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SARTA Submission on the HVNL Review C-RIS

SARTA acknowledges the substantial challenges faced by the NTC in undertaking the Review of the HVNL and we share its frustrations in seeking common ground with 8 jurisdictions.

This has resulted in adoption of a path of least resistance from jurisdictions and as a result has diminished the true value of the Review of the HVNL, fundamentally failing to deliver what Ministers promised, namely a rewritten HVNL that is Risk-based and Safety-focused and which also facilitates productivity.

Accordingly we have ended up with proposals that constitute only minimal amendment of the HVNL, largely to effect outcomes on matters that are of more interest to the jurisdictions and which fail to deliver to the country, the economy and the industry on the very real and substantial potential of the Ministers' undertaking.

SARTA participated actively and constructively in almost all of the countless meetings, workshops, hook-ups and email traffic over the past 5 years, in the genuine hope of realising the Risk-based and safety-focused HVNL promised by Ministers. It is with a great sense of disappointment and frustration, let alone concern for the future capacity of the HV industry to continue to underpin the growth of the Australian economy, that we make these comments on the C-RIS.

SARTA participated in the development of the ATA's submissions on the C-RIS and we support the ATA submissions, whilst offering the following comments.

a. Whilst supporting the concept of shifting much of the detail to the Regs, to facilitate a more responsive HVNL, the amended HVNL ***must ensure*** effective oversight and controls over the making of Regulations, so the NHVR, now or in the future, can't unilaterally impose unreasonable requirements through the Regs. SARTA has constantly stressed that governments need to guard against imposition by the NHVR of unreasonable or ineffective regulatory requirements, now or in the future. For example it would be unacceptable and unjustifiable for

the NHVR to unilaterally decide to impose a requirement for Electronic Work Diaries or other technology on all or sectors of HV operators. Any such decisions must:

i. Only follow extensive, genuine and broad consultation with industry;
ii. Be demonstrably justifiable, taking into account assessment of the reputed risks associated with the identified problem, the expected safety gains and the actual cost to HV operators to purchase, install and then administer such systems;
iii. Only be tabled in Parliament following advice to the industry of the date;
iv. Be disallowable Regulations within an appropriate period that is long enough to prevent abuse of the Christmas holiday period to 'slip' the regulations through unnoticed;

b. Re the proposed new National Audit Standard (NAS) and our concerns with multiple audits by multiple clients, we appreciate the efforts of the NTC to address this very problematic issue, however:
    i. the proposed NAS will NOT provide the outcome that is needed because it will not relieve the clients from what they and their lawyers perceive to be a legal Chain Of responsibility exposure and risk that they can only address through micro-managing their transport service providers, ironically increasing their influence and control and hence their actual CoR exposure;
    ii. This results in HV operators who have say 20 significant clients, under-going up to 20 Compliance audits, one from each of their clients, all of which fundamentally cover the same issues. This is an unacceptable and utterly unnecessary burden on the industry which comes at a huge cost, to operators and hence the economy, and which delivers minimal if any safety gain as compared to a single audit;
    iii. Governments have been given this message consistently by all industry organisations over the past 5 years. It does not take much thought to realise the truth of this and see that the failure to resolve this issue in the amended HVNL will perpetuate the massive administrative cost and continue to make transport of freight more expensive than it needs to be;
    iv. The proper solution is to provide in the amended HVNL that a third party, in relation to their CoR obligations so far as it concerns movement of freight by contracted road transport operators, is entitled to rely upon:
        1. the relevant accreditation(s) of their transport providers and appropriate exception reports from those providers; and
        2. the third parties own internal policies and procedures relating to and their management of their Transport Activities, such as ensuring that the freight demands they impose on their transport providers are reasonable and lawful;
    v. At the very least the amended HVNL and/or the National Audit Standards ***must*** include a clear unequivocal statement that clients ought limit the extent to which they inject themselves into their transport contractors' businesses and operations because the more influence and control they exert over the transport contractors' actions, the greater the third party client's own liability will be under the HVNL;

c. Work Diary (WD):
    i. The guidance in the WD should clearly identify those bits of information required on a WD that are non-offence items, ie failure to complete them is not an offence;
    ii. The HVNL Review should have given serious consideration to whether or not Work Diaries with highly prescribed content requirements are needed at all; particularly if the focus is actually on safety as distinct from ineffective enforcement of rule and counting-of-hours compliance. There is more than enough evidence that the enforcement effort in relation to WDs is almost entirely NOT safety-focused, but rather it is rule-focussed and is not a significant contributor to effective fatigue management of HV operations within this country;
    iii. The C-RIS proposals for a 'lite' WD for low-risk operations are welcome but they do not address the fundamental failing to implement a genuinely effective approach to fatigue management;
    iv. Low Risk operations of HV > 12t perhaps should not have the full WD requirement imposed on their drivers;

d. Data and Tech: There must be adequate controls over the access to and use of data, especially by third parties and agencies and data must not be used by any party for any purpose other than that for which is was collected under the HVNL;

e. Fatigue Enforcement:
    i. re Option 3B, the HVNL should prescribe the period within which the three breaches must occur to generate an offence because whilst the concept is right, it would be ineffective if say three minor Short Rest breaches occurred over 28 days or even 14 days, as distinct from 3 with 48 hours. The relevant period ought perhaps vary for different types of breaches because some breaches are of more fatigue significance than others;
    ii. The HVNL should encourage active management of compliance and improvement of drivers' understanding and compliance over time, rather than simply penalise them. The purpose of fines, after-all is not vengeance; its to encourage behavioural change and the HVNL ought reflect and facilitate that by providing that no penalty applies where the operator demonstrates that:
        1. they had already identified an historical breach, which authorities have only more recently identified, such as through Safety Cam analysis which is often months after the fact;
        2. they had appropriately managed the driver, including ensuring any necessary retraining; and
        3. that the driver has not re-offended since, demonstrating that behavioural change has occurred;
    iii. re Option 3D: The HVNL should be amended to remove admin/clerical offences in relation to failure to complete data fields in a WD that have no bearing on fatigue compliance;

iv. re Option 3F: The option to require education of the driver ***must*** be limited to significant and/or repetitive breaches. This is to avoid what would otherwise inevitably occur. Given their mindset, too many enforcement officers would opt for unreasonable and unjustifiable imposition of unnecessary and time-consuming education directions simply because those officers realise it imposes a far greater 'penalty' on the driver and operator. Any such training/education alternative penalty would also have to be structured in a way that avoids the absurdity of repeated and ineffective re-training.

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