

Bus Australia Network Submission: Review of Safe People and Practices

Bus Industry Confederation



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Bus Industry Confederation

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 school bus is the second most popular mode for travel to school after the car with about one quarter of all school children traveling to school by bus.

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.

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.



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The Review of NHVL – General Comments

- a) The NHVL should recognise that one size does not fit all when it comes to HV law – different sectors have different needs – NHVL needs to recognise the difference between truck and bus and the task undertaken including 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 approaches for operators to meet the law. This should include incentives to do so and recognise good compliance performance. This should include greater acceptance of technology as a compliance tool – The NHVL 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 NHVL 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 NHVL maintenance group is a contributing factor to promulgating state by state HV laws and undermining national uniformity.
- d) The NHVL 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 NHVL 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 NHVL should be retained and only reviewed in the context of adoption nationally as part of the NHVL review.

In terms of our submission, the BAN has prepared a response to each of the eleven (11) questions posed in the Issues Paper. These are set out below.

Q1: Have we covered the issues relating to safe people and practices accurately and comprehensively? If not, what do we need to know?

Bus Industry safety operations are much broader based than recognised in the discussion paper as a result of being passenger and not freight transport. This includes, for example, buses being largely urban based operations in highly pedestrianised areas with frequent stopping close to gutters and kerbs and mostly in heavy traffic conditions. Bus drivers operate in a higher driver safety risk circumstance from a road and traffic perspective and from personal safety perspective, including passenger safety factors (personal health, people with disabilities, drug effected passengers and violence and abuse) that need to be considered in some way in the HVNL. This could include a national approach to bus driver and passenger safety and protections and penalties.

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Buses and the passenger transport sector do not fit neatly within the ‘heavy vehicle’ issues outlined in the NTC’s paper. The Issues Paper rightly defines a safe heavy vehicle driver *as one who is competent, fit for duty, authorised, alert and operating safely* (p.8). The Paper goes on to state that such issues are not currently the focus of the HVNL. It points out that this situation contrasts with the safety accreditation schemes operating in the rail and aviation sector.

This point illustrates the dilemma facing the bus and coach sector. Like the rail and aviation sector, the bus and coach industry currently have a range of prescriptive controls that focus on the ‘safe driver’ issue. State-based accreditation schemes require formal accreditation of drivers that includes training, regular medical assessments, drug and alcohol programs and a range of other controls. Unlike the rail and aviation sector, the bus industry is also captured by the NHVL. It is not a neat fit. The responsible parties in the chain of responsibility under the NHVL (such as consigners and consignees, packers, loading managers, loaders and unloaders – p.18) are irrelevant to the bus and coach industry where the operator (who is also the employer) transports passengers from Point A to Point B. There are generally no consigners and consignees, packers, loading managers, loaders and unloaders, etc. involved in the task. Similarly, the *heavy vehicle operating task* outlined on p.17, which involves *loading, unloading, restraining a load*, etc is not relevant to buses and coaches where the operating task is to carry passengers.

Chain of Responsibility laws are relevant to the bus and coach industry but have its own “influencers” such as:

- Customer demands in the charter and tour sector prior to a trip and during a trip
- Government contractual arrangements and reasonable consideration in relation to for example on time running and road delays. In other words, Governments/Transport agencies should be explicitly identified as part of the chain and recognised as a contractor in the NHVL as the procurer of services.

The Issues Paper seems inclined to expand the scope of HVNL, rather than pursue the point made on p.9, that other parts of the regulatory environment may be more appropriate for managing some safety risks. Buses and passengers are not addressed in this Issues Paper. Bus accreditation systems with comprehensive Safety Management Systems in Victoria and NSW and to varying degrees in other States and Territories are ignored. There is an argument for excluding buses and coaches (which have strict state-based accreditation schemes) from the scope of the NHVL. At the very least, such schemes need to be recognised in the NHVL rather than duplicated (as the new CoR obligations have done for the bus and coach sector).

The industry believes a national bus accreditation model needs to be developed and recognised as a national minimum safety standard within the HVNL. States can still manage their own accreditation requirements and support a mutually agreed minimum safety standard accreditation recognised by all jurisdictions within the HVNL that includes recognition of good safety performance and reward for effort.

Q2: What aspects of safe regulated well? What needs to be regulated better? What aspects of safe people and practices are currently regulated well? What needs to be regulated better?

Accredited bus operators are regulated by their own distinct safety legislation. For example, in Victoria this is the Bus Safety Act 2009 and Bus Safety Regulations 2010, and in NSW, the Passenger Transport Act 2014 and Passenger Transport (General) Regulation 2017. These and similar legislation in other states extensively regulate safe people and practices. Similarly, bus operators and drivers are regulated (and accredited) by an overlapping combination of some half a dozen bodies including, in Victoria, Transport Safety Victoria, VicRoads, WorkCover, Commercial Passenger Vehicles Victoria and the police. In NSW bus operators and

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drivers are similarly regulated and accredited by Transport for NSW, Roads and Maritime Services, the Office of Transport Safety Investigations, SafeWork NSW and the police.

The HVNL, when it was introduced, added a new layer of complex variations for the bus industry, for little additional benefit. Each regulator has produced different and sometime conflicting versions of guidance material and expectations, all ostensibly written to achieve the purpose of better safety outcomes.

The NTC Issues Paper suggests incorporating some elements of other safety regimes, such as Rail and Aviation Safety regimes, into the NVNL. However, buses have very similar passenger safety accreditation systems focused on safe people and practices. These requirements are found in bus safety legislation in each state. Buses have been captured by the HVNL because buses are technically defined as 'heavy vehicles', however, there is an argument that to avoid further duplication and red tape, buses and other passenger transport should be excluded from the scope of the NHVL. At the very least, the HVNL should recognise and support bus regulatory controls where these exist as outlined in Question 1.

As outlined in Question 1, Chain of Responsibility law is primarily focussed on freight businesses and fails to recognise the operational circumstances and state-based regulations currently applying to the bus and coach industry. Bus operators have safety accreditation schemes in place, and risks are appropriately managed by operators in accordance with those schemes.

The Issues Paper notes that the HVNL does not regulate drivers, but bus and coach drivers are regulated effectively under separate passenger vehicle driver accreditation regimes. HVNL should recognise and accepting the current state driver accreditation regimes and mutually recognise a national bus safety minimum standard accreditation regime.

Q3: What should the future HVNL do to regulate safe people and practices so heavy vehicle drivers and others are safe? What risks are adequately managed by other regulatory controls? Are there any risks to the safe driver that are not currently regulated at all, and if so, how should these risks be regulated?

If we have commonwealth and state/territory legislation applying to the same issues (as is the case with the bus and coach sector), we need to avoid duplication and different ways of doing the same things. For example, SMS and CoR already work effectively in the bus industry. The HVNL does not need to regulate Drugs and Alcohol, health assessment, driver competence, speeding, etc., as these are already regulated by Victorian, NSW and other state passenger transport authorities. HVNL should simply acknowledge and recognise an agreed mutually recognised national bus safety minimum standard accreditation regime.

We fully agree with the statement at p.44 of the issues paper that, *Concurrent or overlapping duties may exist elsewhere. Where this is the case, the future HVNL should complement safety goals, not compromise them.* Duplication should be avoided and the HVNL should work cohesively with other regulatory regimes, otherwise it considerably increases compliance time and costs for the industry for no additional safety benefit.

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Q4: Does the primary duty and chain of responsibility in the current HVNL comprehensively cover the people who can influence the safe driver and their practices? What improvements are needed?

We agree that *the future HVNL should be comprehensive in ensuring safe practices for supply chain [CoR] parties who influence the safe driver* (p.44). However, as mentioned, the responsible parties in the HVNL chain of responsibility (such as consigners and consignees, packers, loading managers, loaders and unloaders) are not relevant to the bus and coach industry where the operator (who is also the employer) transports passengers, often in accordance with schedules administered by the state government. Unlike the freight sector, there are no consigners and consignees, packers, loading managers, loaders or unloaders in the passenger transport sector.

Bus operators should only be held responsible for controlling what they can influence themselves. HVNL's obligation for third parties such as external businesses (e.g. heavy vehicle workshops or mechanics) to 'observe, record and report' adds further compliance paperwork that operators have little ability to enforce on their suppliers. Small regional bus operators have been told to take their vehicles elsewhere by workshops not because they are poor safety performers as regards their buses, but because the regulatory requirement is considered excessive by these suppliers who do not want to incur additional paperwork.

Q5: How can the HVNL support better training and a higher level of driver competency? How can it support ongoing professional development?

In addition to a Heavy Vehicle Licence, bus drivers in Australia are subject to an 'additional' licensing scheme specific to that industry. This licence, named a "Driver Authority" in NSW and "Driver Accreditation" in Victoria, is administered by the public transport regulator in each state and requires the driver to be competent to transport public passengers, including a range of training requirements. It also requires a suitable level of heavy vehicle driving experience. As the NTC Fatigue Management issues paper noted, most heavy vehicle incidents are caused by third parties, not heavy vehicle drivers. Increased training and compliance requirements will increase costs, with little discernible benefit in the already heavily regulated bus and coach sector. HVNL could offer evidence-based advice or guidance but should not seek to create or enforce a new (and independent) regime of training additional to that already existing in the bus and coach industry.

Q6: Is driver health and medical fitness managed as well as it could be? Is there a case for regular medical assessments for drivers (and possibly other parties), similar to those for Safety Critical Workers in the Rail Safety National Law? Is the Rail Health Assessment Standard a good basis for a heavy vehicle medical assessment standard?

In the bus and coach sector, driver health and fitness are risk managed and regulated. Driver health assessments occur as part of the driver accreditation renewal process, which takes place every three years for most bus drivers. For bus drivers over 60 years of age or with a medical condition such as sleep apnoea, health assessments take place annually. Bus drivers are also subject to (additional) triggered health assessments by their employer (or the state regulator), for example where the employer has any concerns with the driver's fitness for duty.

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Bus and coach operators operate in a qualitatively different and already highly regulated environment to freight. As bus and coach drivers are already heavily regulated in the area of driver health assessments, we would oppose any *additional* testing under the NHVL. If medical assessments are to be introduced for other heavy vehicle drivers, the state-based health assessments for bus and coach drivers should be recognised in the NHVL as outlined above.

Q7: Should heavy vehicle driver licences be national? If so, should this be by mutual recognition, nationalisation or some other approach? If licences shouldn't be national, why not? Should licensing progress subject to experience rather than arbitrary timeframes?

There seems to be no clear reason why heavy vehicle licences should be national rather than remaining state and territory based, especially for single state-based bus operations or bus operations procured by individual State and Territory Governments. Having said that there is no reason that it could not be offered as an option for bus operators.

Mutual recognition and information exchange between jurisdictions is a viable way of dealing with this. Heavy vehicle licensing could be harmonised to the same standard by state/territory agreement and recognised nationally.

As mentioned, in addition to a Heavy Vehicle Licence, bus drivers in Australia are subject to an 'additional' licensing scheme specific to that industry. This licence, named a "Driver Authority" in NSW and "Driver Accreditation" in Victoria, is administered by the public transport regulator in each state. It requires the driver to be competent to transport public passengers, to undergo regular health assessments, a clean criminal record, etc. It also requires a suitable level of heavy vehicle driving experience. In NSW for example, to obtain a Driver Authority, the applicant must be *at least 20 years of age* and to have held a driver licence *for a total of at least 12 months in the 2 years immediately preceding the date of the application* (cl. 29, NSW Passenger Transport (General) Regulation 2017). This could be considered as part of a mutually recognised national minimum standard bus safety accreditation regime as outlined above.

The Issues Paper claims that national heavy vehicle driver licence standards will reduce barriers to entry for young people (p.46). However, given the current passenger transport regulations, it is not clear how any form of driver training could reduce the on-road learning time currently required to allow a driver to commence driving a bus or coach.

Q8: Should the HVNL do more to help manage drug and drink-driving? For example, should it include a drug and alcohol management program requirement such as the one required in rail? Is on-road enforcement enough?

The bus and coach industry already have strong drug and alcohol requirements that in many cases are analogous to that required in rail. For example, in NSW drug and alcohol management is regulated under the *Passenger Transport (Drug and Alcohol Testing) Regulation 2010*. Bus and coach operators are required to develop and implement a Drug and Alcohol Program based on their risk assessment and in consultation with their employees. Drug and alcohol test results are required to be forwarded to the state regulator who may cancel the Driver's Accreditation as a result.

Any additional drug and alcohol regulation administered under the NHVL would only confuse and complicate the current state requirements

Industry supports a mutually recognised national bus safety minimum standard accreditation regime.

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Q9: Do the Australian Road Rules do enough to manage driver distraction, speeding and other on-road behaviours? Is the primary duty in the current HVNL rigorous enough to manage the practices of chain of responsibility parties who can influence a driver to operate unsafely?

We support encouragement of operators to develop and apply technology, practices and systems to manage safe on-road behaviour. We think the Australian Road Rules do enough to manage driver distraction, speeding and other on-road behaviours, and that the primary duty in the current HVNL is enough.

We would also point out that passenger transport has its own requirements in terms of speeding and driver distraction. For example, in NSW a driver of a school bus carrying standees is not permitted to travel more than 80kmph irrespective of the road signs. Similarly, most states have rules and procedures concerning the use of mobile phones and other devices whilst driving a public passenger vehicle.

Q10: How can the future HVNL encourage a stronger role for safety management systems in a way that doesn't disadvantage smaller or more seasonal operators? Can registered industry codes play a role in supporting smaller operators to develop safety management systems?

We note that there is no mention of the bus transport task or of the carriage of passengers in the Issues Paper discussion of the heavy vehicle operating task. The Bus sector in Victoria and NSW already require SMS's as part of their accreditation systems. If HVNL proceeds to include a requirement for a heavy vehicle SMS, it needs to recognise and accept these current accreditation systems within a mutually recognised national bus safety minimum standard accreditation regime.

Q11: How can the future HVNL nurture a culture that places a high level of importance on safety?

The Bus sector already has a strong safety culture recognition as an element of state-based passenger transport accreditation. The HVNL needs to recognise this existing approach to safety culture within our sector.

Further inquiries relating to this submission can be directed to Mr Michael Apps, Executive Director, Bus Industry Confederation on (02) 6547 5990.