NATROAD

NATIONAL ROAD TRANSPORT ASSOCIATION

Submission to the National Transport Commission

HVNL Review: Consultation Regulation Impact Statement: Roadworthiness

9 November 2020

Introduction

1. The National Road Transport Association (NatRoad) is pleased to make comments on the *HVNL Review Consultation Regulation Impact Statement (CRIS)*[1] prepared by Frontier Economics and published by the National Transport Commission (NTC) on 25 June 2020. This is the eighth submission in a series of submissions.

2. We also note the publication of the NTC document *HVNL 2.0 A Better Law Scenario.*[2] (Better Law) That document sets out one possible scenario for a future law. This document has proved useful in simplifying the choice of options and their rationale. In this instance, however, we focus on the detail in the CRIS rather than the summary in Better Law.

3. NatRoad is Australia's largest national representative road freight transport operators' association. NatRoad represents road freight operators, from owner-drivers to large fleet operators, general freight, road trains, livestock, tippers, car carriers, as well as tankers and refrigerated freight operators.

4. This submission responds to the issues raised in Chapter 11 of the CRIS entitled *Roadworthiness*. The CRIS says that the objective of the discussion in Chapter 11 is to assess the options identified "that are aimed at improving assessment and defect clearance processes and addressing inconsistencies in jurisdictional inspection regimes." [3] NatRoad supports this aim. In an earlier submission[4] in the review process, NatRoad provided qualified support for the introduction of a consistent approach to the issue of roadworthiness of heavy vehicles and the frequency of inspections required.

5. Chapter 11 also contains material which acknowledges the issue of lack of consistency in enforcement of the HVNL, a major concern of NatRoad members. The Chapter 11 discussion reinforces NatRoad's position that enforcement issues must, subsequent to the end date for submissions on the CRIS, be given a high priority for examination and reform. The below discussion on self-clearing defects is illustrative of the direction of reform: more reliance on self-clearing defects should be a central part of a reformed HVNL.

Productivity Commission findings

6. The Productivity Commission's recently released report on transport regulation[5] discusses the subject of vehicle inspections as an aspect of derogation from the HVNL. It is worthwhile reproducing the Commission's findings as they are on point in the current context, essentially the finding that requirements for periodic safety inspections are inconsistently regulated:

   The National Heavy Vehicle Inspection Manual (NHVIM), developed and published by the NHVR, has been adopted by all HVNL jurisdictions (with additional requirements in Queensland, South Australia and Tasmania) to provide consistent standards and criteria for which vehicles will be inspected (NHVR 2018). However, State and Territory agencies have

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[1] https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.ntc-hvlawreview.files/5715/9304/9833/HVNLR_RIS_25_June.pdf
[2] https://www.ntc.gov.au/sites/default/files/assets/files/HVNL-2.0.pdf
[3] Above note 1 at p167
[4] https://www.ntc.gov.au/submission_data/575 at par 70 et seq
[5] https://www.pc.gov.au/inquiries/completed/transport/report/transport.pdf

retained responsibility for vehicle inspections and roadworthiness as part of their registration requirements, as these issues are outside the scope of the HVNL. This has led to varying requirements for heavy vehicle inspections across jurisdictions …Requirements for scheduled vehicle inspections are determined by the State or Territory of registration, and do not affect vehicles merely travelling through a jurisdiction. Operators with vehicles subject to periodic inspections face higher compliance costs. Businesses that register their vehicles in a jurisdiction with no periodic inspection regime (such as Victoria or the ACT) might have a marginal competitive advantage compared to those registering in jurisdictions with periodic inspection regimes.[6]

7. NatRoad would urge the NTC to assess the various costs of registration for a range of classes of heavy vehicles in each State and Territory and to devote resources to this task. This would cover more than the annual recommended registration charges but the various administration, compulsory third party and inspection costs in each jurisdiction where the latter are mandated. This work could then feed into a national, risk based roadworthiness system where, if States and territories did not wish to devolve responsibility for roadworthiness (as is proposed in the CRIS), the costing could underpin the introduction of a cost effective system which could take into account the issues subsequently discussed in this submission. Given that in 2016/2017, the NHVR made a business case for national registration which was rejected by Transport Ministers, it seems critical that the varying costs of State based heavy vehicle registration at the least should be more transparent under a reformed HVNL.

Standardised maintenance/roadworthiness assessment (Option 11.1)

8. The CRIS indicates that this option would assist to solve the problem with inconsistencies in the process associated with the clearance of defects between jurisdictions as well as regularise the basis for determining whether a heavy vehicle is non-compliant with vehicle standards or is unsafe.

9. The option contains three elements. The first is:

It recognises the NHVIM expressly in the HVNL in order to increase consistency in the roadside inspection of vehicles. Currently the NHVIM is only used for annual inspections or scheduled inspections to clear defects.[7]

10. NatRoad supports this element of the option. It accords with the recommendations made by NatRoad in our earlier submission mentioned at paragraph 4 above. As noted in the CRIS, section 526 HVNL currently allows an authorised officer who has inspected a heavy vehicle under the HVNL to issue a defect notice if the authorised officer reasonably believes the vehicle is a defective vehicle and the use of the vehicle on a road poses a safety risk. That opinion should be made objective by reference to the NHVIM. In addition, all authorised officers who wish to exercise the power of issuing a defect notice should be required to be trained to a level where they are able to competently apply the NHVIM. This obligation should be extended to all parties that enforce the HVNL, including the Police.

[6] Id at page 91

[7] Above note 1 p169

11. The CRIS appears to recognise the training element referred to in the prior paragraph where, in the assessment of the option, it indicates that in addition to saving the industry costs from the issue of fewer spurious defect notices, "There may also be an increase in regulator administrative costs for training inspectors in the NHVIM, both an initial one-off cost and then an ongoing cost to keep capability current."[8] That cost will result in a concomitant benefit in the enforcement of the law consistently.

12. The second element of this option is that "It amends the HVNL to require the use of self-clearing defects for non-safety cases."[9]

13. NatRoad supports greater use of the self-clearing defect notices. The intent of "enabling self-clearing of non-safety defects and limiting defect clearance to the specified identified defects"[10] as a means to "remove the need for follow up inspections for non-safety issues and prevent a vehicle being subjected to a full inspection in order to have a defect cleared"[11] is supported.

14. We note, however, that in correspondence with NatRoad in November 2017 the National Heavy Vehicle Regulator (NHVR) indicated that a defect notice issued to a heavy vehicle with the same or similar defective component may be categorised differently depending on the safety risk the continued use of the vehicle poses which naturally requires a judgment to be made by an authorised officer. This situation arises because under the HVNL, it is the vehicle defect notice that is categorised rather than the defective heavy vehicle component or system. Accordingly, it is essential that enforcement guidelines/protocols highlight the issue of consistency in the application of the principles for properly distinguishing whether a safety risk is present and that authorised officers consistently apply those protocols and have training in order to do so. That necessity exists, in any event, under the current HVNL.

15. In the context of the latter paragraph, it is of utility to set out the NHVR's provided explanation in more detail:

In determining the level of safety risk the continued use of the vehicle poses the Authorised Officer will:

- *identify any defects or defective components present on the heavy vehicle;*
- *identify what safety systems may be compromised by the identified defects and/or defective components;*
- *determine the extent that the defective components have compromised the performance of the vehicle's safety systems using their knowledge and experience; and*
- *determine the effect that the compromised safety system has on the continued safe-use of the vehicle on a road.*

[8] Above note 1 at p172
[9] Above note 1 at p 169
[10] Above note 1 p 172
[11] Ibid

Authorised Officers will also consider any external factors that may place differing demands on vehicle performance and components; for example (not limited to), posted speed limit, road features (grade, bends, intersections), traffic density, weather conditions, lighting conditions (day or night), nature of the load etc.

As such a defect notice issued to a heavy vehicle with the same or similar defective component may be categorised differently depending on the safety risk the continued use of the vehicle poses.[12]

16. How these elements are to be consistently applied would need to be the subject of agreed guidelines/binding protocols that were transparent in their application.

17. The third element of the proposed option is fully supported: "Where a defect does relate to safety then an inspection for defect clearance would only be required to check whether the identified defect has been rectified, rather than a full inspection."[13] That process should be able to be undertaken in any jurisdiction e.g. undertaken in Queensland if an operator is based there where a defect noticed was issued in, say, NSW.

Risk-based inspection scheme (Option 11.2)

18. This option would require the NHVR to develop a national regime of risk-based inspections of heavy vehicles based on the technical requirements in the NHVIM. Under this option the NHVR would develop risk criteria for identifying which vehicles have a higher risk of being unroadworthy, drawing on jurisdictional understanding of risk to roadworthiness. How that would work in practice would need to be the subject of subsequent, detailed examination that industry was consulted on.

19. This proposal fits in with NatRoad's earlier submission where we indicated support for a single regulatory system for inspections focused on areas of highest risk not on the idea of " registration renewal means an inspection must happen."[14]

20. We note that the CRIS indicates that the inspection process would be a matter developed by the NHVR: "the NHVR would be given the power to require nominated heavy vehicles and/or classes of vehicles to submit to scheduled inspections at a frequency commensurate to the risk they present."[15]

21. The CRIS says:

Without pre-empting any detailed assessment of roadworthiness risk, some relevant parameters are likely to relate to vehicles with: 1. a greater risk of developing a safety-critical defect based on the vehicle's age (i.e. the older the vehicle, the more likely it will develop a defect) or the operator's track record 2. greater potential adverse consequences if a crash occurs, based on the type of load being carried and industry segment (i.e. dangerous goods vehicles).

[12] Private email correspondence dated 15 November 2017
[13] Above note 1 p170
[14] Above note 4 para 77
[15] Above note 1 at p170

22. We note that dangerous goods vehicles are currently subject to separate regimes and safety measures in relation to inspections and enforcement by agencies other than the NHVR[16] and that a better segmentation regime is called for e.g. anecdotal evidence is that tippers and dogs working in the construction industry are often involved in incidents. The targeting of the dangerous goods sector is not necessarily warranted given the other extensive regulatory structures imposed on that sector. Research data is needed which provides an insight into which segments of the market represent higher risk separately from the presumption that the dangerous goods sector must be the subject of the relevant inspection. That material should be sourced and utilised in the next stages of the review.

23. In the assessment of this option, the CRIS indicates that on the basis of broad principles "interventions that focus inspections (be they scheduled or on-road) on vehicles that have a higher risk of defects will likely deliver more benefits in terms of reduced defects and therefore reduced crash risk." Ongoing maintenance appears to NatRoad to be a better indicator of reduced defects and therefore reduced crash risk. As we pointed out in prior submission in this context[17], the predominant cause of incidents of mechanical failure relates to issues with tyres. This is a matter that is not necessarily picked up at the required annual inspection at the time of registration renewal, as the issue often is inadequate tyre inflation. The statistics relating to what mechanical attribute causes incidents reinforces NatRoad's support for a risk-based, national roadworthy system to be introduced rather than a "tick and flick" at registration time or on transfer by sale.

24. As indicated earlier, there needs to be more work done to crystalise this option. The CRIS seems to arrive at a contradictory position where it says that it is "difficult to draw firm conclusions from existing data about the relative effectiveness of existing jurisdictional approaches to vehicle inspection. Nonetheless, it can be presumed that some ability to redirect resources within and between jurisdictions could enable the overall inspection regime to become more risk based." The reallocation of resources (if that were even feasible between jurisdictions) would not necessarily propel the system towards being risk based. We do not agree that this could be presumed without a better analysis of the effectiveness of current schemes. That work must be undertaken before reform proceeds.

Prior Examination of Roadworthiness

25. As shown in the CRIS[18], the NTC undertook a detailed assessment[19] of the issues associated with the introduction of a national roadworthiness scheme in anticipation of a national registration scheme. As is clear from the observation in paragraph 7 of this submission, a national registration scheme was not implemented.

26. One of the recommendations arising from the NTC's prior work was developing a risk-based approach to scheduled inspections. The related caveat was that a "decision to implement this approach would not be made until the necessary additional data is gathered (via the National Roadworthiness Data Strategy) and risk criteria based on that data are considered

[16] For example, the EPA in NSW see https://www.abc.net.au/news/2015-09-04/epa-compliance-crackdown-on-dangerous-goods-transport/6748924 by way of example.
[17] Above note 4 at para 80
[18] Above note 1 p 173
[19] https://ris.pmc.gov.au/sites/default/files/posts/2016/02/Heavy-Vehicle-Roadworthiness-Program-Decision-RIS.pdf

and approved."[20] The document makes it clear that "If it is agreed that the resultant criteria are sufficiently robust, they would form an acceptable basis for a risk-based approach to scheduled inspections."[21]

27. It is important that how the scheme is implemented is next carefully assessed utilising the same approach as previously indicated by the NTC because the prior NTC work well-estimated the costs of various options. Expected changes to number of scheduled inspections and the resulting cost to operators for 5 sub-options under option 3 of the earlier NTC work[22] should be updated as part of the ultimate acceptance or rejection of the broad proposals encapsulated in Options 11.1 and 11.2.

Conclusion

28. NatRoad is broadly supportive of Option 11.1 and 11.2 subject to a detailed cost/benefit analysis that could be modelled on the earlier NTC work. We ask that industry be consulted on the issues that require consideration following the acceptance of the broad options set out in Chapter 11.

[20] Id at p 30 for the full details
[21] Id at p31
[22] Id Table 6 at p51