

# NHVR Submission to the Independent Review of the Federal Safety Commissioner

Response to Discussion Paper

July 2023

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## Introduction

The National Heavy Vehicle Regulator (NHVR) thanks Marie Boland for the opportunity to provide feedback on the review of the Federal Safety Commissioner (FSC). The review considers the impact of the FSC and Work Health and Safety Accreditation Scheme on building industry safety by adopting a tripartite approach to stakeholder consultations.

The NHVR supports the review and the potential improvements to safety and productivity in the building and construction industry. It must be noted, however, that there may be implications for the heavy vehicle industry, particularly regarding proposed changes currently under consideration as part of the Heavy Vehicle National Law (HVNL) Review.

Our response to the paper is focused on the following topics:

- Ensuring the safety of workers by increasing education around hazards associated with the interaction of heavy vehicle and construction sites
- Streamlined reporting and data sharing
- Audit criteria
- Providing advice relating to proposed changes under the HVNL Review.

Addressing these issues is critical to delivering tangible and meaningful outcomes for both the heavy vehicle and the building and construction industries.

The NHVR is tasked with championing sustainable improvements to safety, productivity, and efficiency; minimising the regulatory burden of the heavy vehicle industry; and reducing duplication of and inconsistencies in heavy vehicle regulation across state and territory borders.

Several types of heavy vehicles that the NHVR regulates are commonplace on construction sites, including mobile cranes, concrete agitator trucks, and freight delivery vehicles.

## About the National Heavy Vehicle Regulator (NHVR)

The NHVR is Australia's regulator for all vehicles with a gross vehicle mass of over 4.5 tonnes.

Headquartered in Brisbane, the NHVR employs more than 800 people across the ACT, Queensland, New South Wales, South Australia, Tasmania and Victoria. This will increase to more than 1,000 employees this year when heavy vehicle services in Queensland transition to the NHVR.

It was established in 2013 as a statutory authority to administer one set of laws – the HVNL – which applies in all of Australia's states and territories except the Northern Territory and Western Australia.

The HVNL is designed to establish a national scheme for facilitating and regulating the use of heavy vehicles on roads in a way that:

- promotes public safety
- manages the impact of heavy vehicles on the environment, road infrastructure and public amenity
- promotes industry productivity and efficiency in the road transport of good and passengers by heavy vehicles
- encourages and promotes productive, efficient, innovative and safe business practices.

In the six states and territories where the HVNL applies, there are more than:

- 91,700 registered prime movers
- 814,000 registered heavy vehicles
- 230,500 registered operators
- 475 road managers.

The NHVR's vision is to have a **safe, efficient and productive heavy vehicle industry serving the needs of Australia**.

It aims to achieve this by working collaboratively with industry, governments and partner agencies to:

- provide leadership and drive sustainable improvement to safety, productivity and efficiency outcomes across the heavy vehicle transport sector and the Australian economy
- minimise the compliance burden, while ensuring the objects of the HVNL are achieved and duty holders meet their obligations
- reduce duplication of, and inconsistencies in, heavy vehicle regulation across state and territory borders.

The NHVR administers the National Heavy Vehicle Accreditation Scheme (NHVAS), a voluntary scheme that focuses on improving safety through accreditation of operators who have robust management systems in place. The scheme provides regulatory concessions and is increasingly being used to show compliance with primary duty safety obligations under the HVNL.

Previously managed by state and territory road transport authorities, the NHVAS is now administered on a national basis by the NHVR.

Heavy vehicle operators can apply for accreditation under the following NHVAS modules:

- Mass Management
- Maintenance Management
- Fatigue Management (Basic and Advanced).

More than 8,000 operators currently hold NHVAS accreditation. The concessions provided are specific to each module, and include increased mass limits, greater flexibility for work and rest times for drivers, and exceptions from regular vehicle inspections in some states.

## Submission Response

### Improving safety around heavy vehicles on construction sites

#### **Question 7: Should the FSC be increasing its education role and what would that look like in practice?**

Understanding of work health and safety (WHS) duties, and in particular hazards relating to heavy vehicles, is a vital component for all parties at work, and the role of regulators in this area is significant. Similar to WHS and other transport regulators, the HVNL contains recommendations (s559) that the NHVR should 'provide advice, information and instruction to persons with duties or obligations under the HVNL about compliance with their duties or obligations'. Accordingly, the NHVR believes that any improvements in education may provide benefits to industry.

Some regulators have more resourcing available to develop education programs (such as WHS regulators) or industry specialisation and subject matter expert knowledge (such as the NHVR) and are generally seen as having authority and educational remit by industry. Adding another regulator with an education function may reduce the educative authority of the current regulators. If undertaken, education campaigns should be aligned between regulators to ensure consistency of messaging and audience. Although there may be scope for an education function for the FSC, the NHVR's view is that it should instead support regulators such as the NHVR to provide education to industry about construction hazards.

The NHVR recommends that the FSC takes a regulatory stewardship approach to its functions, which requires it to consider how best it can support, and be supported by, other Australian regulators already operating in this space.

### Streamline reporting requirements and data sharing

#### **Question 21: Should WHS incident reporting be streamlined to cater for all government agency and regulatory reporting requirements? If yes, how?**

The NHVR supports initiatives that streamline data sharing between regulatory bodies; however, it notes the challenges associated with such activities, including privacy, legal and data quality concerns.

Incident reporting and information sharing between government entities can be difficult given the nature of confidentiality and privacy obligations on regulators and inconsistencies in incident reporting requirements between jurisdictions. For example, WHS regulators may have differing privacy provisions between them, or different incident notification requirements, processes and timelines.

The NHVR recommends that the FSC consults with WHS regulators to discuss the practicality of streamlined and centralised reporting before making a decision.

#### **Question 22: Could the FSC draw on existing data sources instead of requiring its own data?**

Expanding on the above restrictions on data sharing, there are several challenges associated with data sharing between regulatory bodies and other government organisations. This includes that establishing data sharing agreements can take some time; the format of data is often not standardised between organisations, which can impede large scale data analysis; different state and territory legal and privacy obligations can restrict which data is being shared, potentially leaving gaps in data; and data gathering methodology may change between organisations, creating unintentional data bias.

However, data sharing between government bodies can have several benefits, including increasing the breadth of data available; reducing the resources required to gather data; strengthening relationships between organisations; and promoting a culture of regulatory stewardship between participants. Data sharing also helps to reduce the regulatory burden on industry participants by reducing duplicative reporting requirements.

Noting this, the NHVR suggests that the FSC consults with WHS regulators to discuss the challenges associated with data sharing, and to conduct an analysis of the cost/benefit of data sharing vs self-collection. The NHVR advocates for the sharing of data and is open to sharing data whenever practical and encourages the FSC to explore this possibility.

## Reducing audit pressure and aligning audit standards

**Question 26: Do the audit criteria remain relevant to building and construction workplaces in 2023? If not, are there any new criteria you would suggest be included?**

The NHVR supports the audit criteria detailed in the discussion paper. In particular, the NHVR highlights the Focus Point Audit Criteria noting that items such as senior management commitment, whole of project consultation, and management of subcontractor WHS are key indicators of positive safety culture within an organisation.

## Considerations surrounding the future of the Heavy Vehicle National Law

The review of the HVNL led by the National Transport Commission (NTC), has identified a series of reform options for the HVNL. The Decision Regulatory Impact Statement (D-RIS) prepared by the NTC is due to be released for public comment in the fourth quarter of 2023.

Through consultation on the HVNL, the NTC found that multiple accreditation schemes are creating large audit burdens for operators.

There are two important reforms being proposed that may be of importance to the FSC.

The National Heavy Vehicle Accreditation Scheme (NHVAS) is being reformed around a Safety Management System (SMS) approach. This approach will require persons participating in the scheme – including those in the construction industry – to have a Safety Management System (SMS) in order to access regulatory benefits. Consequently, the FSC should be aware that some persons in their scheme or subject to their scheme may also have regulatory obligations in NHVAS in the future.

Further, as part of the new NHVAS the NTC is developing a National Auditing Standard (NAS). The NAS is to be applied as part of the regulator's existing function to implement and manage an audit program for the NHVAS. The standard will be outcomes based, and designed so that other assurance schemes can adopt it. The NAS will also be designed to be used for non-accreditation audits intended to establish adherence to, or compliance with, the primary safety duty under Section 26 of the HVNL. The NAS will follow the principles of *ISO 19011 Guidelines for Auditing Management Systems*. Given that a major purpose of the NAS is to reduce audit burden, the FSC may find it worthwhile to consider the NAS as part of possible reform of their assurance processes.

Thank you for the opportunity to provide feedback on the Independent Review of the Federal Safety Commissioner Discussion Paper. Should you require any further information about the NHVR's submission, please contact Mr Raymond Hassall, Executive Director Statutory Compliance on 07 3309 8540 or at [raymond.hassall@nhvr.gov.au](mailto:raymond.hassall@nhvr.gov.au).