

Bus Industry Confederation

Bus Australia Network Submission: Review of Risk Based Regulation for Heavy Vehicles

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Overview of the Bus Industry Confederation

The BIC represents the interests of the bus and coach operators, manufacturers and suppliers to the industry in Australia.

The BIC Objectives are to:

- promote the development and viability of the bus and coach industry in Australia
- foster public understanding of the contribution made by the bus and coach industry to Australia's economy, society and environment
- promote and support industry related research and development
- promote the use of public transport as a viable alternative to the motor car
- promote policies and actions that are environmentally responsible
- encourage investment in public transport infrastructure
- foster and promote a viable Australian bus manufacturing industry.

The Bus Australia Network

The *Bus Australia Network* (BAN) consists of the bus associations of New South Wales, Victoria, Queensland, Tasmania, South Australia and Western Australia and the federal representative body, the *Bus Industry Confederation* (BIC).

The BIC and State Association members carry more than 1.5 billion urban public transport passengers per year and makes up 5 per cent of the total urban passenger task. The coach sector of the bus industry, comprising long distance, tourist and charter operators moves more than 1.5 million domestic travellers and makes up 8 per cent of the total non-urban passenger task.

The Bus Industry, which includes bus operators, bus manufacturers and parts and service suppliers, employs more than 50,000 people nationally. The BAN promotes the efficient and sustainable growth of public transport in Australia as well as the benefits of bus and coach transport.

Generally, the bus and coach industry is divided between the contracted sector (bus operators who have a contract with a relevant State or Territory Government to provide regular passenger or school bus services) and the non-contracted sector which undertakes long distance, tourist and charter services. In most states and territories bus and coach operators must be accredited to undertake public passenger services, irrespective of the type of bus service being provided.

There is some overlap between the two sectors of the industry. For example, some contracted bus operators also undertake charter work. The industry also includes new types of bus transport; for example, "On-Demand" bus services are currently being trialled in NSW and are included in some new contracts; and in Victoria, the industry is taking a lead with such services through the introduction of a demand responsive transport booking platform.

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There is also a significant variation in the size of operators within each sector. The contracted sector can involve metropolitan operators with more than 1,000 buses and rural operators with one school bus. Likewise, in the long distance, tourist and charter sector, there are operators with vehicle numbers ranging from one to several hundred.

Therefore, in addition to a significant difference between a truck and a bus, there are also differences within the bus and coach sector that requires consideration when reviewing the HVNL.

The Review of HVNL – General Comments

- a) The HVNL should recognise that one size does not fit all when it comes to Heavy Vehicle National Law – different sectors have different needs – HVNL needs to recognise the difference between truck and bus and the task undertaken including the vastly better safety record of the bus and coach Industry, technical issues with vehicles and contracted operations – including specific recognition of a national minimum safety standard for accreditation for buses and coaches.
- b) The NHVL needs to have a stronger performance and risk-based approach, that provides operational flexibility, is less prescriptive and offers performance based /alternative compliance and reward for effort approaches for operators. This should include incentives to do so and recognise good compliance performance. This should include greater acceptance of technology as a compliance tool – The HVNL should not prescribe the technology only the compliance performance outcome and establish an appropriate alternative compliance enforcement regime that allows on road enforcement resources to be better targeted and for good operators to get on with the job.
- c) The HVNL maintenance group is unnecessary –the law should be allowed to work and not be under constant scrutiny and review (generally by jurisdictions) where there are issues raised or problems, due to things like idiosyncratic industry operational needs or state differences. This would be better dealt with through NHVR and specific regulation to address these types of issues. The HVNL maintenance group is a contributing factor to promulgating state by state HV laws and undermining national uniformity.
- d) The HVNL should be considered, when it comes to buses, in the context of the future passenger task and future impacts on the task such as population growth and congestion and automation and the efficient functioning, for example, of cities and the transport network and not in isolation of these broader societal outcomes.
- e) The HVNL should become more focussed on the use of technology to manage legal access by different productive vehicles to use the road network – the current arrangements are inadequate in managing and monitoring access.
- f) A PBS for bus system is required. The current PBS system is not suitable for buses, limits productivity for buses and adds costs because it is based on “old school paradigms” about infrastructure, safety, environment rather than an approach that focusses on productivity and positive societal outcomes that passenger transport can deliver.
- g) Existing exemptions to the HVNL should be retained and only reviewed in the context of adoption nationally as part of the HVNL review.

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In terms of our submission, the BAN has prepared a response to each of the twelve (12) questions posed in the Issues Paper. These are set out below.

Q1: Have we covered the issues with the current HVNL accurately and comprehensively? If not, what do we need to know?

The BAN agrees with the issues identified by the NTC in relation to the current HVNL; in particular, that the current law:

- Is not nationally consistent. (As outlined later in this submission, we believe that this is largely due to other problems identified with the legislation, namely its inflexibility and “one size fits all” approach).
- Is prescriptive and inflexible.
- Fails to adapt to the diverse heavy vehicle uses, domains and operators in Australia, and instead applies a ‘one size fits all’ methodology.
- Is not risk based or proportionate and tends to treat all operators identically, irrespective of the actual risk posed.
- Relies on roadside interception, rather than other, more nuanced forms of enforcement such as auditing and accreditation schemes.

The NTC makes the point that in contrast to the prescriptive approach of the HVNL, other transport modes, particularly air and rail, utilise a risk-based approach to regulation (p. 21). This approach is also used in a sub-section of the current heavy vehicle industry; namely the bus and coach sector. In some states, including NSW and Victoria, the bus and coach sector is subject to a separate risk-based legislation, administered under passenger transport and bus safety legislation, which requires operators to establish safety management systems, vehicle maintenance management systems, driver health monitoring systems, among other requirements, with clearly delineated enforcement (including audit regimes).

The current HVNL makes no allowance for this state based systemic approach and it complicates, and in many cases duplicates the requirements found in state-based passenger transport and bus safety legislation. For example, different states have developed different risk management guidance material, all ostensibly written to ISO 31000, as is the HVNL’s CoR guidance material, but using different risk management terminology, resulting in considerable confusion for operators as to how to demonstrate compliance. This particularly impacts cross-border operators, for example operating in both NSW and Victoria, who have at least three different sets of risk management guidance (Transport Safety Victoria, RMS, and NHVR) that aim to assist compliance. In view of these state-based systems, the BAN questions whether the heavy vehicle regulatory framework should even be applied to the bus and coach sector. At the very least, the new HVNL needs to acknowledge and allow for the state-based systems mandated for bus and coach providers.

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Q2: What does the current HVNL do well? What should we keep from the current law? What do non-participating jurisdictions' regulations, or comparable regulations from other sectors, do better than the current HVNL that we might incorporate in the new law?

We recognise that the prescriptive approach of the current HVNL is sometimes preferred by small operators; rather than a risk-based approach that can require sophisticated systems. In view of this disparity, there may be a need to consider a two tier approach in the HVNL which allows smaller operators to comply with more prescriptive legislation (drafted for small operators) where appropriate, while allowing other operators to apply the systems-based approach employed in some parts of the bus and coach sector; for example, to enable the implementation of safety management and vehicle maintenance management assurance systems to be used as evidence of compliance.

Q3: Do you support using the proposed risk management approach to test current policy and to develop and test policy options? How can the proposed approach be improved?

The BAN supports a risk-based approach however the approach needs to be considered in detail as to who is identifying, evaluating and establishing controls for material risks. It looks from 5.1 of the Issues Paper that the regulator is identifying controls, which is not commensurate with a risk-based approach.

We also agree with the proposition that a regulator's "inspection and enforcement resources should be based on an assessment of the risks that a regulated person or firm poses to the regulator's objectives" (p.21). In other words, we believe those operators with auditable risk management systems should be less exposed to on-road and other enforcement activities by the regulator. For example, such resources are allocated by Transport Safety Victoria using a risk management approach.

The industry is hopeful that a risk-based approach will reduce the likelihood of, for example, Controlled Access Buses that meet PBS general access standards, (i.e. performs to the same level as a 12.5m long bus, and has all the necessary risk based safety systems in place), being denied access on the road network by road managers, due to a variety of reasons, including inadequate road geometry and community concerns.

Q4: Does the object or scope of the HVNL need to change? If so, how?

We believe that the object and scope of the HVNL (as outlined at p.28) is appropriate, although we note there is no reference to passengers. As outlined above, the BAN questions whether the heavy vehicle regulatory framework should be applied to the bus and coach sector.

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Q5: Do you agree that national consistency is a goal that we should strive for, acknowledging it may mean compromise for participating and non-participating jurisdictions alike to be nationally agreeable?

We believe that national consistency is a goal that the legislation should strive for, noting that the move away from detailed prescription to a risk management approach is likely to make the legislation more palatable to the Northern Territory and Western Australia.

We also note that the NSW derogations from the HVNL for the bus and coach industry, particularly in relation to fatigue, were made to avoid duplication of the (already significant) regulatory burden placed on the bus and coach sector by state-based Passenger Transport legislation. For example, the use of Work Diaries by drivers of contracted regular route bus services, would largely duplicate the detailed record keeping required to be kept of driver's rosters and work hours under the *Bus Operator Accreditation Scheme* in NSW (refer Q8 below). Victorian derogations relating to exempting rail replacement bus services from the fatigue rules would also need to remain.

We further note there are other goals that are just as important, such as simplifying any regulation. Ideally the NHVR and HVNL would minimise regulatory obligations and rather seek to work towards national harmonisation based on a "less is more" approach that facilitates and encourages, rather than administratively impedes, the passenger transportation industry.

Q6: Do you agree we should simplify the law by placing obligations as low in the legislative hierarchy as we can? How do we balance agility and flexibility in the law with suitable oversight when deciding where obligations should reside?

The BAN agrees that the HVNL should be simplified by placing obligations as low in the legislative hierarchy as possible i.e. that there needs to be a move from the current prescriptive-based model to a principles-performance based model, just like workplace health and safety legislation. In terms of oversight and enforcement of the law, we believe there is a need to move to an audit-based model, with a recognition of systems-based compliance i.e. that employers with appropriate safety and vehicle maintenance management systems should have the option of independent auditing, in place of the current on-road/defect based enforcement system. Again, this is a process followed already by some state-based organisations dealing with bus safety, for example, Transport Safety Victoria.

We need to be mindful however that placing obligations lower in the legislative hierarchy, does not mean a corresponding increase in guidelines and codes of practice. As noted, some 94% of Australian heavy vehicle operators have between 1 and 4 heavy vehicles. The more separate guidance and codes there are, the harder it is for small businesses to keep on top of the changes coming from different regulators and the greater the compliance obligations. What the bus industry needs is a simple HVNL that aligns with the requirements of the relevant state agencies. Hopefully this will also reduce the amount of cross-border issues.

While acknowledging this as a way forward, the BAN also believes that smaller employers who may lack the resources to put systems-based compliance in place should have the option of reverting to more prescriptive based requirements; i.e. there needs to be the option of either meeting prescriptive requirements (developed for small operators) or developing the necessary systems to meet an "equivalent level of safety".

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Q7: How do we encourage the use of technology and data for regulatory purposes? What do operators, regulators and road managers need or want?

Currently, a range of detailed data is kept on the bus and coach industry.

In NSW this data is captured under the passenger transport framework and is collected by a range of different government agencies. This data includes:

- The Bus Incident Database (which captures a wide range of incidents whether these result in an accident), Transport for NSW.
- Drug and Alcohol Test results (including positive confirmatory drug and alcohol tests and any refusals to test), Transport for NSW.
- Detailed reports and data on all serious incidents (e.g. fatalities and bus fires), the NSW Office of Transport Safety Investigations.
- Bus Operator Accreditation Audits and operator non-compliances (these audits are undertaken every three years by an independent auditor), Roads and Maritime Services. In Victoria, Transport Safety Victoria field audits occur typically every one and a half to two years, and since late 2016 have been weighted in frequency by safety performance. In Tasmania Operator accreditation audits are undertaken every three years by approved transport accreditation auditors.
- Bus Defects (imposed as part of the twice-yearly heavy vehicle inspections that must be undertaken by buses and coaches in NSW), Roads and Maritime Services, and once a year in Victoria, with an additional quarterly mechanical inspection. In Tasmania buses are inspected every twelve months for vehicles less than 16 years of age and twice yearly for vehicles that are greater than 15 years of age.
- Vehicle movements from the Public Transport Information and Priority System (PTIPS) which is a computer-based system that brings together information from the tracking of buses, Transport for NSW.

The data is available to the state association (BusNSW), as well as the various government agencies.

Similar data is available from the following agencies in Victoria: Transport Safety Victoria, Public Transport Victoria, and related agencies. In respect of defects, some information is available from VicRoads and Transport Safety Victoria, but also Road Safety Inspections Pty Ltd, which is a private inspection body operated by the Victorian bus industry.

As is clear from the above, extensive compliance data is already captured and is used both for regulatory purposes (e.g. compliance programs) and industry education. Whilst we don't believe any additional data capture is necessary at this time, we acknowledge that data can be a very useful tool in implementing a risk-based regulatory approach for the bus industry, provided it is appropriately developed and implemented.

In terms of technology and in view of the rapid progress in vehicle technologies, the HVNL should accept new technology as a compliance tool and should simply define the performance outcome required, rather

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than the actual technology to be used. The shortcomings of the Intelligent Access Program, outlined at p.34 of the Issues Paper, are noted. Similarly, the need for changes in mass and regulation as a result of electric vehicles and components, will need to be accommodated in any new law.

Q8: What areas of the current law are particularly problematic because they are process or administration focused? Can you detail the impacts?

The bus and coach industry find the following three areas of the current HVNL particularly problematic:

Road Access and Mass Limits:

The current road access system does not work for the bus and coach industry. Buses are viewed under the HVNL in the same way as trucks, with passengers viewed simply as another type of freight. Bus and coach operators are regularly penalised for extremely minor breaches of mass, even though the weight of individual passengers (unlike freight) is next to impossible for an operator to control, and the standards on which mass limits are based are outdated. This aspect of the HVNL requires review.

A public transport provider is not simply a “heavy vehicle operator” and the HVNL needs to recognise the broader social benefits that public transport provides, including a reduction in congestion, removal of other vehicles from the road, and the efficient functioning of cities and the transport network.

Buses and coaches have come a long way in terms of engineering, how they can manoeuvre on the road, and the current approach for dealing with additional length and mass, and what it means for road infrastructure needs review. Industry has experienced significant difficulty in getting CABs on the road network in circumstances where the vehicles were clearly not a threat to the road pavement or roadsides.

We also note that the access approvals process is lacking transparency and does not provide operators with clarity of the road manager decision making process, or any realistic avenue to appeal.

Performance Based Standards (PBS)

The PBS is a scheme designed to offer improved safety and higher productivity through innovative and optimised vehicle design. However, the current PBS system is focused on trucks and is not “bus friendly”. This limits productivity and adds costs in many instances for the bus and coach industry. The current PBS also takes the default position of not granting access, rather than focusing on productivity outcomes and how and what access can be achieved. A PBS Standard is needed that takes the specific design features and characteristics of buses and coaches into account.

Fatigue Records

Because bus operators and drivers are viewed as “heavy vehicle” operators/drivers under the HVNL, the fatigue provisions of the legislation do not adequately consider the operational issues within the bus and coach sector. Bus operators undertaking “regular passenger services” in some states, including NSW and Victoria, (i.e. route services and school bus services) are required as a condition of their accreditation to develop and maintain (for periods of up to 5 years) detailed records of all drivers’ shifts and rosters. These records go further than the Work Diary records kept by drivers under the HVNL. Hence the need for the current exemptions from Work Diary provisions for contracted bus operators/drivers in NSW. Extending this to all public transport bus and coach services across Australia needs to be considered.

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As noted at p. 42 of the Issues Paper, in most cases collisions with a heavy vehicle result from poor decisions by the driver of the other vehicle.

Work Diaries should not be required where an operator has in place an equivalent means of recording and demonstrating fatigue management compliance. Note the case study at the top of p. 35, where a driver was heavily fined for administrative Work Diary breaches although he was demonstrably not fatigued.

Further, operators should not have to collect and maintain records of their regular passenger service drivers for fatigue legislative purposes, over and above what they already do, particularly for under 100km work.

The work undertaken by regular route drivers, involving regularly stopping to pick up and drop off passengers in accordance to timetabled shifts, is also very different to the long-haul freight work that is the primary focus of the HVNL. Greater recognition of these very different operating environments in the HVNL is required.

Q9: How could the law regulate heavy vehicles in a way that accommodates diversity, while retaining consistency and harmonisation across Australia?

To accommodate diversity while retaining consistency and harmonisation, the BAN believes a separate Division of the Law is needed which regulates the different vehicles, drivers and operating environments inherent in the bus and coach sector. Alternatively, a broader risk management-based approach is needed in the HVNL that recognises the current state-based approach to the industry.

Q10: In a broad sense, what tools do the regulator and enforcement agencies need to respond appropriately to compliance breaches? What recourse and protections do regulated parties require?

The HVNL should recognise good compliance performance and establish an alternative compliance regime that allows on-road enforcement resources to be targeted towards poor performers. The HVNL needs a stronger performance and risk-based approach that provides operational flexibility, is less prescriptive and offers performance based /alternative compliance approaches for operators to meet the law. The current safety standards applied to buses and coaches via accreditation should be reviewed in each State and then where appropriate recognized by the legislation.

Where there is clearly no intention to commit or cover up a breach, education rather than penalisation should be the primary object of regulatory staff to improve and advance safety management rather than financially penalise operators. This is recognised in the NTC discussion in section 4.2.3, where the emphasis of current HVNL is on administration rather than safety outcomes.

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There needs to be a clearer mechanism for on road enforcement, for the police, to support the assessment of compliance breaches. Where cross border issues exist (and this will still be the case), arrangements between the jurisdictions need to be put in place to manage non-compliance breaches when operating in an environment that requires cross border journey's as a regular part of operations (i.e. school bus services on the Victorian / NSW border). Clearer vehicle registration practices that effectively record vehicle parameters and any associated approvals need to form part of a national system for enforcement agencies.

The ability of enforcement officers to have access to current data will facilitate compliance assessments, identify serial breaches compared to one off inconsequential breach, and reduce the incidents of fines for minor non-compliance issues associated with paperwork.

Q11: How can the new HVNL help to improve safety, productivity and regulatory efficiency?

Refer response to Q9 and 10 above.

Q12: Do you agree with the six draft regulatory principles? If not, why? Are there other principles we should consider?

The BAN broadly agrees with the six draft regulatory principles outlined in the Issues Paper; namely, that the new HVNL should:

- Be risk based;
- Consider good regulatory practice from other transport modes and jurisdictions;
- Provide operators with the flexibility to choose the most suitable compliance option;
- Recognise the diverse risk profile and business models of industries, operators and parties;
- Target the most significant risks associated with heavy vehicle operations;
- Deliver better safety, productivity and regulatory efficiency outcomes.

The BAN believes that the vastly better safety performance of the bus and coach Industry should be recognised as a seventh regulatory principle to clearly highlight the different task undertaken and regulatory requirements to operate. This will assist greatly in recognising that the one size fits all approach to heavy vehicle regulation is not a fair or equitable approach.

If the foregoing principles are followed, it will go a long way to ensuring that there is a better melding of Commonwealth, State and Territory obligations on operators, hopefully meaning less confusion and duplication. A reasonably good example of new regulation recently was the implementation of the CoR reforms. The reforms were a piece of risk-based regulation based on the international safety standard ISO 31000 - the same standard as the AS/NZS 31000 standard that Victoria used for its bus accreditation regime. In respect of the recent CoR reforms, it allowed Victorian operators at least to amend their safety management systems to take into account the new CoR obligations. The process was however cumbersome, and many found the online CoR assessment tool difficult to understand and use.

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A bad example of regulation continues to be fatigue management. Currently there are Commonwealth organisations involved (e.g., Safe Work Australia; NHVR) and State/Territory organisations (e.g., in Victoria, WorkSafe; Transport Safety Victoria; VicRoads). All of these organisations have either Codes or Guidelines about fatigue management. Given the potential legal function of Codes, the number of organisations and documents involved can confuse operators and drivers. This needs to be reviewed.

We look forward to seeing how these broad principles are translated into practical measures for the industry in the new legislation.

If you would like to discuss any of the above issues further, please do not hesitate to contact me on (02) 6247 5990.

Yours sincerely,

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On behalf of the Bus Australia Network.

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