

**Submission to the
National Transport Commission**

**~ Draft Heavy Vehicle National Law
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Executive Summary

1. The Association supports the establishment of a single national system of laws for heavy vehicles to improve efficiency and reduce the administrative burden for heavy vehicle operators.
2. The Association has concerns that the Regulator and the Law could result in another layer of bureaucracy which will make it difficult for state based organisations such as ourselves to have realistic access to decision makers.
3. Great uncertainty remains around the funding, structure and role of the Regulator.
4. It is claimed that securing 'last mile' access will now be easier and fairer because the Regulator can co-ordinate access requests on behalf of the operators; it is uncertain how this will change the dynamics of the current arrangements and lead to better outcomes.
5. It is imperative that productivity variations that provide the most benefit are nationalised in absence of a case as to why they are not suitable for transfer across jurisdictions.

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1. Introduction

The NSW Farmers' Association (the Association) appreciates the opportunity to present its views to the National Transport Commission for their consideration.

The Association is Australia's largest state farming organisation representing the interests of the majority of commercial farm operations throughout the farming community in NSW. Through its commercial, policy and apolitical lobbying activities the Association provides a powerful and positive link between farmers, the Government and the general public.

Australian farmers currently produce 93% of all food consumed in Australia and 1% of all food consumed around the world. Our nation is responsible for 3% of global seaborne trade and in total Australia feeds 60 million people each day.ⁱ

Australia is the second most road freight dependent economy in the advanced western world. It has been estimated that by 2020 Australia's freight load is set to double in volume and treble on the eastern seaboard.

Almost all farm inputs are transported by road and most farm produce will travel by road at some point in the logistics chain... agriculture and associated industries is responsible for an estimated \$913 million dollars of transport and storage services per annum and the majority of this is by road transport.

Globally, over the next 50 years, nations will need to produce as much food as has been consumed over our entire human history. Timely and efficient delivery of agricultural produce, in addition to the greater volumes required, need to be considered and planned for now.

The Association believes it is critical to create a heavy vehicle industry which is safe, productive and free of unnecessary regulation. Given the diversity of the heavy vehicle industry, it is important that the productivity gains of nationalisation of laws are balanced with the flexibility required to provide industry-specific policy.

2. Draft Heavy Vehicle National Law

The Association welcomes elements of the National Heavy Vehicle Law (the Law). \$12.4 billion in savings over 20 years is a significant benefit promised by the National Heavy Vehicle Regulator (the Regulator). As the key elements of the Law are still to be determined, it is difficult to make a general comment, thus we have addressed each item relevant to the Association.

Many of the submissions to this public consultation will be from the transport industry. In many cases producers such as those represented by the Association will benefit from the policy positions of the transport industry, in others we provide a vastly different perspective. To oversimplify; farmers often travel short distances in infrequently used trucks or towing agricultural equipment and rely on flexible, common sense regulations that allow for these short distance movements.

It is imperative that the Regulator does not create an extra layer of bureaucracy that will inhibit flexible arrangements, or remove exemptions and notices required to facilitate policy relevant to primary producers. In the documents provided to stakeholders, there was insufficient explanation of how the Regulator will work. The Association recommends that the national law should provide a legal guarantee that the Regulator can't repeal, but can only improve productivity variations from the standard transport law.

2.1 Heavy Vehicle National Law Draft – Appendix A – Non RIS Items

The RIS states that the Non RIS items contained in Appendix A are of minor technical or definitional nature, where consensus as to the way forward as reached around the state and territory level. Given that the current NSW Government did not partake in this round of consultation, and that the Association is opposed to certain recommendations, we will provide specific comments on some items contained in Appendix A.

2. Concessional mass limits (CML) – Non RIS items

1. Heavy vehicles covered by CML

The Association strongly supports the inclusion of agricultural machines and implements in CML.

3. Compliance and enforcement

23. Reasonable steps defense – legal and evidentiary burdens – Rule Cl. 89

Association policy strongly opposes the chain of responsibility and thus both the legal and evidentiary burdens placed under the chain of responsibility. However given our intent to improve the existing chain of responsibility policy, we recommend that defendants should only have to provide evidence that they took reasonable steps (thus satisfying the evidential burden).

5. Heavy Vehicle Registration

The Association has continually called for the removal of impractical and excessive restrictions on the transport and registration of all farm machinery. Registration policy specific to the requirements of primary producers is necessary to ensure that the key differences between large transport companies, smaller trucking operators, bus companies and primary producers are taken into consideration.

The current provisions in NSW for primary producer registration exemptions, registration concessions, conditional registration and unregistered permits need to be retained (and extended) under the Law. In NSW the following vehicles are exempt from registration:

- An agricultural implement - such as irrigating equipment, augers, conveyors, harvester fronts and harvest bins - towed by a vehicle.
- A trailer towed by an agricultural machine such as a tractor or harvester.
- Vehicles that are not used on roads or road-related areas, other than when they are driven across roads when travelling to or from land that is used for primary production.

1. Seasonal Registration

The Association strongly supports the provision of seasonal registration. Current exemptions for harvest periods in NSW are essential.

12. Exempt vehicles – Law 18

The Association strongly supports the provision for the Regulator to exempt vehicles. It is essential that the Regulator can swiftly grant exemptions as they are required.

8. Mass and Loading

Improvements to the productivity and competitiveness of the NSW meat and livestock sector are of utmost importance. Instilling a realistic, affordable and safe livestock loading scheme is essential. The Association strongly supports the Victorian Livestock Loading Scheme. Participants are exempt from complying with vehicle mass limits by:

- Reducing the chances of animals being injured
- Increasing the productivity of livestock transport
- Protecting road and bridge infrastructure
- Reducing the chances of vehicles rolling over.

This scheme should be available nationally, as it balances the demands of both safety and productivity.

10. Oversize Overmass

16. Rear overhang rules for augers – Model Clause 4.3

Grain augers have increased in size for occupational, health and safety reasons on-farm, to cope with the geometry of increasing silo sizes. Due to occupational health and safety reasons, these augers are required to be constructed at an approved industrial site, and then towed to the farm. They cannot be dismantled, transported and then put back together again on-farm, as the requirements for lifting apparatus, and other site requirements make this practice impossible. The majority of augers, once on-farm, are no longer required to be transported on the road.

The Association recommends that there should be oversize allowances for auger combinations up to 35 m and a rear overhang maximum of 60% instead of the current 53%.

17. Warning lights – Model Clause 6.3

The Association opposes the need to have warning lights permanently wired.

25. Dimension limits – Model Clause 1.2

The Association strongly supports the variation cited allowing heights of up to 4.6 metres and widths of 3 metres to be adopted as the model law.

Transport of wool bales

Regardless of the density, cut, quality of the wool, the type of wool press used and the expertise of the wool-presser the wool bale invariably bulges at the end away from the seam. The Association believes that if the seam of the wool bales are loaded so that they are within the gunnel rail of the

truck, they should be classified as a legal load. Moreover the downward horizontal angle along the bale towards the centre of the truck that is created when the outer seam of the bale is resting on top of the gunnel rail actually creates a safer foundation for the load to be carried, resulting in a more stable load.

The Association would like to see more flexibility for situations where the seam of the bale is within the gunnel rail however the bulge of the bale creates a minor breach of width.

Transport of hay bales

The General Oversize (Baled or Rolled Hay) Drought Assistance Exemption Notice 2007 currently limits fodder loading to 4.6 m high x 2.50 metres wide. The corresponding limits in Victoria are 4.3 m high x 2.70 m wide. The Association recommends the establishment of uniformity across borders with a 4.6 metres x 2.70 metres limit. In NSW the *Class 3 Baled or Rolled Hay and Straw (Disaster Relief) Exemption Notice 2011* has allowed hay loads up to 2.7 metres and previously the *General Oversize (Baled or Rolled Hay) (Drought Assistance) Exemption Notice 2007* and the *General Oversize (Baled or Rolled Hay) (Bushfire Assistance) Exemption Notice 2009* allowed hay loads up to 2.83 metres, with no width related transport problems reported.

28. Width of agricultural machines – Model Clause 4.3

Given that there are currently many notices and permits that authorise different widths in different States, how will the Regulator determine which widths will be allowed in which jurisdictions? NSW regulations are currently extremely restrictive. An example of this is fodder trailers for which there are realistic width allowances in Victoria compared to those in NSW. For example in NSW the RTA doesn't allow fodder trailers towed behind a conditionally registered vehicle (i.e. tractor) to be fodder laden if wider than 2.5m. The Association is requesting an exemption so that fodder carrying trailers wider than 2.5m can be laden, if travelling short distances at slow speeds between farm blocks to feed livestock, provided that they meet certain access, loading, dimension and construction requirements.

38. Displaying an unnecessary warning sign

The Association finds it puzzling that there is a specific offense for displaying a warning sign incorrectly. By punishing road users for erring on the side of caution, this clause will have a long-term effect of reducing safety. Whilst we recognise the intent of the measure, the benefits would surely not outweigh the costs. Our Members provide constant feedback on the amount of confusing and seemingly unnecessary regulation on the movement of agricultural equipment. The Association recommends that this provision must be removed from the model law, to avoid a further reduction in confidence in heavy vehicle regulations

12. *Speeding chain of responsibility*

The Association strongly opposes the concept of the chain of responsibility, and the possibility of primary producers being prosecuted for breaches that occur beyond the farm gate.

2.2 Heavy Vehicle National Law Draft Regulatory Impact Statement

Whilst extremely thorough and helpful, the RIS (and documentation in general) provided by the NTC lacked simple explanations of how the Law will work. Which productivity variations will be kept, how these will be decided and the impact for all vested interests were lacking. Furthermore, it is unclear why jurisdictions could not be named. This would have given a greater understanding of which productivity variations were granted, and how the Regulator will determine if future variations appropriate.

The Association will now provide specific comments on the items covered under the medium impact variation analysis.

2.2.1 Medium Impact Items

8.8 Higher Mass Limits (HML) eligible vehicles

The higher mass limits (HML) network in NSW is vastly inadequate. Of approximately 185,000 kms of total road network in NSW, there is a mere 15,000 km appropriate for HML access. Moreover the lack of interconnectivity between the HML routes in the network compounds the inadequacy of this asset.

Whilst the NTC has indicated that securing last-mile will now be easier and fairer as the Regulator can co-ordinate access requests on behalf of operators, details are thin. The Association would like the NTC to provide further information surrounding how heavy vehicle road access in general will be improved.

8.10 Regulation of pilot and escort vehicle drivers

The Association has had conflicting reports from the Police compared to the RTA regarding the requirement for police escorts, when transporting oversize agricultural equipment as per the NSW General Class 1 Oversize (Agricultural Vehicle) Notice 2007. Police have stated to the Association that there is a maximum width of 5.6 m before it is necessary for a police escort (which is applicable only in the southern region) whereas the RTA (as per the Notice) have a maximum width of 6m before it is necessary to contact police.

Further confusion arises when consideration has to be given to what is a major and minor route (as requirements for escorts differ between major or minor roads), and whether terrain limits a clear view of approaching traffic to less than 500 m. If a police escort is required, at least 2 days notice needs to be provided to the Police. The police car costs \$480 per day. Sometimes due to weather constraints impeding upon farming operations such as grain harvest, providing notice is not always feasible. Ultimately harmonisation between Police and RTA inspector's interpretation of the regulation should be an imperative.

How will the model Law address these issues?

8.14 Treatment of Silage Trailers.

The Association agrees with the assessment that the model law is ambiguous, and welcomes the move to the Victorian system: http://www.vicroads.vic.gov.au/NR/rdonlyres/904DB3B5-898B-4FB4-A94C-682C0348ED66/0/VRPIN02646_Silagetrailers_FA_web.pdf . This allows silage trailers to be up to 3m wide and to be towed laden on the road without registration. This has been a key issue for many of our Members, particularly those from the dairy industry. This 3m width must be implemented nationally, as many of the silage trailers commercially available are of this width.

In 2010 the Association conducted a survey in which statistics regarding distances travelled between farms were shown to be 17.9 kilometres (which becomes 12 kilometres when the top 5% are removed). Of the 133 responses on silage trailers received, 68.4% were <2.5m, 22.6% between 2.5 and 3m and 9% between 3m and 4m (most of these 9% were grain chaser bins which travel unladen anyway). Not only are these statistics relevant to silage trailers, they also demonstrate the unique nature of how the agricultural industry uses heavy vehicles.

2.2.2 High Impact Items

9.1 Decision Making Frameworks

At present, there can be issues around transparency and consistency of decision making. There is no formal mechanism for review of access decisions which impacts operators' ability to plan and confidently invest.

The Association welcomes any move that will lead to increased targeted investment in infrastructure. The issues with decision-making frameworks identified need to be addressed, and the Association supports moves to increase access. However it is very important to ensure this does not lead to inflexible decision-making processes which discriminate against those dealing with localised problems.

9.2 Advanced Fatigue Management

In a period of 24 hours a driver must not work for more than 16 hours, more than 154 hours in 14 days, and more than 288 hours in 28 days.

The Association welcomes the provision of short rest breaks within vehicles with the engine running, as long as the vehicle is stationary and the driver is not subject to work demands.

As has been mentioned previously, distances travelled by primary producers are often very minor. Policy that reflects that nature of travel movements by farmers are therefore necessary. The following policies are supported by the Association, providing examples of why flexible arrangements are required under the law.

The NSW Ministerial Exemption (Primary Production Work Diary and Record Keeping) Order 2009 provides that record keeping duties do not to apply to a driver of a regulated heavy vehicle engaged on a journey for the purpose of primary production within a 160km radius of the driver's base. This was introduced to cater for the "stop and go" nature of the primary production tasks when short

distances are involved and in recognition of the difficulties in maintaining accurate work diary records in these situations.

South Australia, NSW, Western Australia and the Northern Territory allow a livestock driver the flexibility to attend to an animal welfare incident, before completing their journey. This flexibility helps keep livestock alive, and is clearly a productivity variation.

The Association is opposed to the current one in seven rest day provision. The proposal for the new bus work hours regulations which allow up to 24 days work in 28 days without the 24 hour weekly rest requirement should be made available to the trucking industry with the same night rest provisions. This would be especially useful in seasonal work like grain harvest and for drivers who only work a short number of hours each day but work every day are also adversely affected.

Regarding Advanced Fatigue Management policy, the Association supports the 16 hour outer limit.*

9.3 Spray Suppression

B-doubles are currently required to be fitted with spray suppression devices for road safety reasons. These cost around \$1500. There is scientific research suggesting that they are of limited value.

Association Members have provided feedback that the spray suppression increases safety for trailing motorists in wet conditions. The Association supports the latter option, to allow mutual recognition of existing local exclusions between the states.

9.4 Vehicle Inspections

There are currently wide variations in vehicle inspection schemes between the states and territories.

The Association supports the expert panel's suggestion that states mutually recognise each other's inspection regimes whilst further work is done on the development of a national inspection model.

9.5 Transfer of Registration

The model law currently only requires that purchasers of heavy vehicles notify the registering authority of a transfer of registration. To prevent new owners paying for indiscretions of previous owners, this could be changed to require notification of transfer by both sellers and buyers of heavy vehicles.

The Association supports the proposed change in the model law.

9.6 Restricted Access Vehicle (RAV) Permits

Under the model law only a heavy vehicle operator may apply for a RAV permit. Queensland has diverged from the model law to allow anyone to apply for a permit, allowing, for example, a farmer to apply for a permit to enable a B-double operator to enter their farm during harvest.

The Association supports the inclusion of the Queensland diversion in the model law.

9.7 Unpaid Fines

All states and territories use vehicle registration sanctions as punitive measure for unpaid fines under state based non-transport law. Options provided include recognizing state law, or removing all reference to registration sanctions.

The Association does not support sanctions for unpaid fines that do not relate to the operation of the vehicle.

9.8 New Offenses

If vehicles receive defect notices, they can be removed. This means that the operator would now know of the defect until re-registration. In Victoria, this is illegal.

The Association supports the offense in the national law.

3.0 Further Comments on Heavy Vehicle Policy

Whilst the issues below are not explicitly included in the terms of reference, they are important in that they demonstrate heavy vehicle regulation issues of importance to the Association.

Heavy Combination Licence Requirement

A Heavy Combination Licence is required to drive a tractor with a silage trailer, due to the combination forming a heavy vehicle combination, the licence class required is Heavy Combination even if the trailer only has to travel a short distance between farms to feed livestock. This licence category mostly requires competency based assessment, which can come at a cost of up to \$1000. Tractor and trailer combinations are completely different to truck and trailer combinations. Tractors are not designed to cover long distances and generally do not travel greater than 40km/hr.

Registration of oversize loads on trailers if load is a divisible item

A case study has shown a header and comb trailer to be 23 m in total length. The maximum length for a divisible load is 19 m. Therefore the two items must be loaded on two separate low-loader trailers, thus doubling the cost to transport them.

No Travel during Public Holiday Period for Oversize Equipment

Another concern for many farmers, particularly in southern areas of NSW where grain harvest is still in full swing around the Christmas/New Year period, is the inability to transport oversize equipment in a public holiday period. Around Christmas the public holiday period is classified as between sunrise 23 December until sunset 3 January.

Police Enforcement

How will the regulator be able to ensure that State Policy finally enforce the law in a consistent way, matching what transport inspectors do?

Parking of Vehicles Following Breach Notices

The Association has received feedback from Members stating that trucks were left on dangerous roadside bends. The Association recommends that this is explicitly banned under the new national law.

Carrying of Accreditation Documents

The model law should move away from the requirement for drivers to carry accreditation, notices or permits within the cab.

Penalties and Communication

Currently there is an approach to enforcement that focuses too heavily on fining as the major means of determent. In theory drivers weigh up the risk of being caught with the disincentive of large monetary penalties. Unfortunately in many cases those who commit offenses were not aware of the rules in the first place. The Association recommends an increased focus on education of the current rules and regulation. The transition to the Regulator provides the opportunity to revamp the approach to enforcement, and education of what the current policies are. As there would no doubt be different levels of success for communication around Australia, it is essential that the Regulator is able to influence all states to use these. The increased use of the internet will provide further opportunities to provide clarity regarding rules.

3.1 Issues with Transport and Infrastructure in NSW

These issues have been provided for information and to provide a background to the current challenges faced by our Members.

Transport Policy in NSW

Currently the RTA is the judge, jury and execution within NSW. The separation of the RTA's roles of an infrastructure provider, a road safety monitor and a service provider would remove this conflict of interest. This change will also allow a much needed focus on improving the economic efficiency of NSW's road network.

The Association has lobbied for the creation a Department of Regional Roads to address the metropolitan focus of policy-making in NSW. This will also allow for the provision of customer service to rural and regional residents, who currently have great difficulty in obtaining information from the RTA's Sydney Office.

Infrastructure Issues in Rural NSW

Nationally, 8 in every 10 kilometres of roads are local. Only about 20% of total road funding is council money for local roads. Almost seven of every 10 kilometres of local roads are rural. Rural local roads get about one-third of total local road maintenance and upgrade funding. Road funding is usually based on population numbers, but that must change as increasingly efficient agricultural industries mean fewer regional residents.

In NSW \$3.5 billion is directed to rural and regional roads (around three quarters of the Roads budget), most of this expenditure is for the Coastal areas of Sydney Metropolitan, Illawarra, Hunter, Central Coast, North Coast for the Hunter Expressway, Pacific Highway, Hume Highway, Great Western Highway (to Lithgow) and the Princes Highway. Other regional investments include the upgrades to the Mt Victoria to Lithgow Highway (\$15 million), Newell Highway Bypass at Moree (\$2.5 million which is Federally Funded) and Barton and Olympic Highways (\$18m and \$500,000 respectively).

The Bureau of Transport and Regional Economics in its report on 'Freight Measurement and Modelling in Australia' has highlighted that the dependence of NSW on road freight has increased significantly and is expected to continue to grow. In the last 10 years, the amount of freight transported on NSW roads has increased by over 65 percent. The increasing demand on road transport has meant that a larger number of heavy vehicles are now travelling on NSW roads. This has both placed increasing pressure on existing infrastructure as well as exacerbating existing safety concerns. The Rural and Regional Affairs and Transport Legislation Committee in its review noted that since the 1970s national investment in transport infrastructure has declined from about 7 percent to about 3.6 percent of GDP.

The Australian Farm Institute suggests that the New South Wales Government should create a Regional Infrastructure Fund to provide central funding administration for major regional infrastructure projects through the Department of Regional Development. The current approach administration of infrastructure in NSW is disconnected and notoriously dysfunctional. The standard of infrastructure in NSW has been allowed to degrade over a period of time and considerable investment is now required to bring it up to a suitable standard.

Whilst the issues above are not unique to NSW, it is important the Regulator is aware of the task they are undertaking. Our Members are crying out for funding to fix their local roads. The Regulator has promised that their ability to coordinate request on behalf of operators will increase the ability to target funding to infrastructure hot-spots. The Association would welcome any change that will lead to upgrades to roads that will increase productivity for the transport system, thus reducing costs to producers and end prices for consumers.

The Association's priority list of bridges requiring funding in NSW:

1. Kapooka Bridge
2. Aberdeen Bridge, South Bound
3. The railway bridge on the Gunnedah Link to the Oxley Highway
4. The railway bridge on the Narrabri Link to the Kamilaroi Highway
5. The Boree Creek Bridge between Orange and Manildra.

Bridges further to those mentioned above that are in dire need of funding:

- Railway Bridge at the Crescent, Auburn
- Manildra Bridge
- Eunonie Bridge, Wagga
- Nemingah Railway Culvert

- Euston Murray River
- Hay Bridge, Wyalong Road
- Bridge, Grand Avenue Rosehill and pavement.

5.0 Conclusion

The Association welcomes the opportunity to provide a submission to the NTC on the proposed changes to heavy vehicle regulation. We felt that it was important for the NTC to understand the areas of importance for primary producers in NSW and thus have included direct response to the documentation, and further highly relevant information. However it was difficult to provide comments on some areas given the uncertainty of:

- how the Regulator will function
- which productivity variations will be included into the national law,
- how the role of the RTA and the local Government will change
- the impact of the Law and the Regulator for our Members.

The Association supports the establishment of a single national system of laws for heavy vehicles to improve efficiency and reduce the administrative burden for heavy vehicle operators. As outlined in our submission, we do have concerns that the Regulator and the Law could result in another layer of bureaucracy which will make it difficult for state based organisations such as ourselves to have realistic access to decision makers. This could reduce the ability of regulation to change as is demanded by changing circumstances.

The Association recommends that the NTC changes its approach to communications. Detailed examples demonstrating the future process for changing regulations are required to reduce the confusion that surrounds the Law and the Regulator. To maximise the participation of stakeholders in this process, the Association recommends that clear and concise terms of reference are included in the future to guide and encourage submissions.

ⁱ Dr Megan Clark, address to the National Press Club 30 September 2009.