

Submission - Review of the HVNL Amendment Bill 2025

Without Prejudice

With respect to the proposed changes to the HVNL Part 1, the Queensland Trucking Association (QTA), Victorian Transport Association (VTA) and National Road Transport Association (NatRoad) would make the following joint submission on the proposed changes to the accreditation standards.

1. Introduction: The Shift to a Risk-Based Accreditation Framework

The Heavy Vehicle National Law (HVNL) is currently being reformed by authorities to replace the existing National Heavy Vehicle Accreditation Scheme (NHVAS). This proposed two-tiered framework purports to offer increased flexibility, a risk-based methodology, and an outcomes-driven focus. However, while the reform seeks to enhance safety and productivity, it also creates a systemic conflict. Limited industry consultation has led to concerns that the new requirements may be financially and legally burdensome for road freight operators, potentially undermining the original intent of the Heavy Vehicle National Law.

- **Two-Tiered System:** The NHVAS will be replaced by a new system comprising General Safety Accreditation (GSA) and Alternative Compliance Accreditation (ACA), designed to provide more tailored and flexible solutions for operators.
- **Safety Management Systems (SMS):** A scalable SMS becomes a new core requirement for accreditation, embedding a proactive, risk-management approach into the application and audit process.
- **National Audit Standard (NAS):** The current NHVAS Audit Framework will be replaced by the NAS, introducing a more rigorous, safety-focused audit process designed to assess the effectiveness of an operator's SMS.
- **Regulatory Focus:** The stated goals of the reform are to improve safety, increase productivity and efficiency, deliver more consistent and fair enforcement, and accelerate the adoption of new technology.

2. The Conflict

The conflict within the new framework arises when a company Director hires an independent auditor to obtain accreditation, potentially creating a record that could be used as evidence against them. In our perspective, this proposal effectively reverses the burden of proof and undermines the standard defenses typically available to employers within our established legal framework. Accreditation should serve as a tool for accountability, not a means to apportion blame.

3. Disincentivising Operators

The new framework is likely to deter company Directors from seeking accreditation under NHVAS. If the scheme is viewed primarily as a means of imposing personal liability for executive due diligence failures, operators will understandably choose to opt out. While the scheme is presented as a partnership aimed at enhancing safety and productivity, the reality of an accreditation program that potentially undermines operator confidence raises concerns about its ability to deliver genuine public safety benefits. The focus should be on creating an encouraging experience that promotes fleet safety, rather than a punitive mechanism.

4. The Risk of Litigation and the Lack of Auditor Protection

The environment created by the new framework subjects independent auditors to legal risks that extend beyond regulatory oversight. The use of audit reports as evidence in prosecutions could also lead to civil litigation initiated by Directors against the auditors themselves. This risk is heightened as auditors do not receive any protection from the "shield of the Crown" in their "quasi" regulatory role. Potential grounds for litigation are extensive and may encompass claims of professional negligence, breach of contract, or misinterpretation of the National Audit Standard.

5. Auditors at Risk

This framework imposes an unsustainable level of risk on both the heavy vehicle industry and independent auditors, thereby jeopardising the very operational foundation of the accreditation scheme.

Specifically:

- **Auditor as Unprotected Enforcement Agent:** Auditors are effectively compelled into a quasi-regulatory role, tasked with collecting prosecutorial-level evidence (via detailed Major Non-Conformances and Corrective Action Requests). Crucially, they perform this function without the fundamental legal protection, indemnity, or immunity typically extended to government employees.
- **Heightened Litigation Exposure:** This absence of statutory protection leaves auditors acutely vulnerable to civil litigation from operators and directors. These parties may seek to discredit or challenge audit reports as a strategy to mitigate their own prosecution risks.
- **Impending Auditor Shortage:** The combined effect of escalating audit costs (driven by increased auditor liability) and the personal risk of prosecution will inevitably drive experienced auditors out of the field, leading to a severe and critical shortage of qualified professionals.
- **Contradictory Risk Management:** The Regulator is concurrently increasing operational risks within the industry (e.g., through the new 15.5-hour fatigue standard) while simultaneously mandating that auditors bear the burden of liability for managing and reporting on these elevated risks.

6. Industry Implications

The key structural issues previously mentioned must be adequately addressed before delving into the operational details. Nonetheless, some observations can be made, particularly regarding the introduction of a mandatory 28-day audit submission timeline in the Draft National Audit Standard. This change is not merely a procedural update; it reflects the NHVR's intention to enhance the timely collection of compliance data. However, this new requirement places substantial financial, operational, and professional risks on both approved third-party auditors and operators. The central takeaway is that while auditors are now held accountable for meeting deadlines, operators also face significant financial implications in terms of their preparedness.

In summary, the implications for the heavy vehicle industry are substantial and require further examination by the NHVR and NTC:

- Increased costs, time, and expertise will be necessary for operators to develop and implement a Safety Management System (SMS) to maintain their accreditation.
- Higher consultancy fees may arise as operators seek assistance in developing an SMS for accreditation maintenance.
- Audit costs are expected to rise significantly, possibly doubling or tripling, as the scope and complexity of audits increase, until a clear understanding of the audit matrices is established.
- Financial repercussions may occur if an operator decides to withdraw from accreditation, such as reduced payloads due to not operating under Higher Mass Limits (HML), operators being restricted to Standard Hours, and vehicles requiring pit inspections.
- Certain operators will be obliged to transition to the new accreditation, including those requiring permits (e.g., operators with Performance-Based Standards (PBS) fleets) or those with contractual obligations to maintain accreditation along with its imposing costs.

7. Conclusion

The Heavy Vehicle National Law reform amendment package is well-intentioned in its risk-based approach to safety. However, it lacks a compelling argument that is reasonably necessary and proportionate to justify the denial of legal defenses for safety outcomes in the operation of heavy vehicles in Australia. We believe this approach by the NTC shifts the evidential burden and undermines the presumption of innocence for operators in any "accreditation-related prosecution," especially regarding significant evidence.

If this hypothesis is accurate, then Parliament must reconsider the legislation to allow the regulator to place the burden within the accreditation framework, meaning that any implication of wrongdoing in an audit report would result in liability for legal repercussions or adverse findings against the operator. The proposed accreditation framework should not serve as a statutory exception to the fundamental principle that the prosecution bears the legal burden of proof.

The industry is justified in questioning the legislative basis for this proposed accreditation structure, which raises concerns of being "ultra vires" as a vital threshold question. Accreditation should act as an incentive for enhancing and standardising safety practices, not as a mechanism that jeopardises "rights of natural justice" at a considerable additional cost.

Ultimately, this policy proposal needs to be revoked and reconstructed with full and meaningful participation from the industry.

This submission is endorsed by the following Industry Associations representing thousands of businesses and operators around Australia.

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