



PO BOX 6298
Kingston ACT 2604
Phone: 02 51008239
Email: admin@mtaa.com.au

Heavy Vehicle National Law Review (HVNL)

National Transport Commission (NTC)

Email: HVNLreview@ntc.gov.au

Website: <https://www.ntc.gov.au/current-projects/heavy-vehicle-national-law-review/>

MTAA Submission to the NTC regarding the Issues Paper on *A Risk-Based Approach to Regulating Heavy Vehicles*

Executive Summary

The [Motor Trades Association of Australia Limited](#) (MTAA) appreciates the opportunity to make this submission to the National Transport Commission (NTC) regarding the wide-ranging, deep and thoughtful Issues Paper on *A Risk-Based Approach to Regulating Heavy Vehicles*.

MTAA is a federation of various state and territory motor trades associations (ie four MTAs) and automobile chambers of commerce (ie two ACCs). MTAA represents, and is the national voice of, the 69,365 automobile sector businesses which employ over 379,000 Australians and contribute around \$37.1 billion to the Australian economy equating to about 2.2% of GDP. MTAA member constituents include automotive retail, service, maintenance, repair, dismantling recycling and associated businesses that provide essential services to a growing Australian fleet of motor vehicles (MVs) fast approaching 20 million by 2020. Some of these MV businesses, in turn, encompass heavy vehicles (HVs).

1. **MTA SA** have worked closely with the *National Heavy Vehicle Regulator's* South Australian Office to enhance understanding of the *National Heavy Vehicle Law* through several Industry Information Evenings, with more than 100 members attending. This, along with numerous divisional meetings, working groups and a member survey has informed our response to Issues Paper 1. We believe that the six draft regulatory principles identified in Issues Paper 1 have been suitably outlined. Our members are in full agreement of this direction.
2. **MTAA** suggests that “public good”, along with “maximise” and “intended”, should be defined and explained from legal, economic and policy perspectives. Cost benefit analysis (CBA) is the best tool to test whether a “regulation” will “maximise”, is “maximis[ing]” and has “maximise[d]” the “public good”.

3. **MTAA** supports NTC’s risk-based approach (RBA) to regulating HVs along with the use of the ISO 31000:2018 definitions and concepts of “risk”, “probability”, “consequence”, “harm”, “safety” and “threats”.
4. **MTAA** suggests that CBA is needed in between the third and fourth steps of “risk management”.
5. **MTAA** suggests that lessons can be learned *for* Australian safety regulation of HVs *from* Australian and overseas economic regulation of public utilities infrastructure especially airports.
6. **MTAA** largely agrees with this [ie NTC Issues Paper page 48] but disagrees that “[o]bligations should be placed as far down the legislative hierarchy as is tolerable”.
7. **MTAA** points out that there are few other sectors of the economy as “diverse” as the automotive sector, as can be seen from the [2017 report](#) *Directions in Australia’s Automotive Industry*. This diversity increases the need for ‘grassroots’ level consultation.
8. **MTAA** agrees that “[t]he new law should support sanctions and enforcement tools that reflect the severity of the risk”. However, most “safety” violations are either *no-fault* accidents or *at-fault* torts not *intentional* crimes. The first-best approach for “sanctions and enforcement” in torts is just and efficient compensation to the injured not semi-random fines, fees and taxes for government.
9. **MTAA** also agrees that “enforcement decisions must be able to be reasonably challenged”. In addition, “challenged” should include *merits review* of the facts as well as *judicial review* of the law.
10. **MTAA** suggests that “safety”, along with “productivity and regulatory efficiency”, should be defined and explained from legal, economic and policy perspectives.

Please accept this **MTAA** submission to the **NTC** regarding the high-quality Issues Paper on *A Risk-Based Approach to Regulating Heavy Vehicles*. MTAA very much looks forward to being fully engaged for the remainder of this important consultation process on the HVNL. Any questions or comments may, at first instance, be directed to Mr Darren Nelson on 0479 001 040 or Darren.Nelson@mtaa.com.au. He is MTAA’s Director of Policy and Industry Relations.

Introduction

The [Motor Trades Association of Australia Limited \(MTAA\)](#) appreciates the opportunity to make this submission to the National Transport Commission (NTC) regarding the wide-ranging, deep and thoughtful Issues Paper on *A Risk-Based Approach to Regulating Heavy Vehicles*.

MTAA is a federation of various state and territory motor trades associations (ie four MTAs) and automobile chambers of commerce (ie two ACCs). MTAA represents, and is the national voice of, the 69,365 automobile sector businesses which employ over 379,000 Australians and contribute around \$37.1 billion to the Australian economy equating to about 2.2% of GDP. MTAA member constituents include automotive retail, service, maintenance, repair, dismantling recycling and associated businesses that provide essential services to a growing Australian fleet of motor vehicles (MVs) fast approaching 20 million by 2020. Some of these MV businesses, in turn, encompass heavy vehicles (HVs).

MTA SA provides both the following opening statement regarding NTC's risk-based approach (RBA) to regulating HVs as well as the supporting table in **Appendix A** based on the results of a recent survey of their members:

"We have worked closely with the *National Heavy Vehicle Regulator's* South Australian Office to enhance understanding of the *National Heavy Vehicle Law* through several Industry Information Evenings, with more than 100 members attending. This, along with numerous divisional meetings, working groups and a member survey has informed our response to Issues Paper 1. We believe that the six draft regulatory principles identified in Issues Paper 1 have been suitably outlined. Our members are in full agreement of this direction."

Principle 0. Principles of good regulation

NTC states on page 16 that:

"Regulation is intended to maximise the public good."

MTAA suggests that "public good", along with "maximise" and "intended", should be defined and explained from legal, economic and policy perspectives. Cost benefit analysis (CBA) is the best tool to test whether a "regulation" will "maximise", is "maximis[ing]" and has "maximise[d]" the "public good".

Principle 1. Regulation based on risk analysis and control

NTC states on pages 43 and 17 respectively that:



“The future HVNL should be risk-based. The law should be developed by identifying, analysing, evaluating and establishing controls for material risks.”

“The ISO 31000:2018 defines risk as ‘the effect of uncertainty on objectives’ (ISO, 2018). An effect is a deviation from the expected and may be positive, negative or both. A risk is usually expressed in terms of its likelihood (the probability it will occur) and its consequence (the severity or significance of the results). Harm means a negative event. That might be a decrease in public safety (such as a load dislodged from a vehicle) or a cost, problem or other loss of value (such as pavement wear). We are using the term threats to describe the component parts that contribute to the likelihood of a risk, and precede a harm, and results for the events that derive from a harm and make up the consequence of a risk.”

MTAA supports this RBA to regulating HVs along with the use of the ISO 31000:2018 definitions and concepts of “risk”, “probability”, “consequence”, “harm”, “safety” and “threats”. Regarding the concepts of “cost” and “value”, note that: the former can be either a subjective (and forward-looking) opportunity cost or an objective (and backward-looking) expense; and the latter can be either a subjective (and forward-looking) ranking or an objective (and present-looking) price. And regarding the concepts of “risk” and “uncertainty”, note that according to one of the founders of the Chicago School of economics [Frank Knight](#):

“Risk refers to situations in which the outcome of an event is unknown, but the decision-maker knows the range of possible outcomes and the probabilities of each, such that anyone with the same information and beliefs would make the same prediction. Uncertainty, by contrast, characterizes situations in which the range of possible outcomes, let alone the relevant probabilities, is unknown. In this case the decision maker cannot follow a formal decision rule but must rely on an intuitive understanding of the situation – ‘judgment’ – to anticipate what may occur. Risk, in this sense, refers to a quantity susceptible of measurement, and not a true uncertainty that cannot be quantified.”

NTC states on pages 43 and 17 respectively that:

“The future HVNL should not attempt to control immaterial risks or have controls that aren’t clearly contributing to risk management.”

“Risk management involves:

- identifying and describing a risk[;]
- understanding the risk’s threats and results[;]
- quantifying the risk in terms of likelihood and consequence[;] and

- treating the risk by applying controls to the threats to reduce the likelihood (prevention), and/or applying controls to the results to limit the consequences (mitigation).”

Principle 2. A law with the right object, coverage and scope

NTC states on page 47 that:

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

MTAA suggests that lessons can be learned *for* Australian safety regulation of HVs *from* Australian and overseas economic regulation of public utilities infrastructure especially airports. Regarding the latter, world-leading regulatory economist Professor Stephen Littlechild observed in a [2011 paper](#): “Australia is at the frontier of light-handed regulation [and] this policy has been broadly successful.” More recently, the Productivity Commission (PC) stated on page 5 of a [2019 draft report](#) that:

“Under the light-handed regime airport users, such as airlines, negotiate directly with airport operators on charges and other terms of access to a range of infrastructure services — the government does not intervene in the setting of charges or other terms of access. Instead, the government mandates the collection and publication of information about airports’ financial and operational performance. Light-handed regulation is intended to achieve outcomes that would be consistent with those found in markets with effective competition, but will only do so if there is:

- transparency as to how an airport operator is performing over time[;] and
- a credible threat of further regulatory intervention if an airport operator is found to be exercising its market power to the detriment of the community.”

Principle 3. A responsive and flexible law

NTC states on page 48 that:

“The future HVNL should be responsive, flexible and able to readily accommodate changes to technology and business models while maintaining the right degree of oversight. Operators should be provided with flexibility to choose the most suitable compliance option, where options are appropriate. Obligations should be placed as far down the legislative hierarchy as is

tolerable and should preference outcomes, in the form of harm minimisation, over inputs and process.”

“Changes to primary legislation and regulations require appropriate consultation with industry, ministerial agreement and follow a parliamentary process (primary legislation) or a ministerial process (supporting regulation). Other lower-order instruments may be approved, by delegation from ministers and the Parliament, to an administrative body[.]”

MTAA largely agrees with this but disagrees that “[o]bligations should be placed as far down the legislative hierarchy as is tolerable”.

Principle 4. A harmonised law for diverse operations

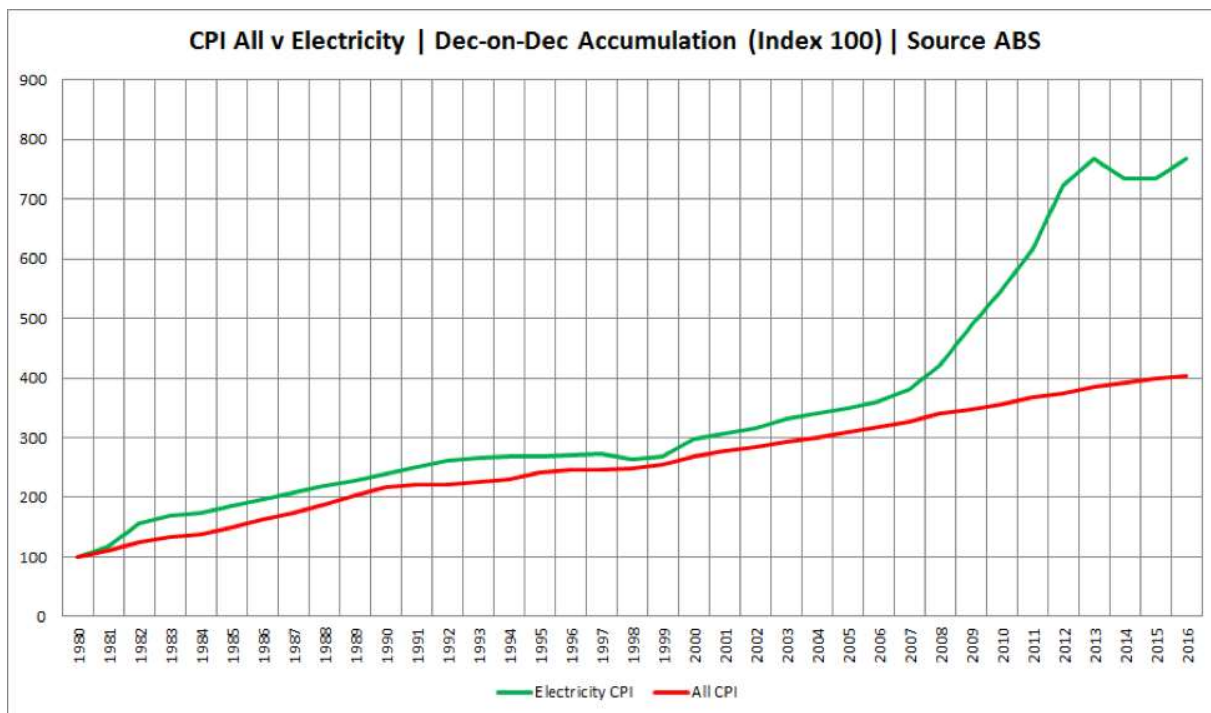
NTC states on page 49 that:

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

MTAA points out that there are few other sectors of the economy as “diverse” as the automotive sector, as can be seen from the [2017 report](#) *Directions in Australia’s Automotive Industry*. This diversity increases the need for ‘grassroots’ level consultation as MTAA submitted to the Australian Securities and Investments Commission (ASIC) in April 2019:

“Best practice consultation by Australian government agencies and regulators, like the PC or Australian Competition and Consumer Commission (ACCC), provide stakeholders with multiple opportunities for input, both written and verbal, as well as both formal and informal. This usually involves the opportunity for at least two rounds of formal written submissions, one to an initial issues document and one to a draft position document. In addition, this often involves the opportunity for at least one round of formal hearings and/or other style of face-to-face engagement with key/interested stakeholders like conferences.”

MTAA does not support naïve “harmonised” legislation (be it primary, secondary or tertiary) as some sort of unequivocal net benefit. For example, electricity-related harmonisation has been at a net cost whilst airport-related harmonisation has been at a net benefit. Regarding the former, see Figure 1 on page 5 of the [2017 report](#) by international regulatory economist Dr Alan Moran entitled *The Finkel Report’s Recommendations on the Future Security of the National Electricity Market - Impacts on the Australian Economy and Australian Consumers*:



Principle 5. A law that responds proportionally to risks and harms

NTC states on page 50 that:

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

MTAA agrees that “[t]he new law should support sanctions and enforcement tools that reflect the severity of the risk”. However, most “safety” violations are either *no-fault* accidents or *at-fault* torts not *intentional* crimes. The first-best approach for “sanctions and enforcement” in torts is just and efficient compensation to the injured not semi-random fines, fees and taxes for government.

MTAA also agrees that “enforcement decisions must be able to be reasonably challenged”. In addition, “challenged” should include *merits review* of the facts as well as *judicial review* of the law. As the Hon Justice Janine Pritchard of the WA Supreme Court put it in her [2015 essay](#) on *The Rise and Rise of Merits Review - Implications for Judicial Review and for Administrative Law*:

“The significant extent to which merits review has been used as an avenue for the review of administrative decisions shows no sign of abating. For that reason alone, merits review

warrants closer consideration than it has previously received, from the perspective of both principle and policy. Like judicial review, merits review has an important role to play in ensuring the observance of the rule of law, consistent, rational and transparent decision making, and thus of good governance generally.”

Principle 6. A law that delivers better outcomes

NTC states on page 50 that:

“The future HVNL should deliver better safety, productivity and regulatory efficiency outcomes and lead to continual improvement across these key performance areas.”

MTAA suggests that “safety”, along with “productivity and regulatory efficiency”, should be defined and explained from legal, economic and policy perspectives. The economics of “safety” is discussed in **Appendix B**.

Conclusion

Please accept this **MTAA** submission to the **NTC** regarding the high-quality Issues Paper on *A Risk-Based Approach to Regulating Heavy Vehicles*. MTAA very much looks forward to being fully engaged for the remainder of this important consultation process on the HVNL. Any questions or comments may, at first instance, be directed to Mr Darren Nelson on 0479 001 040 or Darren.Nelson@mtaa.com.au. He is MTAA’s Director of Policy and Industry Relations.

MTAA Ltd

18 June 2019

End of Submission



Appendix A. MTA SA Members Survey Results Table

HVNL Issues	CVIA	CVIA COMMENTS	FIMDA	FIMDA COMMENTS
The HVNL is not applied uniformly across Australia. Over half of Australia (by area) has not applied the HVNL, and every participating jurisdiction has derogated.	Agree		Agree	
The HVNL contains a large number of prescriptive rules in the primary legislation, making changes onerous. Even relatively minor amendments can take more than 12 months to take effect.	Agree		Agree	
Heavy vehicles are used for diverse purposes by a wide range of operators. Heavy vehicles travel in vastly different domains in Australia. The law does not deal well with the diversity.	Agree		Agree	
The HVNL is not risk-based and contains inconsistent rules and regulations disproportionate to the risks it seeks to manage.	Agree		Agree	
The HVNL is challenging to administer, enforce and comply with.	Agree		Agree	
Although the HVNL has been in operation for some years, it has not fully achieved its original goals in reducing regulatory burden, and productivity and safety improvements have been mixed.	Agree		Agree	

Reform Proposals	CVIA	CVIA COMMENTS	FIMDA	FIMDA COMMENTS
Regulation based on risk analysis and control	Agree	Future technology needs to be accommodated	Agree	
The future HVNL should have a clear and balanced object, and provide the scope, coverage and visibility needed to manage the risks specific to Australian heavy vehicle operations. The new law should consider good regulatory practice from participating and non-participating jurisdictions, other transport modes, and elsewhere so as to be nationally agreeable and set us on a path to improved consistency	Agree		Agree	
The future HVNL should be responsive, flexible and able to readily accommodate changes to technology and business models while maintaining the right degree of oversight. Operators should be provided with flexibility to choose the most suitable compliance option, where options are appropriate. Obligations should be placed as far down the legislative hierarchy as is tolerable and should preference outcomes, in the form of harm minimisation, over inputs and process.	Agree		Agree	
The future HVNL should recognise the diverse risk profile of the industry, operators and regulated parties and provide flexibility (in a harmonised manner) for those operating across vastly different domains and under different business models.	Agree		Agree	
The future HVNL should target the most significant risks associated with heavy vehicle operations. The new law should support sanctions and enforcement tools that reflect the severity of the risk, and enforcement decisions must be able to be reasonably challenged.	Agree		Agree	
The future HVNL should deliver better safety, productivity and regulatory efficiency outcomes and lead to continual improvement across these key performance areas.	Agree		Agree	