



SUBMISSION

**NTC Issues Paper 6:
Assurance Models**

**NTC Issues Paper 7:
Effective Enforcement**

31 October 2019

1. Contents

- 1. Contents.....2
- 2. About Us.....3
- 3. Industry Consultation.....5
- 4. Introduction.....5
- 5. Issues Paper 6: Assurance models6
- 6. Issues Paper 7: Effective enforcement.....8
- 7. Next Steps.....10
- 8. Submission Contact10

2. About Us

The Motor Trade Association of South Australia is the only employer organisation representing the interests of automotive retail, service and repair businesses in the state.

The MTA Training and Employment Centre comprises of both our Registered Training and Group Training Organisations. It is the automotive industry's training provider of choice and is the largest employer of automotive apprentices in South Australia.



We currently have
over **800** apprentices
in training

We also directly employ
500 apprentices
through **240** host businesses

DIVISIONS



3. Industry Consultation

This submission summarises the views of the MTA's members. In developing this submission, the MTA has consulted with members in the bus and coach, and heavy vehicle sales, repair and transport sectors.

4. Introduction

The MTA will use this Submission to provide a response to the following National Transport Commission (NTC) Issues Papers:

- Issues Paper 6: Assurance models
- Issues Paper 7: Effective enforcement

The MTA notes that the NTC wishes to provide everyone affected by the current Heavy Vehicle National Law (HVNL) with an opportunity to have a say on the development of a new HVNL; seeks advice on the problems identified in the Issues Papers; and seeks comment on whether the NTC has accurately and comprehensively covered the key issues.

The MTA's consultation with industry has revealed a broad support for the apparent intent of the NTC's review of the HVNL, that is, to enable more flexibility in the interpretation of the HVNL and to move away from overly prescriptive language.

Without flexibility, it is the MTA's observation that operators can be unduly restricted and, in some cases, the law can have the perverse effect of causing less safe decision-making.

However, in moving to a more flexible approach, the model should still rely on evidence based parameters and guidelines that operators must adhere to, in order to ensure safety and consistency. That is, an appropriate balance will need to be struck, giving consideration to the differing environments in which the heavy vehicle industry operates.

The MTA's consultation has shown that industry supports legislation that makes the heavy vehicle industry a safer industry in which to operate. Transport operators have unreservedly expressed the view that safety is a paramount consideration in how they manage their business.

The heavy vehicle industry incorporates a wide range of operator types: including long haul transport, tow truck operators, transporters of livestock, refrigerated products transport, and bus and coach operators.

Accordingly, it is imperative that the HVNL review takes into account the unique circumstances of each type of operator and their management of safety.

The MTA notes that Issues Papers 6 and 7 cover more specific 'how to regulate' matters. They include assurance models and managing compliance including

the regulatory role technology and data could play in issuing infringements, for example.

5. Issues Paper 6: Assurance models

The MTA notes that Issues Paper 6 explores assurance model options that support the safe and efficient heavy vehicle journey, and relevantly, the paper identifies options for an assurance model for the future HVNL.

In particular, the paper identifies the following assurance model options:

- Model 1: Vertical integration
- Model 2: A market for regulatory certification
- Model 3: A market for accreditation
- Model 4: Deliver flexibility through performance standards only

The MTA consulted with its members regarding the proposed assurance models for the future HVNL. Our members generally agreed that an evidence and risk-based model is preferred over an overly prescriptive or rigid approach.

MTA members agreed with the assertion in the Issues Paper that *“An effective assurance scheme can contribute to better and more effective targeting of enforcement resources.”* This also speaks to our members’ view that enforcement should target those operators that continue to flout the law, rather than those operators who are actively engaged and meeting their compliance obligations, with little to no infringements.

The MTA is of the view that an effective assurance scheme should be tied to measurable and demonstrable outcomes, such as through compliance activities and the monitoring of infringement data that can be used to track and identify those operators who are meeting or falling short of their obligations. Enforcement activities could then be targeted towards those operators who continue to fail to meet their obligations.

The MTA agrees that assurance schemes rely on a cooperative and open relationship between regulators and regulated parties to be effective, and that the process of developing the scheme should be transparent and collaborative.

The MTA also agrees that when government hands over risk management roles to a regulated party that has greater risk management expertise, it can result in better outcomes. It can also free up public resources, allowing more efficient compliance and enforcement activities. Regulated parties may be able to choose risk controls that suit their operations and are therefore more efficient. This frees regulated parties from having to use onerous prescriptive processes and systems to meet their obligations. In exchange, they take on more responsibility for risk management and demonstrating compliance.

However, MTA members are of the view that there must be a level playing field. If all heavy vehicle operators fall under one assurance scheme then that would

be considered fair. However, currently, those who sign up to various schemes (the NHVAS, for example) are perceived to have an advantage over those that don't. That is, those operators are left alone for the most part, and don't receive roadside scrutiny.

Furthermore, MTA members believe that there is currently too much "tick and flick", which is counterproductive in that the vehicles are seldom physically inspected. MTA members are concerned that compliance relies on the operator providing paperwork, and that this can lead to an operator signed up to the scheme producing compliant paperwork processes, which does not accurately reflect maintenance processes. The consequence is that there is a poorly maintained vehicle on the road.

During our consultation, members have suggested that there should be kilometre limits. For example, annual inspection of a heavy vehicle that does 50,000 kms per year might be appropriate, but if a heavy vehicle does 300,000 kms per year then, arguably, it should be inspected more often.

Turning to the four identified assurance model options, the MTA considers that heavy vehicle operators are currently subject to parts of Model 1 and Model 4. Members are generally satisfied with this model, with a bit of tweaking.

Furthermore, the MTA reports the following member feedback in respect of each of the Models:

Model 1: The Issues Paper notes that while assurance levels may be high with this model, *"there may be some issues with a single body certifying operators and enforcing compliance."*

The MTA advises that our members would prefer to have a single body to deal with, particularly when it comes to disputes. However, such a body would need to have an efficiently run complaints authority (or tribunal or mediator) to ensure minimised operator/regulator disharmony.

Model 2&3: MTA members were of the view that proposed Models 2&3 would lead to too many schemes, which would be problematic. That is, if there are multiple private enterprises serving as accreditors and certifiers there could potentially be too many sets of rules and procedures to follow, leading to confusion.

Model 4: If Model 4 were to operate on its own, our members agreed with the view expressed in the Issues Paper that the model would be too restrictive and inflexible. Members were also concerned that the model could also run the risk of over-zealous Authorised Officers.

In summary, the MTA advises that its members would prefer a model that provides an overarching manager, with an independent 'umpire' to resolve any disputes.

Members identified that an independent dispute resolution process was particularly necessary for operators to be able to challenge defect notices.

6. Issues Paper 7: Effective enforcement

The MTA notes that through this Issues Paper the NTC is seeking views on how to:

- better align the objects of the law to compliance
- deliver a future law that is easier to comply with
- make enforcement more efficient and effective, underpinned by better information.

The MTA notes that Issues Paper 7 is closely related to Issues Paper 6, and addresses the linked issues of compliance, enforcement and assurance.

The MTA agrees that both enforcement and assurance are intended to promote behaviour that complies with the requirements of the law, and that:

- enforcement identifies and addresses noncompliant behaviour;
- assurance identifies and promotes compliant behaviour; and
- an effective assurance scheme can contribute to better and more effective targeting of enforcement resources.

Before addressing the issues raised in the Paper, it is important to note that:

- in the MTA's previous responses to Issues Papers 1 to 5 much consideration has already been given to issues that our members currently face under the HVNL; and
- if those issues are addressed/fixed then effective enforcement should follow. That is, there would potentially be less to enforce.

Moving now to the content of Issues Paper 7, the MTA agrees that compliance rates are more likely to increase when rules are reasonable and easy to understand; compliance should be the easy option.

Furthermore, the MTA agrees that the way offenders are treated at roadside interventions influences operators' willingness to comply with the law. Consistent and proportionate treatment can help drive compliance. In contrast, operators' goodwill is eroded when operators perceive enforcement is heavy-handed, unpredictable and disproportionate.

In this regard, the MTA notes the Enforcement Pyramid outlined in the Issues Paper (Figure 4.). The pyramid suggest that the full, punitive force of the law is only directed towards those who have decided not to comply with the law. However, our members would argue that this does not happen in practice. That is, it is our members' experience that Authorised Officers will stop a heavy

vehicle and desperately search for a defect and, finally finding one, exclaim, "Gotcha!".

The MTA notes that the Issues Paper identifies alternatives to roadside enforcement, which include audit-based and 'back-office' activities. The intention behind these alternatives being to enhance safety culture while increasing effective enforcement outcomes.

In particular, the Issues Paper provides that, *"Audit-based activities involve auditing documents and systems to make sure the criteria for each standard is being met. Current audit-based activities rely on a manual review of documents and systems supported by objective evidence. A future approach could rely on technology to provide this information."*

As discussed above, in relation to Issues Paper 6, our members would say this is not enough, that heavy vehicle operators may have superior record-keeping processes while at the same time undertaking poor physical maintenance processes.

The Issues Paper also identifies that current audit-based activities rely on a manual review of documents and systems supported by objective evidence, and that a future approach could rely on technology to provide this information.

MTA members consider that a future that has technology based documentation could be problematic for small operations. That is, while most embrace technology, some small operators would baulk at the idea that they have to boost their safety management systems (whatever they may be) by 'going digital'.

This creates a non-level playing field, whereby large operations using economies of scale are in a much better position to insert technology into their processes.

Additionally, members have raised concerns around the use of telematics, data and in-vehicle technology for compliance purposes. Our members are of the view that this information belongs to the owner of the vehicle. Currently, it is our members' experience that Authorised Officers try to access the data on a roadside inspection. As technology progresses, the question of ownership of data and the actual uptake of technology will be an issue for our members (as referenced in the MTA's submission in response to Issues Paper 5: Vehicle Standards and Safety).

The biggest issue regarding enforcement for MTA members, and the greatest cause of angst, is the attitude and knowledge of the Authorised Officers. It is our members' view that improving this base level will lead to effective enforcement.

The MTA is of the understanding that there is an unsatisfactorily low percentage of Authorised Officers who are suitably qualified to inspect and identify a defect in a heavy vehicle.

The tender for Stage 2 of the South Australian based Heavy Vehicle Inspection Scheme has called for inspectors to be suitably qualified (i.e. qualified diesel technician), *plus* have 5 years post trade experience. The MTA is of the view that these requirements should be mirrored in criteria to become an Authorised Officer in heavy vehicle compliance enforcement.

7. Next Steps

The MTA is available to provide further information in relation to this submission and to clarify any aspect of it.

This includes meeting with agency representatives and facilitating further consultations with industry on proposed changes.

8. Submission Contact

For further information relating to this submission please contact:

Nathan Groves
Industry Engagement Specialist
ngroves@mtaofsa.com.au
08 8291 2000