the NHVR.**

## **4.2. External Review of Decisions**

### **4.2.1. RIS 9.1 - Decision-making frameworks (HVNL Chapter 4 Part 8, Chapter 11)**

The aim is to deliver a significantly improved decision making framework for heavy vehicle access. To do this, it is absolutely critical that the decisions by road asset managers are subjected to external review. We have taken legal advice from a leading specialist Counsel that shows that this position is also consistent with normal social justice standards for similar decision makers making decisions of similar gravity.

Access enhancements by facilitating better decision making practices is the cornerstone to delivering benefits from the National Regulator process. The RIS builds significant benefits upon enhancing the access decision making processes. However, it stops well short of making the asset managers' decisions subject to external review. The asset managers' decisions are critical decisions, and accordingly these should be transparent and accountable. External review of decisions is an ideal way of ensuring transparency and accountability are important in decision making. It is easy to say "No" if the only review is conducted by a generalist internal manager. It is much more transparent to face a situation where the applicant can ask for a statement of reasons and call for review by an alternative decision maker. These obligations are common to Commonwealth agencies, and have demonstrated enhanced decision making over the years. However, care needs to be taken that reviews are limited to applicants and not any party.

The ATA has sought specialist legal opinion on this matter from Special Counsel, Tony Hulett, of Lord Commercial Lawyers Pty Ltd in Melbourne. Mr Hulett advises the following:

"The justification for restricting road manager decisions to internal review only is brief with little supporting argument. The RIS states that it is not feasible at this juncture as Councils would be required to source second opinions and legal expertise likely to be outside their budgetary reach.

"This is an unusual justification. There are many decisions that Councils make which, if subject to external review, would require them to source second opinions and legal expertise and which would not fall with any fixed budgetary allocation."

Mr Hulett further stated that:

"These decisions have to be based on infrastructure protection and public amenity and the RIS implies that Councils are reluctant to grant access on either ground as refusal is a safe decision..." and that "The prospect of external review is, in our view, more likely to result in better informed and careful access decisions and made in accordance with the comprehensive evaluative tools mentioned in the RIS."

The complete correspondence from Mr Hulett regarding this matter can be found at *Attachment B – Correspondence Ref 11608*.

#### **Recommendation 5**

**The ATA recommends both internal and external review of decisions by road asset managers be available to applicants.**

### 4.3. Access, Higher Mass, and IAP

#### 4.3.1. HML and IAP

The HVNL does not resolve the vagaries of HML and inappropriate use of IAP for this level of access by two states. The ATA is determined that the requirement for HML vehicles to adopt IAP to access regulatory benefits be quashed.

#### **Recommendation 6**

**The ATA recommends the vagaries of HML be resolved in the HVNL thereby delivering the lost benefits promised since 1999.**

#### 4.3.2. RIS 8.8 - HML eligible vehicles (HV (MD&L) NR Schedule 3, Parts 1 and 2)

Currently, not all RFS equipped axle groups receive HML mass limits from the various authorities. The intended national policy is varied in different ways across agencies.

The ATA supports the original National Model, wherein RFS on axle group equals access at HML weights on relevant network for the vehicle type. That is, RFS on general access vehicle should equal HML on all roads, and RFS on B-double should equal HML mass limits on full B-double network. We support this because the engineering states that road loads with RFS may be higher with same impact. States must be required to justify any departures from this policy, and be required to put in place plans that will allow HML access within 5 years.

#### **Recommendation 7**

**The ATA recommends the original national model relating to HML eligible vehicles be incorporated into the HVNL.**

**The ATA further recommends that states must justify any departures from the related policy, and must put plans in place to allow HML access within five years.**

#### 4.3.3. RIS 8.21 – Intelligent Access Program (IAP) record retention (HVNL Chapter 7 Part 4 [not part 6])

The model law for IAP requires sensitive IAP information to be destroyed after one year. NSW had a variation to this, which potentially allowed premature destruction of IAP data. The RIS recommends retaining the model law.

#### **Recommendation 8**

**The ATA recommends the RIS proposal, to retain the model law in relation to destruction of sensitive IAP data, be adopted.**

#### 4.3.4. Appendix A (2. Concessional Mass Limits) Item 3 - Route compliance certificates

Only one jurisdiction has this requirement in place. The ATA believes it therefore onerous and excessive to allow for route compliance certificates to be noted as an access condition on a notice or permit. This additional burden is unacceptable, and no explanation of claimed benefits from route compliance certificates has been provided. The ATA does not agree with the resolution provided in the Appendix.

#### **Recommendation 9**

**The ATA recommends the model provisions regarding route compliance certificates be retained and that route compliance certificates are not permitted as an access condition of a notice or permit.**

#### **4.3.5. Appendix A (6. Higher Mass Limits) Item 5 – Route compliance certificates**

This approach is applied in SA. South Australian Road Transport Association (SARTA) has advised acceptance by SA operators is, at best, begrudging. It is not perceived to provide any value, and is seen as a nonsensical requirement. It is an unnecessary constraint that, historically, was thrown into the mix by Transport SA at the time Higher Mass came in. Modern mapping and route access technologies used by operators make this requirement utterly redundant.

##### **Recommendation 10**

The ATA recommends the resolution ‘The power to issue access conditions in the HVNL to allow for route compliance certificates if required by a road manager. The mutual recognition provision will not be required.’ should not be adopted.

#### **4.3.6. Appendix A (6. Higher Mass Limits) Item 7 - Additional conditions on notices**

The ATA advises we are still considering the new proposed access decision making framework and waiting for legal advice on reviewable decisions. However, we are concerned about local additional conditions on notices. All relevant conditions should be on the notice, not applied at some other time by a road manager.

##### **Recommendation 11**

The ATA recommends the resolution ‘The regulator, and the road manager when consenting to access, will have the power to impose conditions.’ should not be adopted. The ATA further recommends any local road condition should appear within the NHVR notice, not be a separate document by a road agency.

#### **4.3.7. Appendix A (6. Higher Mass Limits) Item 10 - IAP as a condition of access**

The ATA understands that the HVNL will not include this item as a requirement, however it is allowed as a condition of access. The ATA states that the enhancement proposed really is not good enough. The industry was promised HML for vehicles with RFS, and the ATA rejects any additional hurdles or impost being placed upon the industry, including IAP in any form.

##### **Recommendation 12**

The ATA recommends the resolution that IAP ‘...will not be included as a specific requirement for HML access in the HVNL. The HVNL will allow for the imposition of IAP conditions as access conditions.’ should not be adopted.

The ATA recommends HML should be granted to vehicles with RFS as initially intended.

#### **4.3.8. Appendix A (6. Higher Mass Limits) Item 12 - 4 Definition of road-friendly suspension**

The ATA advises that HVNL will follow the model law, where if RFS is fitted to an axle group, it can be loaded to HML.

##### **Recommendation 13**

The ATA recommends the resolution ‘The model law will be included in the HVNL.’ regarding access to HML for vehicles with RFS be adopted.

#### **4.3.9. Appendix A (7. Intelligent Access Program) Item 3 – Definition of intelligent access condition**

It is not clear that the proposed new definition is consistent with the existing definition.

**Recommendation 14**

Further information is required to enable the ATA to formulate an opinion on this item.

**4.3.10. Appendix A (7. Intelligent Access Program) Item 4 - Definition of IAP information**

The ATA advises that it is not clear that the proposed new definition is consistent with the existing definition.

**Recommendation 15**

Further information is required to enable the ATA to formulate an opinion on this item.

**4.3.11. Appendix A (7. Intelligent Access Program) Item 5 - No ban on providing compliance reports to persons other than the operator**

There is possible drafting error as the proposed position appears to prevent the operator receiving their own compliance reports.

**Recommendation 16**

The ATA recommends the resolution 'The HVNL will expressly provide that any information that suggests that a non-compliance report has been made cannot be released to the participating operator.' be amended to reflect that a non compliance report must be released to the participating operator.

**4.3.12. Appendix A (7. Intelligent Access Program) Item 9 - Provision of personal information to person who has requested access**

The ATA agrees with the resolution, and suggests the provision should require "without unreasonable delay and before 28 days has lapsed".

**Recommendation 17**

The ATA recommends the resolution 'The variation will be included in the HVNL to allow 28 days to provide personal information when requested by the relevant person.' be expanded to include "without unreasonable delay and before 28 days has lapsed."

**4.3.13. Appendix A (7. Intelligent Access Program) Item 10 - Ensure information is accurate, up to date and complete**

The ATA notes this interesting admission that "as IAP information is generally automatically generated, requiring it not to be misleading imposes an obligation that may well not be possible to satisfy". If this is the case how can it be considered prima facie evidence, as is the assumption in the IAP law? The ATA suggests the NHVR needs to review this further to ensure the wording in the HVNL is appropriate when considered with other sections of the HVNL.

**Recommendation 18**

The ATA recommends the clauses regarding IAP included in the HVNL are reviewed to ensure the wording in the HVNL does not conflict with other sections of the HVNL.

The ATA also recommends the validity of the implied current presumption that IAP information is evidence should be reviewed with independent legal opinion, in light of the admission that requiring IAP information to be accurate, up-to-date and complete "may not be possible to satisfy".

#### **4.3.14. Appendix A (7. Intelligent Access Program) Item 30 - Breaches by TCA**

Currently, the HVNL is proposing not to apply penalties to TCA on the basis that it is a government entity. The ATA believes this is at odds to our expectation of modern binding the Crown provisions.

##### **Recommendation 19**

**The ATA recommends the resolution regarding breaches by TCA that ‘This will not be included in the HVNL as TCA is a government owned entity’ should not be adopted.**

#### **4.3.15. Appendix A (10. Oversize Overmass) Item 14 - Access conditions**

It is important that the NHVR achieves good gains in access through a better decision making framework, but IAP continues to be the elephant in the room no one wants to address. IAP has not been a facilitator, it has largely been an obstacle as it has been applied inappropriately to low risk situations such as HML in NSW. Requiring a heavy vehicle to allow following vehicles to overtake is a poor example, and the ATA rejects the requirement of IAP as an access condition as noted

##### **Recommendation 20**

**The ATA recommends the resolution ‘The HVNL will include the standard conditions from the Schedule but will also allow the regulator to specify other conditions, including access conditions required by road managers.’ should not be adopted.**

**The ATA recommends the resolution should be appropriately considered in a RIS, and an inclusion to the HVNL that the NHVR be required to approve or disapprove road agency access conditions should be added.**

## **4.4. TruckSafe**

The HVNL fails to recognise TruckSafe industry accreditation when it is proven to produce operators who are twice as safe as non TruckSafe operators. The ATA requests that TruckSafe be recognised and granted the regulatory recognition that its standards and audit practices warrant.

The ATA’s Industry Technical Council has recommended that the planned national heavy vehicle laws should exempt trucks and trailers accredited under TruckSafe from yearly roadworthiness inspections.

NSW, Queensland and the Northern Territory require trucks and trailers to have yearly inspections. The draft national heavy vehicle laws released for consultation last week would keep those existing state-based inspection systems.

Operators in TruckSafe have strong systems to manage their maintenance, and are audited on entry to the scheme and then every two years. These requirements are much more stringent than a yearly roadworthiness inspection. As a result, TruckSafe operators record significantly fewer vehicle defects than operators who don’t go beyond their legal obligations.

In a recent study<sup>1</sup>, Lori Mooren from the Injury Risk Management Centre at UNSW used figures from the NSW RTA to show the difference in defect rates between TruckSafe accredited operators and the rest of the industry.

Her paper pointed out that:

- 4.5 per cent of the trucks that were not in any accreditation scheme were found to have major defects;
- 6.1 per cent of the trucks accredited under NHVAS Maintenance were found to have major defects; but
- no trucks accredited under TruckSafe were found with major defects.

<sup>1</sup> University of New South Wales (2008), *Review of Australian Alternative Compliance Schemes*. Research report conducted by Mooren, L. and Grzebieta, Prof. R.

TruckSafe has a demonstrated record of safety, with research showing TruckSafe accredited vehicles have half the crash rate of non-accredited vehicles, independent research shows.

The research, carried out by Austroads in 2008, examined heavy vehicle crash rates for the three year period from 1 January 2003 to 31 December 2005<sup>2</sup>. Table 1 summarises the outcomes of the research.

**Table 1: Crash rates of TruckSafe and non-NHVAS accredited vehicles, 2003-2005**

	Crashes	Vehicle years <sup>1</sup>	Crash rate (crashes/ vehicle-year)
Non-NHVAS accredited	6,278	94,753	0.066
TruckSafe accredited	408	12,249	0.033

<sup>1</sup>Vehicle years are a measure of accident exposure. A vehicle accredited for the whole three years was assigned a vehicle year value of 3.

Austroads also examined the safety benefits of TruckSafe accreditation using insurance data provided by National Transport Insurance (NTI). NTI is the largest truck insurer in Australia. Table 2 summarises the results of the analysis, which examined the five year period from 2001 to 2005.

**Table 2: Claims made to NTI insurance per vehicle, 2001-2005**

	Claims per vehicle over five years
Non-TruckSafe accredited	0.061
TruckSafe accredited	0.041

In other words, NTI operators accredited with TruckSafe lodged 33 per cent fewer claims than non-TruckSafe accredited operators. Using the NTI data, the study also demonstrated that the operators improved their safety after joining the TruckSafe program.

The total cost of operators' claims during the two years after operators became accredited was 57 per cent lower than during the two years before accreditation. For operators with 10 or fewer powered units, the reduction was 38 per cent.

### **Recommendation 21**

**The ATA recommend the NHVR recognise research that TruckSafe accredited operators are twice as safe as non-accredited operators, and research that no vehicles in TruckSafe were found with major defects.**

**The ATA recommends the HVNL recognise TruckSafe and provide regulatory benefits afforded to accredited operators under NHVAS.**

## **4.5. Chain of Responsibility**

### **4.5.1. Chain of Responsibility**

Delivering a workable Chain of Responsibility wherein those parties in the chain with influence can be pursued without the need to prosecute drivers and operators. Further, that drivers and operators who have relied upon material from others such as a declared mass of goods should not be prosecuted unless, after investigation, it was unreasonable to have relied on the material. Ensuring that the chain investigations are not hampered by state borders is essential and an expected outcome from this reform.

<sup>2</sup> Austroads (2008). *Analysis of the Safety Benefits of Heavy Vehicle Accreditation Schemes*. Research report AP-R319/08. Austroads is a strategic research body funded by the Australian, New Zealand, and state and territory road transport agencies.

**Recommendation 22**

The ATA recommends the HVNL and National Regulator are provided with the powers to deliver the full benefits of a truly national chain of responsibility accountability processes.

**4.5.2. RIS 8.7 - Three Strikes policy**

Chain of responsibility provisions for speed mirrors the intent of “three strikes”. The ATA supports the CoR provisions, and reiterates the registered operator and/or owner of the heavy vehicle should be notified where any on-road offence is detected where the heavy vehicle is linked to the offence. This will ensure the chain of responsibility is allowed to operate better.

**Recommendation 23**

The ATA recommends a provision providing an obligation on enforcement staff to notify the registered operator and/or owner of any offences, be included into the HVNL, allowing the “three strikes” policy to become redundant as a result.

**4.5.3. Appendix A (12 - Speeding chain of responsibility) General**

The ATA supports uniformity and the need to prevent contracts that may induce speeding.

**Recommendation 24**

The ATA recommends the resolutions in the Appendix regarding Section 12 – Speeding chain of responsibility should be adopted.

**4.6. Reasonable Steps Defence****4.6.1. Reasonable steps defence**

The ATA recognises the advances made since the reasonable steps defence was introduced with chain of responsibility legislation. However, there are some areas where this could be increased, such as removing the strict liability offence for driving an unregistered vehicle. If a driver has observed a current registration label on the vehicle, further enquiry would be unreasonable for a driver to undertake. The ATA has raised this issue informally with the NTC previously, and hopes that more will be done to protect drivers from this type of offence.

**Recommendation 25**

The ATA recommends that reasonable steps defence be considered for strict liability registration offences against drivers

**4.6.2. Appendix A (3. Compliance and enforcement) Item 16 - Defence for complying with a direction**

The ATA firmly believes it should be a lawful excuse to breach a law under direction of an authorised officer, not just a defence. If a B-double driver is directed off an approved route due to a serious accident, is it expected the driver would disobey the direction of an authorised officer?

The defence must be retained and ideally it should become an exemption from prosecution to do something which is otherwise a breach when doing so under direction of an enforcement officer.

**Recommendation 26**

The ATA recommends that a driver following the direction of an enforcement officer should be protected from prosecution of any breach that arises by following the direction.

#### **4.6.3. *RIS 8.6 – Reasonable steps defence to prevent driving while fatigued (HVNL s.199 [not s196])***

This matter was raised as the NSW government wanted to retain a unique requirement outside the model provisions. The ATA does not support the NSW view.

##### ***Recommendation 27***

The ATA recommends the RIS proposal, regarding the retention of the model law provisions for reasonable steps defence to prevent driving while fatigued, should be adopted.

#### **4.6.4. *Appendix A (3. Compliance and enforcement) Item 24 - Reasonable steps defence - CWD***

The ATA suggests that CWD provisions be retained in the HVNL as reflected in the model laws, however agrees if the application of the defence is broadened. It is essential that drivers and operators can rely upon the CWD as intended.

##### ***Recommendation 28***

The ATA recommends the resolution ‘The reasonable steps defence will be available to drivers and operators for all breaches in the HVNL.’ should be adopted.

## **4.7. Compliance & Enforcement**

### **4.7.1. *Sanction options left to states***

The proposals include the HVNL vacating legitimate sanction options to allow states and territories to repopulate the field with their own individual sanctions. The ATA cannot support allowing states such powers.

##### ***Recommendation 29***

The ATA recommends sanction space in the current model provision not be vacated in the HVNL.

### **4.7.2. *RIS 8.11 - Driver licence sanctions for mass, dimension and load restraint breaches***

### **4.7.3. *Appendix A (3. Compliance and enforcement) Item 15 - Driver licence sanctions***

The national model laws limited the potential application of sanctions against a driver’s driver licence for M,D&LR offences to an optional court decision only. Some states have digressed from this and applied sanctions against driver licences in other circumstances contrary to intended policy. The RIS proposes that the HVNL be amended to remove not only the sanction option, but also the limitation which would make the use of such a sanction a state’s purview.

The ATA does not believe that in addition to fines a driver’s licence should be subject to sanctions for M,D&LR offences, except perhaps in exceptional circumstances where the driver’s conduct was pivotal in the offences and repeated. Such a special circumstance should be subject to review by a court, as was the intent of the model law. The ATA does not support allowing the use of sanctions against a driver licence to be left in the purview of the states as proposed by the RIS. The model law provision should be carried over into the HVNL.

##### ***Recommendation 30***

The ATA recommends the model law provision, that the application of sanctions against a driver’s driver licence for M,D&LR offences to be an optional court decision only, should be included in the HVNL.

The ATA recommends that states should not have the ability to impose driver licence sanctions for M,D&LR offences.

**4.7.4. RIS 8.9 - Registering codes of practice (HVNL Chapter 13 Part 2 [not ss.617, 618])**

The ATA supports the model law, which allows registration of industry codes of practice. This increases the legal strength of any defence based upon compliance with such a code, as it becomes prima facie evidence of compliance, and requires the onus of proof to fall upon the prosecution.

**Recommendation 31**

**The ATA recommends the RIS proposal, that compliance with a registered industry code of practice is prima facie evidence of compliance, should be adopted.**

**4.7.5. RIS 8.12 - Vehicle registration sanctions for mass, dimension and load restraint breaches**

The model law provides that courts may impose vehicle registration sanctions for severe mass, dimension and load restraint breaches. WA and NT have not implemented this provision but indicated they intend to do so. The ATA supports the model provisions, which allow vehicle registration sanctions for these breaches, provided the sanctions are ordered by a court, and where the breaches are severe. This should be included in the HVNL.

**Recommendation 32**

**The ATA recommends that the model provision regarding vehicle registration sanctions for M,D&LR offences, and its use being limited to court actions associated with severe breaches, should be included in the HVNL.**

**4.7.6. RIS 8.15 - Obligation to carry accreditation documents (HVNL s 404 [not s 397])**

Currently, an operator must ensure a driver carries relevant accreditation documents under the model laws. SA has moderated this provision so that the strict liability offence becomes “must take reasonable steps to ensure”. The RIS proposed adopting the SA approach in the HVNL.

The ATA supports this approach. If an operator has complied with all requirements in relation to providing the driver with relevant accreditation documentation, then it seems excessive that the operator would be responsible for what a driver does with the paperwork after leaving the depot.

**Recommendation 33**

**The ATA recommends the RIS proposal, providing a ‘reasonable steps’ defence to operators in relation to the obligation to carry accreditation documents, should be adopted.**

**4.7.7. RIS 8.16 - Driver not required to carry documents (HVNL Chapter 4 Part 5)**

The RIS proposes that the driver be required to carry relevant permit/s but not carry relevant notices, as notice conditions are publicly available to drivers and enforcement staff alike. This is a logical relaxation of the model law that requires both permits and notices to be carried by drivers. Further, the ATA suggests the law needs to recognise that such information may be carried in soft form or accessed at roadside via a web-based solution.

**Recommendation 34**

**The ATA recommends the RIS proposal, for drivers to be required to carry relevant permits, but not be required to carry notices, should be adopted.**

**The ATA also recommends that such information should be recognised in hard or soft form, including being accessible at the roadside via a web-based solution.**

**4.7.8. RIS 8.17 - Returning seized goods (HVNL s 483 [not s 475])**

Road transport law allows goods to be seized for evidentiary purposes, but is currently silent on returning the goods. The RIS proposes that such goods be returned when no longer required as evidence or as part of an investigation.

**Recommendation 35**

**The ATA recommends the RIS proposal, to return goods seized for evidentiary purposes when no longer required as evidence or as part of an investigation, should be adopted.**

**4.7.9. RIS 8.18 - Restoration of vehicles, combinations or premises (HVNL Chapter 9 Part 5 Division 2)**

Current model law requires an enforcement agency to repair damage to property occasioned by the unreasonable exercise of their powers. The RIS proposes that an operator may elect to receive monetary compensation as an alternative to the repair of the goods. This is consistent with SA practice, and the ATA supports this position. However, it must be the affected person's choice.

**Recommendation 36**

**The ATA recommends the RIS proposal, to allow an operator to elect to receive monetary compensation as an alternative to the repair of goods damaged by an enforcement officer's unreasonable exercise of their powers, should be adopted.**

**The ATA also recommends that the option to elect to receive monetary compensative should be the choice of the person so affected.**

**4.7.10. RIS 8.19 - Places where powers can be exercised (HVNL Chapter 9 Part 3)**

The model law sets out where enforcement officer powers may be exercised. In NSW, however, enforcement officers are able to access private property if a vehicle has been seen on a public road. The NSW position is unreasonable and runs counter to the normal practice that government officers must serve a warrant to enter private property. The RIS supports adopting the model law.

**Recommendation 37**

**The ATA recommends the RIS proposal, to retain the model law in relation to places where enforcement officer powers may be exercised, should be adopted.**

**4.7.11. RIS 8.20 - Detaining a vehicle (HVNL Chapter 9 Part 3 Division 2)**

Model law allows officers to direct a vehicle to remain stationary until a breach is rectified. In NSW, an enforcement officer may require a vehicle to be detained after a breach has been rectified, which the ATA believes is unreasonable. The RIS recommends continuing the model laws and not including the NSW extended power. The ATA supports the RIS position in this regard.

**Recommendation 38**

**The ATA recommends the RIS proposal, to retain the model laws in the HVNL in relation to authorised officers directing a vehicle to remain stationary until a breach is rectified, should be adopted.**

**4.7.12. RIS 9.7 - Unpaid fines (HV (R) NR r 42 [& r 44])**

All jurisdictions can impose sanctions on vehicle registration for unpaid fines. The model provisions incorporated such sanctions for unpaid fines for vehicle related matters, and was silent on links to unrelated matters such as non-payment of local council fees. Three options are canvassed in the RIS; retain the current provisions, remove all references, or try to accommodate all the additional circumstances into the HVNL. However, The ATA considers a fourth option exists, to provide prohibition to any sanction against HV registrations for unpaid fines linked to unrelated non-vehicle related fines.

HV are tools of trade for transport operators and as such they should not be subjected to potential registration sanctions for matters unrelated to the use of the heavy vehicle. A registration sanction and loss of earnings is harsh penalty for non-payment of a fine related to pet registration. Administrative ease is not a sound reasoning to expose operators to potentially harsh commercial losses and unreasonable penalties for matter unrelated to the business of operating trucks.

**Recommendation 39**

**The ATA recommends the HVNL should prohibit any sanction against heavy vehicle registrations for unpaid fines linked to unrelated non-vehicle related fines.**

**4.7.13. RIS 9.8.1 – Removal of defect notice label**

While it is logical and reasonable for it to be an offence to remove a defect label without lawful reason, the justification for used in the RIS is equally a justification that operators be told about other offences where the vehicle is involved, such as speeding, fatigue offences, loading offences, etc. The industry has, for some time, asked that vehicle owners be advised whenever an on-road offence occurs in their vehicle, as it would allow the chain of responsibility to operate better.

**Recommendation 40**

**The ATA recommends the RIS position, that it be an offence to remove a defect label from a vehicle, should be adopted.**

**The ATA restates that, where any on-road offence is detected where the heavy vehicle is linked to the offence, the registered operator of the heavy vehicle and/or the owner of the heavy vehicle is notified of the offence.**

**4.7.14. RIS 9.8.3 – Intelligent Access Program service provider obligations**

It could be considered that this is a matter for Transport Certification Australia (TCA), as failure to provide auditor materials should affect provider accreditation. However, in this case, there are potential negative impacts on other innocent parties. An operator's access and business activities of customers could be adversely affected by a provider losing its TCA accreditation. The ATA supports the introduction of offences resulting in financial penalty relating to IAP service providers not cooperating with reasonable auditor requests for materials.

**Recommendation 41**

**The ATA recommends financial penalties should apply to IAP service providers where cooperation with reasonable auditor requests for materials is not forthcoming.**

**4.7.15. Appendix A (3. Compliance and enforcement) Item 4 – Right to consent to an enforcement action**

The ATA is unclear how this "minor" variation changes the situation. There is a potential risk of diminished rights for operators that should be clarified.

**Recommendation 42**

The ATA recommends Appendix A, 3. Compliance and enforcement, Item 4, Clause 57 should be clarified with industry before being adopted.

**4.7.16. Appendix A (3. Compliance and enforcement) Item 19 - Obligation to produce licence and other details**

The resolution that the HVNL will include provisions about the production of a driver licence and personal information appears to have been omitted from the attendant regulations. The ATA requests the NHVR to explain why it believes the revised provision does not overstep model provisions.

**Recommendation 43**

The ATA recommends that Appendix A, 3. Compliance and enforcement, Item 19, Clauses 41 and 42 should be clarified with the industry before being adopted.

**4.7.17. Appendix A (3. Compliance and enforcement) Item 22 - Fit to drive requirements**

The addition of drug testing of drivers into the HVNL provides an extension of powers to authorised officers, particularly in jurisdictions where only police officers can conduct drug testing. The resolution in Appendix A also refers to including oral saliva testing for prescribed drugs, rather than proscribed drugs; what benefit is seen in doing this? It is assumed this is a typographical error.

The ATA does not support the resolution in the Appendix, and believes that jurisdictions should continue to manage oral saliva testing. If an authorised officer (but not a police officer) wishes to have a driver provide an oral saliva test for drugs, the correct process would be to request police assistance. Police are also more highly trained to deal with people potentially affected by drugs.

**Recommendation 44**

The ATA recommends the resolution 'The variation will be adopted so that the HVNL includes oral saliva testing for prescribed [proscribed?] drugs as part of the test for assessing a driver's fitness to drive. If a roadside drug test result is available it may be used for the purpose of deciding whether the driver is fit to drive' should be rejected.

The ATA recommends the HVNL should rely on current state-based legislation regarding road side oral saliva drug testing.

**4.7.18. Appendix A (3. Compliance and enforcement) Item 26 - Operator liability**

The ATA believes it is unclear that the rewording retains policy intent in model laws. The RIS should identify what the policy intent is, and what impact it will have on the HVNL.

**Recommendation 45**

The ATA recommends that Appendix A, 3. Compliance and enforcement, Item 26, Clause 150 should be clarified with the industry before being adopted.

**4.7.19. Appendix A (3. Compliance and enforcement) Item 45 - Legal Basis of liability**

The ATA is firm in its believe that the NHVR must state specifically that driver and operator liability has not been increased. This is not clear within the resolution on this item, and further information is requested.

**Recommendation 46**

The ATA recommends that Appendix A, 3. Compliance and enforcement, Item 45, Clauses 147 through 153 should be clarified with the industry before being adopted.

**4.7.20. Appendix A (3. Compliance and enforcement) Item 46 - Defence of lawful authority**

The ATA notes that the existing defence is being removed, however it has not been made clear that state laws will be adequate. To ensure rights are not being removed, this matter should be specifically addressed in the RIS.

**Recommendation 47**

The ATA recommends that Appendix A, 3. Compliance and enforcement, Item 46, Clause 155 should be clarified with the industry before being adopted.

**4.7.21. Appendix A (3. Compliance and enforcement) Item 49 - Indemnity for officers acting in good faith**

The ATA notes the inclusion recommended by the resolution, however the NHVR must insure revision does not diminish liability if actions of an enforcement officer are other than good faith.

**Recommendation 48**

The ATA recommends the NHVR takes independent legal advice to ensure the proposed revision does not diminish liability if actions of persons administering or enforcing the HVNL are other than good faith.

**4.7.22. Appendix A (3. Compliance and enforcement) Item 53 - Demerit points****4.7.23. Appendix A (4. Fatigue Chain of Responsibility) Item 53 - Demerit points for fatigue related offences**

The HVNL does not revert the fatigue related demerit points penalty situation to the circumstances originally promised to industry whereby demerit points would only apply where a court made a specific decision to apply such a penalty.

The ATA does not support the administrative application of demerit points for fatigue offences. Further, the ATA does not accept that amendment variations made to the model provisions are a valid reflection of intent and commitment given to industry in the original package. The industry was not consulted on the amendments made post the original vote, and these changes can have a significant impact on drivers. The ATA prefers the original vote version policy wherein the decision to apply demerit points was a matter for specific decision of the court, after consideration of circumstances in the most severe offences. The ATA suggests that this be retained as an option in the HVNL rather than the administrative application of demerit points.

**Recommendation 49**

The ATA recommends the resolution 'The model law is to be adopted in the HVNL' and 'The offences which are specified as offences in the model law which incur demerit points will also incur demerit points under the HVNL. This means that only offences relating to actual breaches of driving hour requirements of driving while impaired by fatigue will incur demerit points.' should be rejected.

The ATA recommends that the HVNL adopt the originally promised fatigue reform policy whereby the application of demerit points only apply to the most serious fatigue breaches, and only on the specific decision of the courts to apply such a penalty in the specific circumstance.

#### **4.7.24. Appendix A (5. Heavy vehicle registration) Item 11 - Who may issue a defect notice?**

The ATA is of the view that this power must be carefully managed. There have been bad experiences with inappropriate action by environment agencies and local authorities. The NHVR should be constrained to only grant powers to officers who have passed national competency training standards.

##### **Recommendation 50**

**The ATA recommends that only correctly trained authorised officers should be able to issue defect notices.**

## **4.8. Fatigue**

### **4.8.1. RIS 8.2 – Regulating driver fatigue through occupational health and safety (OH&S) law (HVNL Chapter 6)**

The fatigue expert panel recommends retaining driver fatigue within transport law, and the ATA will not support fatigue being absorbed into OH&S laws nationally. However, we acknowledge and recognise that both NT and WA seek to retain their well-established OH&S regime and culture as a recognised alternative approach. The way forward should not disadvantage NT and WA operators and cross-border operations in these areas. This is a long standing position of the ATA Council.

##### **Recommendation 51**

**The ATA recommends that where fatigue is presently administered under transport law, this is maintained.**

**The ATA also recommends that both NT and WA should retain their OH&S regime of managing fatigue, and the HVNL should not disadvantage NT and WA operators and cross-border operations in these areas.**

### **4.8.2. RIS 8.3 – Short rest defence under standard hours fatigue management (HVNL s 228 [not s 255])**

The ATA has always supported the short rest defence under standard hours fatigue management (where there was no suitable rest place this defence allows a driver up to 45 minutes to find the next suitable rest place). Accordingly, this provision should be retained in the national provisions.

##### **Recommendation 52**

**The ATA recommends the RIS position, supporting the short rest defence under standard hours fatigue management, should be adopted.**

### **4.8.3. RIS 8.4 – Split rest defence under basic fatigue management (HVNL s 231 [not s 228])**

The ATA accepts that the split rest defence under BFM should at least be maintained, and prefers that it becomes an allowable action. It should be a choice by the individual driver, provided rest was not split in the previous 24 hour period. In our view, there is no evidence of abuse, and evidence of use as a genuine fix for operational circumstances (for example, the driver cannot buy food and shower where he/she can legally rest). This provision improves fatigue management and must not be lost.

##### **Recommendation 53**

**The ATA recommends the split rest defence under BFM is retained, and consideration given to making this an allowed action.**

#### **4.8.4. RIS 8.5 – Work diary (HVNL Chapter 6 Part 4)**

There is some variation between states and territories about when drivers of regulated heavy vehicles are required to use a work diary. Some states and territories require all drivers to use work diaries, while other states and territories exempt drivers operating within certain distance limits. The model law applies a 100+ km distance limit. There should be some consideration of evidence to answer the question; what should be the threshold distance from base before drivers are required to carry and use a work diary? Until this is available the Model law should apply.

The ATA supports the policy that parties who are permitted not to use work diaries (for example, those working within a 100+km radius and not operating under fatigue accreditation) must keep equivalent records. The NHVR needs to make the obligation keep records clearer.

The ATA proposes consideration of an alternative rule to base the need for work diary records on driver location shift start and finish being different.

#### **Recommendation 54**

**The ATA recommends the model law 100+ km rule for work diary use be retained, and we support the policy that parties not using work diaries must keep equivalent records.**

**The ATA also recommends the NHVR ensures the obligation to keep records is clear.**

#### **4.8.5. AFM**

#### **4.8.6. RIS 9.2 - Advanced Fatigue Management (AFM) (HVNL Chapter 6 Part 3)**

The ATA remains concerned about the proposals around unspecified changes to Advanced Fatigue Management and any possible risk to the status of the fatigue regulations in Road Transport Law by Occupational Health and Safety law, recognising that WA and the NT wish to retain their current operational and legal arrangements. However, the ATA are committed to further open discussions about improving operator access to, and the useability of, AFM.

AFM under model law was intended to allow broader attention to fatigue risk management to be rewarded with increased flexibility under a fatigue management program. Such a program would be tailored to task with appropriate risk mitigation. NSW and Victoria imposed additional framework restrictions on AFM programs by constraining the outer hours of service limit to a lower numeric (15 v 16). The NHVR expert panel took advice that the quantum of the outer limit was redundant as “risk reaches unacceptable level at 12 hours, rendering the debate over 15 or 16 hours largely redundant”. This advice is concerning, as it places all existing AFM schemes including the Basic Fatigue Management scheme at risk. Further, National Transport Insurance accident crash investigation reports over several periods of two years have consistently shown fatigue to be a very significant issue – however, the investigations continue to show the vast majority of serious truck crashes are within 500km of departure, and around ¾ are on the outward journey from home. The vast majority of major crashes attributed to fatigue occurred on the outward journey, within 500km of point of departure. This strongly suggests fitness for duty is a far bigger issue than extended time on task.

The AFM/BFM programs were developed over many years of pilot program experience and some seven years of legislative development, including extensive fatigue advice. The NT and WA situation and current productivity and safety approach needs to be acknowledged. It is a concern that all this work is at risk from one piece of advice that has not been tested. AFM approved operators have delivered enhanced safety outcomes in their businesses over many years. Their experience should also be weighed against the advice tendered to the NHVR’s expert panel.

#### **Recommendation 55**

**The ATA recommends an inclusive consultation process with the ATA to ensure current Advance Fatigue Management (AFM) becomes more useable for the industry.**

**The ATA recommends being provided with the opportunity for further dialogue regarding the concerns surround AFM and the proposed way forward. AFM accredited operators should also be involved in this dialogue.**

**4.8.7. Appendix A (4. Fatigue Chain of Responsibility) Item 1 - HVNL v OH&S laws**

It is unclear if the new drafting changes the existing relationship between road transport and OH&S laws. Intended relationship in the model should be retained. The ATA has previously requested a clear delineation and recognition of compliance efforts between these bodies of law.

**Recommendation 56**

The ATA recommends the intended relationship of coexistence and recognition between OH&S and road transport laws be retained in the HVNL.

**4.8.8. Appendix A (4. Fatigue Chain of Responsibility) Item 19 – Exemption for driving heavy vehicle for personal reasons during rest**

(ALTA suggested there may be precedent in a NSW provision.) The ATA asks the NHVR to review this matter further, as it may impose burden on a driver. The ATA is of the view that allowing limited use during rest to allow for personal use of a heavy vehicle, to meet living needs such as access to food or facilities is a basic human right.

**Recommendation 57**

The ATA recommends the resolution ‘There will be no exemption in the HVNL allowing a driver to drive a heavy vehicle for domestic or personal reasons in breach of driving hour requirements.’ is not acceptable and that further review by the NHVR is required.

**4.8.9. Appendix A (4. Fatigue Chain of Responsibility) Item 22 - Calculation of time**

The ATA does not agree that the present interpretation of the model law is acceptable, especially when only one state has implemented the model law. While the ATA understands this significant issue is being addressed by ATC, there is no guarantee that the vote will be unanimous. Therefore, the ATA supports the NSW/QLD position on calculation of time.

**Recommendation 58**

The ATA recommends that, in the event a consensus ATC decision is not reached, the HVNL implement the NSW/QLD position on calculation of time.

**4.8.10. Appendix A (4. Fatigue Chain of Responsibility) Item 27 – Written work diaries and duplicates**

The ATA requests clarification of proposed departure from Model law.

**Recommendation 59**

The ATA recommends that Appendix A, 4. Fatigue Chain of Responsibility, Item 27, Clause 72(4) should be clarified with the industry before being adopted.

**4.8.11. Appendix A (4. Fatigue Chain of Responsibility) Item 32 - EWD variations; who can apply?**

The ATA agrees with the resolution that only the holder of an EWD approval may apply for an application for variation or cancellation to an EWD approval.

**Recommendation 60**

The ATA recommends that the resolution ‘The HVNL will provide that the holder of an approval for an EWD may apply for a variation or cancellation of the approval. This is necessary as only the holder of the approval should be applying to vary or cancel the approval.’ should be adopted.

**4.8.12. Appendix A (4. Fatigue Chain of Responsibility) Item 40 - BFM/AFM applications**

The ATA agrees with the adoption of the model law in relation to BFM/AFM accreditation, however questions need to declare prior accreditation sanctions. The NHVR and road agencies should have access to prior accreditation sanctions, and therefore this becomes a purely administrative burden on the applicant.

**Recommendation 61**

The ATA recommends that the requirement for an applicant to declare prior accreditation sanctions should not be adopted.

**4.8.13. Appendix A (4. Fatigue Chain of Responsibility) Item 55 - Definition of 'loading manager'**

The ATA requests that the NHVR provide clarification that the variation proposed does not expand the meaning or application.

**Recommendation 62**

The ATA recommends that the NHVR clarifies the variation proposed in Appendix A, 4. Fatigue Chain of Responsibility, Item 55, where one jurisdiction had included a method for calculating the average number of vehicles that are loaded or unloaded at a premise, does not expand the meaning or application.

**4.8.14. Appendix A (4. Fatigue Chain of Responsibility) Item 62 - Driver base**

The ATA requests the NHVR to specifically state that the proposed minor amendment does not add burden to drivers and operators.

**Recommendation 63**

The ATA recommends the NHVR states and ensures that the variation proposed does not add burden.

**4.8.15. Appendix A (4. Fatigue Chain of Responsibility) Item 66 - Direction to take immediate rest**

The ATA requests the NHVR to justify that the proposed change to "one hour delay before a driver must comply" to vary the time provision to be "only available when necessary" is justified, safe and fair.

**Recommendation 64**

The ATA recommends the NHVR identify the proposed change is justified, safe and fair.

**4.9. Mass, Dimension and Load Restraint****4.9.1. Appendix A (8. Mass and loading) Item 3 - Use of GVM or GCM to determine which vehicles are covered by the reform**

This appears to be an error in the proposed way forward where GCM is used, but it appears that GVM should have been used.

**Recommendation 65**

The ATA recommends the use of GCM be reviewed as it appears GVM is intended.

#### **4.9.2. Appendix A (8. Mass and loading) Item 4 – Fixing specific mass limits for general access**

Again, the reform fails to settle the schedule for masses above traditional GML limit of 42.5 tonnes. The ATA suggests that a national schedule (not lowest common denominator, rather, the most generous version) which extends to 50 tonnes be used for general access vehicles. Revised schedules should be adopted for CML and HML keeping the same axle spacings for the additional mass allowances, and similar arrangements for B-double access, while also voiding the clear spacing rule used in some agencies.

##### **Recommendation 66**

**The ATA recommends a national schedule for all GA vehicles up to 50 tonnes, and revised schedules for CML and HML keeping the same axle spacings for the additional mass allowances, and similar arrangements for B-double access while also voiding the clear spacing rule used in some agencies.**

#### **4.9.3. Appendix A (8. Mass and loading) Item 8 - Weighing methodology**

The ATA does not support the resolution, as including the weighing methodology would enable drivers and operators to raise procedural departures, such as using an unsuitable site, in their defence arguments.

##### **Recommendation 67**

**The ATA recommends the resolution ‘This variation will not be included in the HVNL as this matter is best addressed in enforcement practices.’ regarding the provision of a method determining wheel loads, axle loads, total mass and use of weighing devices should not be adopted.**

**The ATA recommends the currently nationally agreed guideline setting down measuring adjustment, methodologies and site requirements should be referenced/noted in the HVNL.**

#### **4.9.4. Appendix A (8. Mass and loading) Item 12 – Definition of load**

The ATA identifies the proposed definition of load captures things not considered load in same current cases, for example, non-load carrying (fix load) vehicles (eg mobile cranes) can carry thing essential to their operation. The proposed definition of load would alter this. There is also a definition of load at clause 4.5 of vehicle categories in ADRs that defines a goods vehicle.

##### **Recommendation 68**

**While the ATA recommends the resolution ‘The HVNL will include a single definition of ”load” which will include all goods and people in the vehicle, all things carried for the normal operation of the vehicle and personal items.’ should not be adopted. The ATA further recommends the definition of “load” be corrected in the HVNL.**

#### **4.9.5. Appendix A (8. Mass and loading) Item 13 - Towing restrictions**

The resolution is to incorporate a new provision mirroring state laws. The ATA questions why this new requirement is not addressed as a RIS item.

##### **Recommendation 69**

**The ATA recommends the matter regarding towing restrictions be specifically addressed in a RIS as it imposes a new requirement which has not been assessed.**

#### **4.9.6. Appendix A (8. Mass and loading) Item 16 - Multiple offending**

The HVNL will have provisions to cover multiple offences, however it has been identified that there is the possibility for double, and potentially multiple jeopardy offences to be possible. The NHVR needs to ensure that the intended policy is not undermined and the outcome is fair. The resolution in the Appendix identifies different mass limit breaches for one vehicle, which may not be interpreted as a double jeopardy situation. However, an operator who is also a driver that loads the vehicle could potentially be charged for the one offence as a driver, as an operator, and as a loader, which is a clear multiple jeopardy situation. The HVNL does not specifically provide a section in relation to double jeopardy.

#### **Recommendation 70**

**The ATA recommends protection from double jeopardy be provided and clearly identified in the HVNL.**

### **4.10. NHVAS**

#### **4.10.1. NHVAS – New Offences**

#### **4.10.2. RIS 9.8.2 – Sanctions for non-compliance with the National Heavy Vehicle Accreditation Scheme (NHVAS)**

#### **4.10.3. Appendix A (9. NHVAS) Item 11 – Imposing Sanctions**

Proposed new offences without sound policy examination such as those proposed for the National Heavy Vehicle Accreditation Scheme (NHVAS) are a concern. In our view NHVAS has not been administered soundly and needs to be managed using sound accreditation practices, including robust audit and review.

The ATA does not support the HVNL including accreditation sanctions. This is a policy process concern as it makes NHVAS de facto operator licensing, something that has never been justified by a RIS.

NHVAS was designed as an alternative compliance scheme. It was clearly intended that normal accreditation arrangements of review and correction through audits including compliance audits applied. The key objective was to install a systematic approach to compliance, the whole C&E COR approach was designed to promote a systems approach to loading, managing and moving freight. Hence, reasonable steps defence, registered codes of practice and so on. The designers were careful to ensure that being a member of NHVAS did not impose an additional penalty for an offence.

The proposal in the RIS fundamentally changes this foundation. No RIS has ever been released canvassing the implications of migrating NHVAS a mandatory licensing scheme as precondition for access or benefit. Evidence has shown that NHVAS does not work well, as the accreditation system is not functioning due to a lack of audit and rigour. Adding penalties to poorly delivered policy is treating the symptom, not the cause.

The ATA does not believe penalties for NHVAS rules should be applied. Rather, NHVAS should be operated robustly with show rectification and/or triggered audits when on-road non-compliance is found. Roadside detected issues should be reported to vehicle owners so that their accreditation systems can initiate corrective actions. This requires road agencies to be part of the solution.

Further, it is unreasonable that CML and HML mass limits are reduced to statutory mass limits as the permissible mass limit if an offence is detected, thereby increasing the penalty significantly.

Alternatively, NHVAS should be dismissed and other more relevant arrangements for granting permission found.

#### **Recommendation 71**

**The ATA recommends penalties for NHVAS business rules should not be applied. The ATA further recommends that offences which involve NHVAS are reported to the registered scheme operator.**

**The ATA also recommends that CML and HML mass limits are recognised as the permissible mass limit if an offence is detected.**

The ATA recommends the NHVAS be operated using sound accreditation practices including robust audit and review. The ATA further recommends as an alternative the NHVAS be dismissed, with more relevant arrangements implemented for granting permission to access regulatory benefits.

#### **4.10.4. Appendix A (9. NHVAS) Item 1 - Relationship between model legislation and NHVAS business rules**

The HVNL proposal is unclear. Acknowledgement of TruckSafe is not provided for, yet recent research, cited on page 17, clearly shows it is a rigorous and safe accreditation scheme.

##### **Recommendation 72**

The ATA recommends the resolution 'The HVNL should regulate accreditation (along with the NHVAS business rules). Accreditation includes important rights and responsibilities and should be covered by legislation.' be further explored for clarity. The ATA further recommends that TruckSafe be recognised in the HVNL.

#### **4.10.5. Appendix A (9. NHVAS) Item 4 - 14 Agreement between agency and operator**

HVNL proposes a legislative solution rather than an acknowledgement of the alternative compliance system. Is NHVAS becoming operator licensing? If so where is the RIS?

##### **Recommendation 73**

The ATA recommends the NHVR determine if the NHVAS is to become an operator licensing scheme, and if so, that a RIS be released for comment.

## **4.11. Over Mass / Over Dimension**

### **4.11.1. RIS 8.10 - Regulation of pilot and escort drivers**

Currently, different arrangements exist with road authorities regarding pilot and escort drivers, along with variations about when these services are required and the powers able to be used. Mutual recognition of training and skills has been poor or non-existent. In simple terms, pilots warn other motorists of an oversize load, whereas escort drivers may also direct traffic in defined circumstances. This problem is not new. The RIS proposes mutual recognition and future development of a national position.

The ATA supports mutual recognition of pilot and escort drivers and moving to a logical, cost effective and uniform future solution based upon risk management and skills recognition. There needs to be clear legal authority to manage traffic that is appropriate for pilot and escort needs. A benefit of this process is that police resources will be more effectively utilised.

##### **Recommendation 74**

The ATA recommends the RIS position, regarding mutual recognition of pilot and escort drivers and moving to a logical cost effective uniform future solution based upon risk management and skills recognition, should be adopted.

### **4.11.2. RIS 8.13 - Special-purpose trailers (HV (MD&L) Schedule 6 Part 1)**

Oversize and/or overmass permits for non-load carrying trailers are not well catered for in existing rules except for Victoria. The RIS proposes to adopt Victorian practice that allows permits to be issued for oversize and/or overmass non-load carrying trailers.

##### **Recommendation 75**

The ATA recommends permits be available for oversize and/or overmass non-load carrying trailers.

#### **4.11.3. Appendix A (10. Oversize Overmass) Item 17 - Warning lights**

The proposed HVNL is more onerous than currently because warning lamps will be required to be hard wired rather than just on if required. Only one agency currently applies this. This means portable lamps would be excluded from use, which creates an impost on operators who only use these lamps occasionally.

##### **Recommendation 76**

The ATA recommends the resolution 'The variation will be adopted in the HVNL.' regarding warning lights to be permanently wired should not be adopted.

#### **4.11.4. Appendix A (10. Oversize Overmass) Item 18 - Rear mirror exemption**

Current exemption in model laws will not be carried forward to HVNL. This is a material change from a legislative exemption to an administrative whim as a condition under conditional registration. This change is not acceptable.

##### **Recommendation 77**

The ATA recommends the resolution 'This will not be included in the HVNL. Instead, the HVNL will follow the Victorian approach.' relating to Victoria's non-implementation of the provision to exempt vehicles towing agricultural implements for rear mirrors should be rejected. The ATA recommends the current exemption be included in the HVNL.

#### **4.11.5. Appendix A (10. Oversize Overmass) Item 23 - Rear marker plate**

HVNL will refer to VSB 12 but there have been interpretation problems with these plates. Hence, NHVR needs to consider if the approach fixes these issues.

##### **Recommendation 78**

The ATA recommends the resolution 'The model law will be adopted in the HVNL , with reference to Vehicle Standards Bulletin VSB 12 (as per AVSR 119).' should be rectified by drafting clear provisions.

## **4.12. Restricted Access Vehicles**

### **4.12.1. RIS 9.6 – Restricted access vehicle permits**

In Queensland, non-operators, such farmers and supply companies, can apply for a Restricted Access Vehicle (eg B-double) permit for access to their premises. These permits are by vehicle type. The ATA considers this a good idea, because it allows the transport chain to be more responsive to client needs. The client can advise the transport operator that a permit is held for access to their operation, and can provide the transport operator with a copy of the permit. This saves time for the transport operator, who would not be required to apply to the NHVR for a permit, allowing the transport operator to better service their client. Further, this arrangement may have the advantage of a local voter/business being the applicant. The RIS recommends adopting the Queensland enhancement in the HVNL.

##### **Recommendation 79**

The ATA recommends the RIS position, that enhancements to RAV permits allowing non-operators to hold RAV permits for access to their premises by prescribed vehicle types, should be adopted.

### **4.12.2. Appendix A (11. Restricted access vehicles) Items 4, 5 & 7 – Guidelines and conditions - where and how**

The ATA questions if increased access and uniformity flow from the proposed way forward vs the requirement to take into account the NTC guideline of exemptions? The ATA requests the NHVR provide further information in relation to these items.

**Recommendation 80**

The ATA recommends that Appendix A, 11. Restricted access vehicles, Item 4 Clause 19, Item 5 Clause 12, and Item 7 Clause n/a should be clarified with the industry before being adopted.

**4.12.3. Appendix A (11. Restricted access vehicles) Item 6 - Class 3 permits and express conditions**

This item is the same as 4.4.10.1 Item 14. The ATA recommendation is the same.

**Recommendation 81**

The ATA recommends the resolution 'The model law will be included in the HVNL. An IAP condition can be imposed as an access condition if route or area restrictions are required by the road owner.' should be appropriately considered in a RIS, or should not be adopted.

**4.13. Registration****4.13.1. Federal Interstate Registration scheme (FIRs)**

Operators who currently register under the Federal Interstate Registration scheme are most concerned about proposed termination of this scheme and the subsequent loss of the productivity benefits it currently provides. Further, there is no discussion in the package about proposed transition arrangements, including those around inspection and stamp duty. The ATA requests further discussions on these matters.

**Recommendation 82**

The ATA recommends the Federal Interstate Registration scheme be continued unless no-cost and non-loss transition is provided for, and the scheme productivity benefits are maintained.

**4.13.2. RIS 8.1 – Custom plates (HV (R) NR r 18)**

The ATA supports the use of personalised/custom plates and retention of number plate display rights. We do not foresee an issue arising from the retention of this provision.

**Recommendation 83**

The ATA recommends the RIS position, to allow the use of personalised/custom number plates, should be adopted.

**4.13.3. RIS 8.14 - Treatment of silage trailers (HVNL Chapter 4 Part 5)**

Agricultural implements are generally exempt from registration. However, load carrying trailers are generally not exempt from registration. Problems arise when trailers are clearly for an agricultural purpose but may carry associated loads, such as silage trailers. Victoria has attempted to write a definition to clarify what an agricultural implement is so that devices like silage trailers are exempt from registration.

The ATA believes that goods-carrying vehicles should be subject to registration, and that agricultural devices carrying out roles that might also be carried out by trucks should be subjected to access and road user charges. For example, if a tractor and grain bin were to be used to deliver grain to a grain depot they should pay registration and road user charges just like a truck.

**Recommendation 84**

The ATA recommends goods-carrying vehicles should be subject to registration, and that agricultural devices carrying out this role in place of trucks be subject to access and road user charges.

**4.13.4. RIS 9.4 - Vehicle inspections (HV (R) NR r 10)**

Two basic issues with this Item:

1. No mutual recognition by road agencies of inspections by other agents in other states.
2. Widely varying triggers for vehicle inspection from risk based to periodic.

Random and targeted roadworthiness inspections at the road side occur in all states. It is generally accepted this is a key activity to deter unsound maintenance practices. If preventative maintenance processes are adopted good safety is likely.

There is a very poor relationship between vehicle defects and crashes, and even weaker link between agency/agent inspection and reduced crash involvement. There is some relationship to longer service life where Government inspections are in place. Several agencies have found that there is no sound case to establish periodic inspections. However, those using this approach generally find adequate material to defend their position. The robustness of some of that material should be questioned.

A formal review of periodic inspections should be conducted in consultation with ATA, the aim being that inspections are not mandated as roadworthiness checks. Also, that accreditation schemes are accepted as prima facie evidence of reasonable steps. Recognising best practice but avoiding wasteful inspections allows a better utilisation of resources.

**Recommendation 85**

**The ATA recommends the mutual recognition by road agencies of inspections by authorised officers in other states.**

**The ATA further recommends exemptions from periodic inspections where maintenance programs meeting the standards and robustness of TruckSafe are in place, and that these programs be classed as prima facie evidence of reasonable steps, and that intercepts that detect defects may trigger a compliance audit.**

**The ATA also recommends that random and targeted roadworthiness inspections focus on known safety issues.**

**The ATA recommends that, in consultation with the ATA, a formal review of periodic inspections be conducted.**

**4.13.5. RIS 9.5 - Transfer of registration (HV (R) NR Part 7)**

With automatic enforcement and owner onus for such offences in first instance, it is logical to require both seller and buyer of vehicle to notify registration authorities of the exchange in ownership as legal responsibilities need to be clear.

**Recommendation 86**

**The ATA recommends the RIS position, that both buyer and seller be required to notify the registration authority of the transfer to protect their legal obligations, should be adopted.**

**4.13.6. Appendix A (5. Heavy vehicle registration) Item 2 - Written-off vehicles**

The ATA urges that this issue needs to be watched, particularly as details emerge from the NHVR addressing registration agency purchase provider relationships.

**Recommendation 87**

**The ATA recommends that, in consultation with the ATA, there should be ongoing discussions regarding the provisions for written off vehicles.**

#### **4.13.7. Appendix A (5. Heavy vehicle registration) Item 4 – Disclosure of Information**

The ATA recognises the resolution that proposes to include consistent laws in this area including using information for compliance. The ATA views this as a potential positive but believes the issue needs to be watched to ensure an appropriate outcome is achieved.

##### **Recommendation 88**

**The ATA recommends that, in consultation with the ATA, there should be ongoing discussions regarding the provisions for disclosure of information.**

## **4.14. Vehicle Standards**

### **4.14.1. RIS 9.3 - Spray Suppression (HV (Stds) NR r 8 [not r 21])**

Currently, the model law requires B-doubles to be fitted with spray suppression material to a British Standard. This is not required in NT or WA, nor is it required on other vehicle types. These devices are maintenance intensive in some applications. The British Standard referenced is no longer valid. Further, it is now accepted that the spray suppression material does not work as intended, and we have seen argument arise that it makes matters worse. Further, its fitment has been associated with higher tyre temperatures and resulting problems.

There is some evidence that attention to under-body airflow may make a positive difference, as spray is generally accepted as resulting from water on the road being lifted by airflow. Pavement design and condition is the primary contributor to reducing water lying on roads. The disadvantage of the proposed way forward is risk of public perception that safety is being degraded, as the devices were initially fitted on belief of a safety benefit. Unfortunately the benefit of reduced water spray has not been realised.

##### **Recommendation 89**

**Based upon current knowledge, the ATA recommends the mandating of spray suppression devices be discontinued.**

**The ATA further recommends road agencies attend to pavements to ensure water lying on roads is minimised.**

### **4.14.2. Appendix A (1. AVSRs) Item 4 - Axle configuration: tri-axle B-doubles**

The ATA does not agree with the resolution in the Appendix, and believes that including a formula to implement the clear space rule, when it may not be used by all, will provide additional burden and limit the use of existing vehicles. Additionally, axle group spacing may reflect product loading for efficiency, whereas clear spacing may impose inefficiency. Bridge formula controls adequately control the mass stressors placed on bridges, and therefore the clear spacing rule is unnecessary.

##### **Recommendation 90**

**The ATA recommends the clear spacing rule is not included in the HVNL, as bridge formula controls are adequate.**

### **4.14.3. Appendix A (1. AVSRs) Item 13 - Non-application of vehicle standards – exemptions under other laws**

The ATA is unsure why this rule is considered redundant, and is concerned that the intent of the HVNL, being uniformity and consistency, has the potential to be lost if this rule is not retained.

##### **Recommendation 91**

**The ATA recommends mutual recognition of vehicles exempted under another law or by another jurisdiction should be adopted.**

## 5. Conclusion

In summary, the ATA restates its commitment to achieving the harmonisation of the national laws for the transport industry. The progress towards implementation of these new laws will continue to be difficult and time consuming, however this work is necessary to ensure the best product is realised.

The ATA has identified some significant issues within the HVNL and the RIS, most notably those involving the drafting of the HVNL, the inability for external review of road manager decisions, higher mass and IAP. The ATA believes it is essential for TruckSafe to be recognised by governments, and have provided strong evidence to support this recommendation.

As identified, some of the drafting within the HVNL leaves the interpretation quite open, or are simply incorrect. The changes required mean another round of public consultation is needed. While the ATA supports the intent of the new laws, it is unable to support the draft as provided in the RIS.

Allowing road managers to make decisions without being open to external review is not acceptable. Road managers, like local councils, are open to scrutiny by external bodies for other decisions made by them, such as planning. It seems odd that this would not be extended to decisions affecting the livelihood and business operating ability of those involved in the transport industry. The ATA does not agree that road managers would face any substantial increase in costs to obtain second opinions or legal advice, particularly when these options are already being used for other reviews.

Higher mass limits and IAP have long been an issue. The ability for operators with appropriate vehicles to access higher mass limits has been hampered by some states view that IAP must be part of the condition of access. The ATA has never supported this, and continues to object to this imposition on operators. Significant cost and expense is undertaken by operators to obtain vehicles capable of accessing higher mass limits; to then be advised that IAP is needed is a slap in the face to these professional operators. IAP should never be used as a condition to access a state's road network.

TruckSafe has long been proven a reliable and consistent accreditation system. Why it has not been recognised by the HVNL is a mystery, particularly when considering the evidence and research showing how safe and trustworthy the system is. The NHVR needs to seriously consider what objectives it is trying to achieve with NHVAS, then look closely at what TruckSafe achieves.

The ATA have engaged external Special Counsel to assist us with the HVNL and the RIS. While some of his advice is provided with this submission, more will be forthcoming shortly. The ATA looks forward to liaising with the NTC and the NHVR to share this information for the betterment of the new laws.

The ATA is keen to continue working with governments, the NTC, and the NHVR to assist in achieving the right outcomes. With access to some of the nation's largest transport enterprises and representatives of small fleet owners and owner drivers, the ATA has an enviable knowledge base from which to draw on to assist with the new national laws.

The ATA thanks the NTC for the opportunity to be involved in this project, and looks forward to future discussion on this matter.

**MAJOR DIFFERENCES BETWEEN C&E BILL AND HVNL OR DRAFTING ISSUES WITH HVNL**

C&E BILL	HVNL
	Entirely different drafting language and structure. This may not of itself be an issue in all cases but the operation of statute law is based on principles statutory interpretation. Beware subtle but significant changes which may produce quite different or unexpected or unintended consequences.
Cl 189 contains the usual broad regulation making power which is normally used with some discretion if not sparingly.	What appears to be an extensive reliance upon Regulations throughout the Law which will give enormous scope to change or vary the Law without Parliamentary scrutiny. Unusual as a drafting technique.
	Cl 562 (1) is entirely new and requires executive officers to ensure a corporation complies with the Law. An unfair obligation of itself which ignores legal principle and the concept of limited liability, not to mention commercial reality. I suggest that this form of automatic liability be revisited in submissions.
Cl149 Liability of Directors etc – refers to directors and those concerned in management	Cl 562(2) Now covers executive officers Definition of <i>eo</i> far too wide- should mirror Corporations Act definition (section 9). I suggest that this form of automatic liability be revisited in submissions
Cl149(4) (b) defence based on taking reasonable precautions and exercising due diligence	Cl 562(4) based on exercise of reasonable diligence. Note Cl 555 which provides for all parts of the Law that the taking of reasonable steps includes the exercise of reasonable diligence – the term is not defined
	Cl 13 - relationship with primary OHS laws. This raises the issue of dual compliance and the need for NHVL and OHS compliance to be resolved. The future of the <i>Model Work Health &amp; Safety Bill</i> and uniform national OHS laws also arises. The problem is demonstrated by Cl 199 (4) – if the relevant OHS law has different requirements and there is compliance with that law then compliance with the HVNL is not necessary. See the Drafting Note to Cl 28 (5) of the <i>Heavy Vehicle Driver Fatigue- National Model Legislation</i>
CIs 91 92 93 94 95 96 covers liability of consignor, packer, loader, operator, driver and consignee	CIs 67-69 and CIs 75-77 widen the parties in the chain of responsibility who are guilty of an offence if an mdlr offence is committed. Adds employer/prime contractor, operator and loading manager as well as reconstructing the categorization of offences. See also Cl 154 which appears to introduce a new offence

	relating to a mass limit traffic offence.
	Chapter 11 dealing with internal/external review has some drafting issues not least of which is precision in precisely identifying which offences are subject to internal and/or external review. Road manager access decisions are subject to internal review only and they should be subject to external review. Query the drafting of and Note in Cl 568
	The structure of the legislative package based on the implementation of a Queensland Law in each of the jurisdictions. This will mean different consequences in relation to review, particularly highlighted by the external review process in Chapter 11. External review will be a different jurisdictional process with different consequences which is not in keeping with a nationally uniform system. Some consideration should be given to the <i>Corporations Act</i> structure which has common Court Rules in each jurisdiction which helps to provide consistent approaches and outcomes.
	<i>party in the chain of responsibility</i> (Cl 5) is defined in relation to speeding (cl 183) and fatigue (Cl 197) but not in relation to mdlr. There are positive duties upon parties in relation to fatigue and speeding but not in relation to mdlr. Not of itself a problem but it highlights an inconsistent approach which does not necessarily assist with compliance.

4 May 2011

Mr David Coonan  
National Manager Policy  
Australian Trucking Association  
25 National Circuit  
FORREST ACT 2603

**Our ref:** 11608  
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**Your ref:** P5/001

Dear Mr Coonan,

## **NATIONAL HEAVY VEHICLE REFORM: RIS EXTERNAL INTERNAL REVIEW**

You have asked for our opinion in relation to the proposals set out in section 9.1 on the Regulatory Impact Statement (RIS) dealing with external and internal review of certain decisions made under the proposed National Heavy Vehicle Law (NHVL).

As the RIS states, decisions made under the existing legislation at State or Territory level may be subject to external judicial review dependent upon the administrative review processes in force in the relevant jurisdiction. These processes vary and may be regarded as too expensive and difficult or time-consuming especially in those jurisdictions where there is no access to a specialist tribunal such as the Victorian Civil and Administrative Tribunal (VCAT) in Victoria.

These decisions may also be subject to internal review, formal or informal. Internal review is a less attractive alternative as it may lack the independence and expertise which accompanies a formal external review process.

As the RIS further points out there are currently no legislative provisions for reviewing access decisions, although some form of judicial review may be available, which is a review of the process rather than the merit of the decision.

In Victoria, access decisions do not fall within the review jurisdiction of VCAT although such decisions might be subject to review by the Supreme Court of Victoria under general principles of administrative law. We are not aware of any decisions being subject to review.

Clearly the present position is uncertain and unsatisfactory and the RIS makes specific reference to the disconnection between nationally agreed policy and on-the-ground application.

Of the two options canvassed, maintain the status quo, or instituting a new decision-making framework consisting of evaluation tools for the initial decision and a review process for the reconsideration of the initial decision, the second is clearly the option that should be adopted. However this option needs to be looked at closely.

The proposal is that all decisions regarding registration, accreditation and vehicle conditions would be subject to internal review and external scrutiny, but road manager decisions would be open to internal review only.

The justification for restricting road manager decisions to internal review only is brief with little supporting argument. The RIS states that it is not feasible at this juncture as Councils would be required to source second opinions and legal expertise likely to be outside their budgetary reach.

This is an unusual justification. There are many decisions that Councils make which, if subject to external review, would require them to source second opinions and legal expertise and which would not fall with any fixed budgetary allocation.

Of the decisions subject to review, those relating to road access are arguably the most important, and to shield such decisions from external review is difficult to justify. As the RIS makes it clear these decisions, along with others, have significant reverberations throughout the economy.

These decisions have to be based on infrastructure protection and public amenity and the RIS implies that Councils are reluctant to grant access on either ground as refusal is a safe decision. Why limiting review to internal review, even with evaluation guidelines, is likely to improve this situation is not explained.

The prospect of external review is, in our view, more likely to result in better informed and careful access decisions and made in accordance with the comprehensive evaluative tools mentioned in the RIS. The reference in the RIS to “sections 119 and 136”, should, we believe, be a reference to “sections 111 and 117”.

Internal review provides no incentive for a Council to move beyond the “protect and preserve” approach to a “use and extend” approach.

It is a basic principle of law and policy that government decisions be subject to external review.

*The increase in government control has led to a demand for heightened scrutiny of government, consistent with the democratic ideal that those who elect the government are entitled to call it to account (Creyke and McMillan: Control of Government Action Text, Cases and Commentary 2<sup>nd</sup> edition Lexis Nexis 2009 1.1.3 )*

The only comment we make about the cost benefit analysis in 9.1.4 is that it suggest that the benefits of a new review framework are likely to be very large. We acknowledge the uncertainties, but the stated benefits far outweigh the costs and there is nothing to suggest that any additional costs imposed by the making of road manager decisions subject to external review would increase the costs to an extent that would alter the analysis.

The review provisions in the NHVL are contained in Chapter 4 Part 8 Clauses 139-153) and Chapter 11 (Clauses 565-575). These provisions are new and have no equivalent in existing laws.

They are complex and we have identified some drafting issues. A few brief points:

#### **Clause 144**

This appears to provide an effective right of appeal to the road authority (eg Vicroads) from the decision of a road manager (a Council) either refusing consent to the grant of a mass or dimension authority or where consent is provided subject to conditions the Regulator believes are not necessary for the protection of infrastructure or preserve public amenity. The road authority must make a decision within 3 months or within a period of up to 6 months if agreed by the Regulator.

Clause 144 appears to be inconsistent, at least in part, from the shielding of a road manager's decision from external review. Of course this is to the benefit of road transport operators.

There appears to be no appeal from the decision of a road authority under this Clause, whatever the decision made.

#### **Clause 565**

The definitions of "relevant appeal body" and reviewable decision" raise some issues:

**"relevant appeal body"** defining this as the relevant review tribunal or court for the relevant jurisdiction is insufficient, unless it is intended that each jurisdictional statute name the relevant body eg VCAT in Victoria.

**"reviewable decision"** this brings in all decisions mentioned in Schedule 7 which include those of a road manager under Clauses 140,141,148 and 151. Schedule 7 is divided into 3 Parts which would normally indicate that different consequences may flow from this distinction, but we have been unable to find anything in the Bill which deals expressly with the distinction.

#### **Clause 568**

This appears to be the provision which limits decisions to internal review only, but the wording is not precise. The *Note* – "only decisions made by a road manager that is a public authority are reviewable under this Law" are not part of the substantive legislation and have no effect. In fact we are not quite sure what they mean in the context as they do not appear to fit within the review structure discussed in the RIS.

**Clause 570**

Clause 570(5) compels the road manager to provide the Regulator with reasons for a decision. As any such decision is not subject to external review this may not matter all that much, but the road manager can choose to publish very brief reasons and has no incentive, or obligation, to do otherwise. An applicant may be subject to a process which may provide very few reasons for refusal of an application eg a brief set of reasons which simply cites damage or potential damage to public infrastructure or an adverse affect upon public amenity.

**Clause 572**

This is the provision which limits external review. It limits appeals to reviewable decisions made by the Regulator or authorized officers thereby excluding decisions made by a road manager. From a drafting certainty point of view it would be preferable if it were stated that this means decisions made under Part 1 or Part 2 of Schedule 7.

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These comments do not alter our view that road manager decisions should be subject to external review. This view is based on longstanding legal and policy principles.

We would be pleased to discuss any aspects of the matter with you should you wish.

Yours faithfully,

*Tony Hulett*

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