

Heavy vehicle law and penalties reform

Submission on the draft Heavy Vehicle National Law amendment bill, draft regulations, and proposed changes to penalties

Executive summary

- HVNL penalties should be significantly reduced, with a focus on fairer outcomes for drivers
- Incremental improvements to heavy vehicle legislation and regulations are welcome, but do not go far enough
- Governments must abandon plans to reduce flexibility in managing fatigue
- Ministers should adopt a clear target of eliminating at least 90 percent of access permits by 2028.

The [review of the Heavy Vehicle National Law \(HVNL\)](#) has largely failed to achieve its original objectives. Whilst NatRoad welcomes incremental improvements, the review has been held back by the unwillingness of some governments to demonstrate leadership and embrace real reform.

Proposed improvements to enforcement by removing red tape and shifting details into regulations are steps in the right direction. However, shifting rules into regulations might make them easier to amend and hold out the potential for eventual change, but it can't disguise the missed opportunity to deliver real change after a 6-year long review.

Ministers must not agree to changes which would send the industry backward. The technical detail of setting outer driving hours would reduce flexibility and safety outcomes as currently proposed.

The penalties review is also imbalanced – reductions do not go far enough at the same time as the review process is being used to propose substantial increases to some penalties but without the evidence base that this will deliver better outcomes.

Review background

Ministers agreed in May 2018 to bring forward the review of the HVNL and agreed in November 2018 to terms of reference for the review. The intent was for a first-principles review of the HVNL and regulations with the following priorities:

- Safe and efficient heavy vehicle access, including simpler, quicker and more amenable access decision making
- Risk based approach to fatigue, based on evidence, to reduce complexity and administrative burdens
- Improved accreditation framework, designed to inspire and embed more innovative, more efficient and safer compliance

- Increasing use of technology and data for regulatory purposes
- Any other priorities identified during the review.¹

The Productivity Commission reported that there is difficulty in finding direct links between the introduction of the HVNL and regulatory reforms to improvements in heavy vehicle safety.²

The Commission found that “a greater emphasis on outcomes-focused approaches in legislation and regulation would improve road safety, reduce the burden of compliance and administration, and increase the efficiency of road transport.”³

Instead of fundamental change, the HVNL review has at best delivered incremental reform proposals after over six years of work and considerable investment by both governments and industry.

NatRoad response to the current consultation

NatRoad has provided detailed comments and input across the six long years of the HVNL review, highlighting critical issues facing industry. This includes the [2023 consultation RIS](#) and past issue papers, including on [access](#) and [fatigue](#). This submission does not seek to duplicate this information.

The current consultation includes the exposure drafts of the HVNL Amendment Bill and Regulations, and the outcomes of the HVNL penalties review. Whilst the exposure drafts seek to implement decisions taken by Ministers, the penalties review is yet to be considered by Ministers.

Additionally, key policy decisions to increase access are not included, and are expected to be consulted on in early 2025.

NatRoad broadly supports the Australian Trucking Association (ATA) submission on the HVNL exposure drafts. We have provided additional recommendations on selected issues and the penalties review.

Alternative compliance hours

The ATA submission highlights that the outer fatigue limits in the exposure drafts does not implement ministers' intent that the existing work and rest hour limits for AFM operators be translated into the future law. Instead, the detailed proposals will reduce flexibility and runs counter to the original review terms of reference for a risk-based approach which is based on evidence.

NatRoad has raised this issue directly with both the NTC and the ATA. We have confirmed that this issue would directly impact some of our members, reducing flexibility and working against achieving better safety outcomes. **We strongly support the applicable ATA recommendation.**

¹ NTC. May 2023. Heavy Vehicle National Law high-level regulatory framework. 13.

² Ibid. 12

³ Productivity Commission. 2020. [National Transport Regulatory Reform](#). 25.

Recommendation

The exposure draft bill and regulations should be amended to remove the maximum work and minimum rest times that the regulator can set as alternative compliance hours, including the restrictions on its ability to approve split rest break arrangements.

Other issues raised by the exposure drafts

NatRoad agrees with the ATA that the drafting of the unfit to drive sections are problematic and should be amended.

Secondly, for a new and untested penalty the proposed maximum penalty of \$20,000 (Indexed \$26,610) is significant and hasn't been justified. It should be set at the existing maximum for 228(1) and 264(2), none of which should be increased as proposed.

Recommendation

- The 'unfit to drive' proposal should be amended with 225(2) rewritten in objective and determinate terms and 228(1) amended with the addition of a knowledge element.
- The maximum penalty for 231(1) should be reduced from \$20,000 to be set at \$6,000.

Access

Whilst better access is critical to the outcome of the review and unlocking benefits for industry and the broader community, we note that the proposed drafts would achieve little change.

NatRoad awaits the proposed consultation on increasing general mass limits, increasing general access length, and increasing truck height. These reforms are a vital element to the final reform package.

Additionally, reforms to deliver automated access should be prioritised with a clear delivery plan and resourcing commitment to build and deliver the new system.

Governments must commit to eliminate at least 90 percent of access permits by 2028 across all heavy vehicle classes.

Penalties review

NatRoad is particularly disappointed in the outcomes of the penalties review – which does not go far enough to reducing fines which do not fit the offence at the same time as it attempts a significant increase in penalties, but without the evidence base that this will lead to safer outcomes.

We have consistently argued that the penalties review is critical for the broader HVNL reform and that the existing system is not fit for purpose. In 2020 NatRoad said that “the prescriptive HVNL regime with penalties that are indexed every year is seen by members as a hindrance rather than a framework within which their businesses might thrive. The regime is also viewed as a massive disincentive to recruitment of drivers and others who suffer from pedantic costly fines for minor record keeping or

other minor offences.”⁴ We put forward that the timing and context of the penalties review would be critical – but instead it has been left to the last minute.

What is particularly disappointing is the lack of attempt to assess the actual road safety impacts of the proposed penalties, **with a stronger focus on eliminating non-safety penalties**. That the Productivity Commission struggled to find a link between the introduction of the HVNL and improvements to safety does cast some doubt that doubling down on a punitive approach to penalties will somehow deliver a safer industry.

The entire rationale of the review has not been realised.

Proposed fines of almost \$30,000 would risk financial ruin for numerous drivers and the large-scale doubling of a significant number of penalties risks undermining the credibility of the entire package, especially without the detailed evidence base that these increases would improve safety.

Recommendation

- All proposed increases to penalties should not proceed.
- The ATA's proposed 3 additional penalty decreases should be adopted.
- Other proposed decreases should be reduced at a greater scale, in line with Table 1.

Table 1: Proposed decreases to HVNL penalties

HVNL	Offence	NTC assessment	Current maximum penalty	NTC proposal	NatRoad proposal
R34(2)	Return of HML permit	Decreasing	HVNL \$4,000 Indexed \$5,300 Infringement \$530	HVNL \$1,500 Indexed \$2,000 Infringement \$200	HVNL: \$1,125 Indexed: \$1,500 Infringement: \$150
R35(1)	Replacement of defaced HML permit	Decreasing	HVNL \$4,000 Indexed \$5,300 Infringement \$530	HVNL \$1,500 Indexed \$2,000 Infringement \$200	HVNL: \$1,125 Indexed: \$1,500 Infringement: \$150
250(1)	Operating under standard hours – solo drivers – minor	Decreasing	HVNL \$4,000 Indexed \$5,300 Infringement \$530	HVNL \$3,000 Indexed \$3,980 Infringement \$398	HVNL: \$1,125 Indexed: \$1,500 Infringement: \$150

⁴ NatRoad. 2020. Submission on HVNL Review Consultation Regulation Impact Statement: Preliminary Issues. 6.

251(1)	Operating under standard hours – two up drivers – minor	Decreasing	HVNL \$4,000 Indexed \$5,300 Infringement \$530	HVNL \$3,000 Indexed \$3,980 Infringement \$398	HVNL: \$1,125 Indexed: \$1,500 Infringement: \$150
254(a) (as amended, previously s258)	Minor risk breach of alternative compliance hours	Decreasing	HVNL \$4,000 Indexed \$5,300 Infringement \$530	HVNL \$3,000 Indexed \$3,980 Infringement \$398	HVNL: \$1,125 Indexed: \$1,500 Infringement: \$150
260(1)	Operating under exemption hours – minor	Decreasing	HVNL \$4,000 Indexed \$5,300 Infringement \$530	HVNL \$3,000 Indexed \$3,980 Infringement \$398	HVNL: \$1,125 Indexed: \$1,500 Infringement: \$150
287(2)	Keeping relevant document while operating under work and rest hours exemption (notice)	Decreasing	HVNL \$3,000 Indexed \$3,980 Infringement \$398	HVNL \$1,500 Indexed \$2,000 Infringement \$200	HVNL: \$1,125 Indexed: \$1,500 Infringement: \$150
287(3)	Keeping relevant document while operating under work and rest hours exemption (notice)	Decreasing	HVNL \$3,000 Indexed \$3,980 Infringement \$398	HVNL \$1,500 Indexed \$2,000 Infringement \$200	HVNL: \$1,125 Indexed: \$1,500 Infringement: \$150
288(1)	Keeping a copy of permit while driving under work and rest hours exemption (permit)	Decreasing	HVNL \$3,000 Indexed \$3,980 Infringement \$398	HVNL \$1,500 Indexed \$2,000 Infringement \$200	HVNL: \$1,125 Indexed: \$1,500 Infringement: \$150
288(2)	Keeping a copy of permit while driving under work and rest hours exemption (permit)	Decreasing	HVNL \$4,000 Indexed \$5,300 Infringement \$530	HVNL \$1,500 Indexed \$2,000 Infringement \$200	HVNL: \$1,125 Indexed: \$1,500 Infringement: \$150
288(3)	Keeping a copy of permit while driving under work and rest hours exemption (permit)	Decreasing	HVNL \$3,000 Indexed \$3,980 Infringement \$398	HVNL \$1,500 Indexed \$2,000 Infringement \$200	HVNL: \$1,125 Indexed: \$1,500 Infringement: \$150
297(2)	Information required to be recorded immediately after starting work	Decreasing	HVNL \$6,000 Indexed \$8,000	HVNL \$4,000 Indexed \$5,300	HVNL \$1,500 Indexed \$2,000

			Infringement \$800	Infringement \$530	Infringement \$200
307(2)	Driver who is record keeper must notify regulator if electronic work diary is filled up	Decreasing	HVNL \$3,000 Indexed \$3,980 Infringement \$398	HVNL \$1,500 Indexed \$2,000 Infringement \$200	HVNL: \$1,125 Indexed: \$1,500 Infringement: \$150
307(3)	Driver who is record keeper must notify regulator if electronic work diary is filled up	Decreasing	HVNL \$3,000 Indexed \$3,980 Infringement \$398	HVNL \$1,500 Indexed \$2,000 Infringement \$200	HVNL: \$1,125 Indexed: \$1,500 Infringement: \$150
308(1)	What driver must do if lost or stolen written work diary is found or returned	Decreasing	HVNL \$3,000 Indexed \$3,980 Infringement \$398	HVNL \$1,500 Indexed \$2,000 Infringement \$200	HVNL: \$1,125 Indexed: \$1,500 Infringement: \$150
309(2)	Driver must notify record keeper if electronic work diary filled up	Decreasing	HVNL \$3,000 Indexed \$3,980 Infringement \$398	HVNL \$1,500 Indexed \$2,000 Infringement \$200	HVNL: \$1,125 Indexed: \$1,500 Infringement: \$150
312(2)	What record keeper must do if electronic work diary is filled up	Decreasing	HVNL \$6,000 Indexed \$8,000	HVNL \$3,000 Indexed \$3,980	HVNL: \$1,125 Indexed: \$1,500
312(3)	What record keeper must do if electronic work diary destroyed, lost or stolen	Decreasing	HVNL \$6,000 Indexed \$8,000 Infringement \$800	HVNL \$3,000 Indexed \$3,980 Infringement \$398	HVNL: \$1,125 Indexed: \$1,500 Infringement: \$150
314(2)	How electronic work diary must be used	Decreasing	HVNL \$3,000 Indexed \$3,980	HVNL \$1,500 Indexed \$2,000	HVNL: \$1,125 Indexed: \$1,500
341(2)	Period for which, and way in which, records must be kept	Decreasing	HVNL \$6,000 Indexed \$8,000 Infringement \$800	HVNL \$4,000 Indexed \$5,300 Infringement \$530	HVNL: \$1,125 Indexed: \$1,500 Infringement: \$150
341(5)	Period for which, and way in which, records must be kept	Decreasing	HVNL \$6,000 Indexed \$8,000 Infringement \$800	HVNL \$4,000 Indexed \$5,300 Infringement \$530	HVNL: \$1,125 Indexed: \$1,500 Infringement: \$150

Additional ATA proposed penalty reductions – NatRoad supported		
Offence	Existing HVNL	Proposed penalty
Recording work diary information as required by the national regulations - general (HVNL s 296(1))	HVNL: \$1,500 Indexed: \$2,000 Infringement: \$200	HVNL: \$1,125 Indexed: \$1,500 Infringement: \$150
Recording information in written work diary (Proposed fatigue national reg 20)	HVNL: \$1,500 Indexed: \$2,000 Infringement: \$200	HVNL: \$1,125 Indexed: \$1,500 Infringement: \$150
Recording information in electronic work diary (Proposed fatigue national reg 20A)	HVNL: \$1,500 Indexed: \$2,000 Infringement: \$200	HVNL: \$1,125 Indexed: \$1,500 Infringement: \$150

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About NatRoad

The National Road Transport Association (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, express, car carriers, as well as tankers and refrigerated operators.