

The Commercial Vehicle Industry Association of Australia
Submission to the National
Transport Commission
Review of the Heavy Vehicle
National Law

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1. Introduction

The Commercial Vehicle Industry Association of Australia (CVIAA) is a national peak industry association that represents suppliers of parts, services, repairs, and modifications to the Australian heavy road freight sector. The CVIAA is active in five Australian states and has approximately 1300 member companies. These member companies employ well over 80,000 workers.

CVIAA is the co-ordinating body for the Motor Trader Associations (MTA) in SA, NSW, WA, the TACC in Tasmania and the CVIAV Victoria in Victoria.

This is the third submission that the CVIAA has made to the National Heavy Vehicle National Law (HVNL) review project. The other two CVIAA submissions were made in October 2022 and in November 2023 in response to the National Transport Commissions public invitation for comment. This submission has similar content to the previous CVIAA submissions, but with refinements and additions appropriate to the current state of the review of the project. This version supersedes the previous responses.

2. Overview of this submission

The NTC's reform proposals for the HVNL are limited in scope, and mainly focused on regulatory flexibility and efficiency. Whilst these proposals have merit, the review process has failed to deal with many existing problems, challenges and opportunities that industry experiences, and has failed to develop new structures and processes aimed at achieving safety benefits, fuel efficiency benefits and productivity benefits.

The proposed reforms to the HVNL law and regulations seem to us to be timid and focused on improving regulatory flexibility rather than providing a path that allows regulators and the commercial heavy vehicle road sector to tackle issues co-operatively. Whilst providing greater flexibility to change the regulatory law has merit, there is no additional flexibility for decision making by the National Heavy Vehicle Regulator (NHVR).

The CVIAA is disappointed that it has not received any feedback from the NTC about its previous submissions into the HVNL review process.

The CVIAA contends that reform of the HVNL could assist to:

- Improve fleet productivity.
- Reduce greenhouse gas emissions by the heavy road transport sector.
- Inform the industry about safety performance and issues to improve safety.
- Provide guarantees about availability of vehicle technical information for maintainers and repairers.
- Introduce minimum competencies for heavy vehicle repairers.
- Define when a heavy vehicle is not legally repairable.
- Provide a framework for regulated introduction of new technologies.
- Help improve the attractiveness of heavy vehicle driving as a career.
- Provide review and appeal processes for enforcement and access decisions.

The CVIAA's recommendations intended to assist with each of these goals are stated in Section 3. Our comments on the NTC's reform proposals are given in Section 4.

The CVIAA notes that the heavy vehicle sector faces an accelerating rate of technological change over the next decade. The average age of heavy motor trucks is currently about 17 years. This average age is unlikely to change substantially. Consequently, the range of technologies that

suppliers need to deal with is increasing. Furthermore, the range and complexity of issues that suppliers to the industry must deal with is increasing. The HVNL should create a regulatory domain that promotes co-operation between parties and simplifies requirements where that can be achieved. It is imperative that repairers and servicing workshops can get the training and the information they need.

The CVIAA understands that the NTC has proposed that 'technology and data frameworks' be established to guide the introduction of new technologies into heavy vehicles. No details or role models were provided. Whilst this idea seems to have merit, further description is needed before a detailed response can be given.

In October 2024 the NTC released a 'Consultation Summary'. This document is focused on the C-RIS proposals and does not provide feedback about industry suggestions or concern outside the scope of the C-RIS. Additional suggestions and comments outside of the C-RIS scope seem to have been ruled out.

The CVIAA understands that the HVNL reform process will go on for some time and that the current reform proposals will not be the last. The process started about 5 years ago, so progress has been slow. The CVIAA looks forward to the NTC initiating a dialogue with it so that its recommendations can be reconsidered in the next phase of the project.



3. CVIAA's recommendations

Recommendation 1 – The objective of a co-operative approach

The Objects of the current HVNL are:

3 Object of Law

The object of this Law is to establish a national scheme for facilitating and regulating the use of heavy vehicles on roads in a way that—

- (a) promotes public safety; and
- (b) manages the impact of heavy vehicles on the environment, road infrastructure and public amenity; and
- (c) promotes industry productivity and efficiency in the road transport of goods and passengers by heavy vehicles; and
- (d) encourages and promotes productive, efficient, innovative and safe business practices.

Every clause in the HVNL should be consistent with the objectives.

The Object should be expanded to include:

- Promotes the effective and safe adoption of new technologies in heavy-vehicle road transport.
- Promotes effective working relationships between the operator community and regulators (represented by authorised officers).

The first point might be addressed by the proposed framework administration proposal. The second point is not addressed by any provision in the proposed HVNL.

The CVIAA contends that consultation, review and appeal processes should be specified in the HVNL to ensure that satisfactory decision making occurs.

The CVIAA wants to see greater consultation by the NHVR with suppliers, modifiers and repairers about technical guides and standards. A formal consultation structure should be established.

Recommendation 2 – The Interaction between operators and regulators needs improvement

It is imperative that the HVNL specify that the NHVR must establish consultation, review and appeal processes.

Whilst acknowledging that the NHVR has achieved good customer service levels, there is operator dissatisfaction that no appeal processes exist for decisions made by authorised officers. The relations between operators and the NHVR could be improved if a process existed whereby a written explanation for the situation that led to the breach notice could be reviewed by a senior officer.

Recommendation 3 – Increase in mass and width limits

The CVIAA supports unconditional increase in the general access limits to concessional mass limit level. Additionally, the CVIAA supports adoption of a general 2.55m width limit, increase in vehicle height limit to 4.6m and adoption of the CML axle mass limits as reference. These proposals could result in minor productivity improvement.

Recommendation 4 – The need for a NHVAS productivity module

The CVIAA recommends that additional or alternative industry-initiated accreditation modules be available under the HVNL. The existing three NVAS modules seem to be 'hard-wired' into the HVNL. It is unclear to the CVIAA whether the future restructuring of accreditation paths in the HVNL could allow a productivity module to be added.

Australia has committed to a 43% reduction in greenhouse gas emissions (based upon 2005 levels) by 2030. Whilst this target is not explicitly applied to the road transport sector, it is

incomprehensible that this sector would not be expected to reduce its emissions. Nothing in the reform project considers this significant and challenging national goal. Whilst new drive technologies could be useful, the lifespan of a heavy vehicle exceeds 20 years. So, the great majority of the heavy vehicles that will be operating in 2030 are already on the road.

The HVNL reform project is silent about productivity and fuel-efficiency.

A Productivity module in the NHVAS would allow good practice in productivity by operators to be identified and recognised and for fuel-efficiency equipment and practices to be quantified. Participating operators could achieve a productivity ranking that is publicly recognised. Such an HVAS module would provide a focus for the heavy road transport sector on productivity, and it would also allow governments to be informed about factors that impede productivity.

The fuel-efficiency aspects of this module might be based upon the USA EPA Smartway scheme.

Recommendation 5 – A heavy vehicle safety office should be established

The case for establishing an Office of Heavy Vehicle Safety that advises the NHVR is compelling and is consistent with a risk-based approach to regulation.

The Objectives of this Office should be to:

1. Determine the safety performance of the heavy vehicle fleet.
2. Develop guides, codes, draft regulations and change proposals that address safety issues involving heavy vehicles.
3. Liaise with the operator community to develop programs intended to improve the safety of heavy vehicles.
4. Liaise with entities that study road safety and industrial safety to enhance understandings.
5. Develop risk assessment methodologies for safety that can be applied by the operator community. Some of these could be relevant to duties under Section 1A of the HVNL.

Note that the scope is broader than road safety and includes occupational work safety.

This Office of Safety could be established by a new Chapter 2 in the HVNL. The Office of Heavy Vehicle Safety would be established by the Regulator. The structure and objectives of the Office could be stated in a new Section 2.1 of the HVNL.

Note that the Office of Heavy Vehicle Safety would not issue penalties. It would assist industry to improve safety performance. It would also develop new technical standards to address particular issues.

The community and the heavy road transport industry has a continuing concern about heavy vehicle road safety. An active response to this concern is to establish the Office of Heavy Vehicle Safety. It could fill the gap between the National Road Safety Strategy, which mainly relies upon application on new safety technologies on new vehicles, and best practice for in-service vehicles.

Recommendation 6 – National accreditation standards are required for approved vehicle examiner schemes.

Whilst the CVIAA supports a national approach to all aspects of heavy road transport, the current disparity between accreditation standards for Approved Vehicle Examiners (AVEs) is intolerable. The Queensland scheme is fundamentally different to the schemes that exist in the other participating jurisdictions. The Queensland AVE scheme provides a path to AVE status for trade-qualified modifiers. In contrast, the other participating jurisdictions do not have such a path. For reference, please refer to:

<https://www.tmr.qld.gov.au/business-industry/accreditations/approved-person-scheme/industry-experience-and-qualifications/qualifications>

A national AVE scheme has been a key point of discussion between suppliers and the NHVR for nearly a decade. No progress has been made. The heavy-vehicle law review has ignored this issue.

The CVIAA recommends a national AVE scheme that achieves:

- Consistent assessments between jurisdictions.
- An alignment of qualifications and experience of AVEs between jurisdictions.
- The same minimum insurance requirements for AVEs in each jurisdiction.
- A graduated approval structure based upon qualifications and experience that is consistent.

Until a national AVE scheme is introduced, the CVIAA recommends that section 4A of Clause 85 should be deleted.

The CVIAA notes that the workload of AVEs has increased significantly because the scope of the Section 85 modifications requiring approval has become clearer to industry. A national AVE scheme is urgently needed.

Recommendation 7 – Flexibility in decision making for AVEs

The reforms should also make it clear that an AVE can approve a modification if it is safe and complies with satisfactory engineering practice, irrespective of competing or unclear requirements in codes of practice.

The later point could be achieved by adding a section into the *NHVR Code of Practice for the Approval of Heavy Vehicle Modifications* as follows:

In Section 4 Recognised modification standards, add "The NHVR acknowledges that VSB 6 differs to the original equipment manufacturer's (OEM) instructions and practices, where they are documented by the OEM."

Add a new Section 4.3 as follows:

When an AVE assesses that it is impractical for a common modification to comply with VSB 6 the common modification can be approved if it is done according to common industry practice and if it is safe and if the modification will be effective and durable for several years in service.

Recommendation 8 – Need for a Heavy Vehicle Written-Off Vehicle Register

All participating jurisdictions have a Written-Off Vehicle Register (WOVR) for light vehicles. Only NSW and SA have a WOVR for heavy vehicles.

The purpose of a WOVR is to identify vehicles that have been involved in a serious damaging incident, and to define an acceptable repair path via an approval. This approach provides some protection for purchasers because the history of the repaired vehicle is known, and an approval certificate of some type is needed. At present any damaged heavy vehicle can be repaired and the nature of the repairs need not be disclosed to the purchaser. There is no independent approval process and no protection for the purchaser that the components on the repaired vehicle are undamaged.

The CVIAA recommends that a national WOVR be established either in the context of the HVNL or otherwise by participating jurisdictions. The requirements should clarify how a complex repair must be approved.

Recommendation 9 – Concerning the quality of repairs

The CVIAA recommends that in addition and support of recommendation 8:

- Only recognised repair businesses with sufficient equipment and relevant expertise can perform heavy vehicle repair work (mechanical and body repair).
- Recognised repair businesses must employ competent persons who follow applicable repair standards.
- Heavy vehicles offered at auction must contain a statement of known damage/defects to be issued by vehicle resellers.
- This can probably be developed without specific reference in the HVNL such as a code of practice.

Excluding WA and NSW which have a licensing regime^{1,2}, repairs and modifications can be completed in other jurisdiction without the supervision of a tradesperson. This puts the community and operators at risk because vehicles may not be safely serviced, repaired or modified, due to lack of skill and knowledge.

Currently, heavy vehicle work can be completed by unqualified persons who do not have a legitimate business (backyard mechanics or repairers) and sold to unsuspecting buyers. A code of practice should identify work that requires a level of skill through competence or qualification, further, it should acknowledge work that requires supervision by a qualified person.

The CVIAA contends that many repairs and modifications are not inspected by an AVE. Roadworthiness inspectors, if involved, may not be able to assess the quality of the work done based on observations of the finished vehicle, because the structural aspects of the repair or modification may not be visible. Therefore, it is important that the people performing heavy vehicle repair work:

- ▶ Are suitably qualified or competent to perform the required repair and,
- ▶ work to quality checklists and applicable standards and,
- ▶ are supervised by a qualified tradesperson when applicable.

The HVNL should apply the principle through a code of practice that: *People or organisations that repair, modify or maintain heavy vehicles should have been trained to do so. The NHVR and the repair industry should develop this Code and register it.*

Recommendation 10 – Accreditation standards for authorised officers

A need to improve the knowledge level relevant to vehicle standards of some authorised officers exists. The CVIAA recommends:

Improved co-operation between industry practitioners and authorised officers and police should be a high priority. It could come from improved industry-regulator consultation and introduction of a review processes.

Minimum training accreditation for authorised officers is needed to improve vehicle condition assessments. The HVNL should require regulators and state agencies to establish such levels.

1. https://www.legislation.wa.gov.au/legislation/statutes.nsf/main_mrtitle_615_homepage.html

2. <https://legislation.nsw.gov.au/view/html/inforce/current/act-2013-107>

The existing requirement is:491 (2)

- (2) However, the Regulator may appoint a person as an authorised officer only if the Regulator is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

This does not specify an accreditation standard.

This could be achieved by a new Section 698B as follows:

698B Accreditation of authorised officers

The Regulator may appoint a person to be an authorised officer once that person has achieved a satisfactory level of competence for the assessment of heavy vehicle defects that are described in the national Heavy Vehicle Inspection Manual and requirements specified in the various Vehicle Standards Bulletins, including VSB 6, Heavy Vehicle Modifications.

The intention is to ensure that the Regulator has developed a training program for authorised officers that is focused on the NHVIM and VSB 6. The CVIAA contends that operators and suppliers should be involved in providing information for such a training program.

Recommendation 11 – Concerning appeal processes

An appeal and review process are needed to clear vehicle defect notices. Such a review process could result in better agreement being achieved between authorised officers, police and the operator community.

There is no appeal process available relevant to Defect Notices. A possible solution is to introduce a new Section 531A as follows:

531A Review of major defect notice.

- 1. A person to which a major defect notice has been issued can request that the Regulator review the major defect notice. The request to review the major defect notice must be made within 7 days of the major defect notice having been issued and shall be made in a prescribed format that the Regulator can determine.*
- 2. The application to review the major defect notice must state the reasons why the defect notice should be withdrawn. This application should also provide several photos of each alleged defect that will allow the reviewer to assess the condition of the part of the heavy vehicle that is the subject of the major defect notice.*
- 3. The Regulator can recommend to the authorised officer that the major defect notice should be confirmed or amended or withdrawn according to Section 531.*

The CVIAA notes that some decisions by the Regulator are already reviewable – see Section 3 Reviewable Decisions. However, decisions about defect notices are not reviewable.

Recommendation 12 – Need for national technical standards for specific types of vehicles

The CVIAA contends that national technical standards and regulations are needed for **tow trucks, crane trucks, route-service passenger buses** and **school buses** because of specific safety issues that exist with these types of vehicles. The types of vehicles are currently regulated by road agencies in some jurisdictions, but not others. The HVNL review is a once per decade opportunity to establish national standards for these high-risk vehicle types.

The CVIAA contends that development of model national technical regulations for **tow trucks, crane trucks, route-service passenger buses** and **school buses** could be done by the new Office of Heavy Vehicle Safety.

Recommendation 13 – Need to suspend driving hour limits for recovery operators during an emergency

Recovery operators who operate in outback regions may need to operate outside driving-hour limits. The need arises because of the long distances needed to reach the incident site, extended recovery times for complex heavy vehicle incidents, and the danger to the public existing from not clearing the scene.

For example, heavy vehicle recovery operators who work on complex recovery incidents on the Eyre Highway (Nullabor Plain) often find they are out of hours on the recovery journey after the long trip to the incident site from a southern base. The recovery driver is routinely directed by the local police officer to clear the national highway and to take the vehicle to a specified safe location.

The task of clearing the crash scene can be complex, time consuming and involve unloading and reloading before vehicles can be recovered. Furthermore, police may require that vehicles not be moved until investigations are finished. Therefore, the recovery driver should be legally protected when a police officer gives the recovery operator directions that over-ride HVNL driving hours limits, or other provisions.

The situation is episodic, and the predominant public interest is to clear the road. It may be unsafe to break a recovery journey on the roadside when a suitable parking location does not exist. Breaking the journey can produce a road hazard along the way. Usually, the police officer in control issues a clear instruction to the recovery driver to take the vehicle to a particular location but the NHVR authorised officers are not advised about this instruction. This serious problem could be fixed by making the following change to Clause 265 of Subdivision 1 of Division 8:

emergency service means an entity that has a statutory responsibility to respond to an emergency and includes the following—

- (a) an ambulance service;
- (b) a fire brigade, including a volunteer fire brigade;
- (c) a police force or police service;
- (d) a disaster or emergency organisation of the Commonwealth or a State or Territory.
- (e) a recovery vehicle operator who has been instructed by an authorised officer in writing to move a vehicle to a specific location under stated conditions.

4. Review of NTC's recommendations

4.1 Movement of requirements from the act into regulations

"A key policy objective is to shift prescriptive and administrative detail to regulations".

Moving requirements from the Act into Regulations reflects maturity of the HVNL project because participating jurisdictions are prepared to allow greater flexibility.

The CVIAA supports the flexibility objective.

4.2 Penalties Review

Following consultation with industry, government, the NHVR, police, and others, the NTC recommends that 50 penalties increase, and 21 penalties decrease as part of this law reform package.

The CVIAA understands that the intention is that penalties for low-level offenses that would usually be directed to the driver have been reduced and high-level offenses that would normally be directed to the vehicle operator have been increased. The CVIAA is troubled that some penalties have been doubled.

4.3 Alternative compliance options

- The Regulator will now develop Alternative Compliance Options instead of these being fixed in the law. This supports risk-based regulation and gives the Regulator greater autonomy and discretion.

Apparently, this relates to the NHVAS accreditation system.

Dissatisfaction with the operation of the NHVAS accreditation seems to be a motivating reason for change.

- The opt-in National Heavy Vehicle Accreditation Scheme (NHVAS) will be enhanced to allow accredited operators more flexibility and choice in managing their compliance obligations, within set limits.
- As an enhancement to the current scheme, the updated law will establish a scalable Safety Management System, as a core accreditation requirement.
- A new National Audit Standard will be created by the Regulator and approved by Ministers. This may reduce the need for multiple audits, benefiting productivity and saving costs.

The CVIAA does not represent operators and has not direct interest in the NHVAS scheme but wants it to be effective and reliable. The CVIAA sees the opportunity to add a 'productivity accreditation module' to the NHVAS so that good practice by operators can be reliably assessed. This could lift productivity standards and highlight productivity roadblocks that regulatory changes could fix. Please see Recommendation 4.

4.4 Two new forms of accreditation are proposed:

There is agreed policy to remove the four types of accreditation from the law in favour of broader **general safety accreditation** and **alternative compliance accreditation**. This will include **alternative compliance accreditation** for work and rest hours, which carries across similar policy intent to the current AFM accreditation.

Apparently, the existing forms of NHVAS accreditation will, in time, be replaced by general safety accreditation (approved safety management system) and alternative compliance accreditation (grant of accreditation and administrative processes). These proposals are poorly explained.

- **Safety management standards:** To support accredited operators identify and address public risks associated with the operator's transport activities and the driving of heavy vehicles, and specify the controls to mitigate those risks.

457A Safety management systems for operators of heavy vehicles

- (1) In this Law, a *safety management system*, for an operator of a heavy vehicle, is a group of policies, systems and procedures that relates to the safety of the operator's transport activities and the driving of heavy vehicles.
- (2) A safety management system must—
 - (a) identify public risks associated with the operator's transport activities and the driving of heavy vehicles; and
 - (b) assess the identified public risks; and
 - (c) specify the controls to manage and mitigate the identified public risks.
- (3) A safety management system must comply with the safety management system standard, including by addressing any matters required to be addressed by the safety management system standard.

HVNL, Chapter 12 Administration, section 654 – Other approvals provides responsible Ministers with power to approve Standards and Business Rules for four types of accreditation – BFM, AFM, Mass Management and Maintenance Management.

4.5 Codes of Practice

- Codes of Practice will now be developed and approved by the Regulator. This will support guidance to drivers and other chain of responsibility parties, leading to better compliance and safer behaviour.

The Regulator already has the power to register Industry Codes of Practice. Apparently, this proposal will allow the Regulator to develop its own Codes of Practice. Note that the National Heavy Vehicle Inspection Manual and the National HV Modification Code, are not referenced on the HVNL and are not registered codes.

4.6 Response to a serious safety risk

- Ministerial powers will be adjusted so that Ministers can direct the Regulator to take action where there is a serious public risk.

Whilst serious public risk should be controlled, it is unclear to the CVIAA whether one Minister or several Ministers will need to recognise the risk. The CVIAA contends that the reference to the NHVVR should be co-ordinated by ATC.

The CVIAA notes that because of the Mona Vale tanker incident on the outskirts of Sydney in October 2013, NSW mandated roll stability systems on all dangerous goods tanker vehicles. However, other jurisdictions did not. A national approach to heavy vehicle requirements is desirable. It is unclear to the CVIAA how this provision will work in practice.

4.7 Independence of improvement notices and prosecutions

- Enforcement changes will align the HVNL with other laws, allowing improvement notices and prosecution processes to occur concurrently.

The CVIAA supports this proposal. Improvement Notices could be issued earlier.

4.8 Driver to be fit for duty

- The updated law will expand the driver duty to include not driving if unfit for any reason, not just fatigue, enhancing public safety.

The CVIAA supports application of evidence-based methods to determine whether a driver is fit for duty.

4.9 Technology & data framework

The framework will be a mechanism for recognising technologies, including data protection and access, with a Framework Administrator(s) appointed by Ministers. Further development of the framework is required, including consultation with stakeholders, before it is included in the law.

CVIAA supports the concept that new, complex heavy vehicle technologies should meet appropriate technical standards, and that approvals might be necessary. It is unclear whether the Framework Administrator is a regulator, a technical standards developer, or a service provider. The CVIAA is unsure how the Framework Administrator will operate and seeks further information.

4.10 Record keeping by drivers

- Changes in the law will help to simplify certain work diary requirements, keeping only essential record keeping requirements.

Whilst the CVIAA has no direct involvement with driver work diary issues, changes to simplify and focus record keeping are supported.

4.11 Enforcement

- Authorised Officers will be able to issue formal warnings for a broader range of breaches, including fatigue record-keeping. This change aims to make the law fairer on drivers for minor work diary errors.
- Following further work to confirm a cost-effective implementation pathway, the HVNL will also include 'formal education' as an enforcement option for work diary administrative offenses. This work will be progressed separately and isn't included in this public consultation draft.

The CVIAA requests that information relating to drivers be made available in multi-lingual format. A substantial proportion of drivers have English as a second language. This often creates communication problems between drivers and authorised officers. The NHVR is encouraged to have technologies that can provide information to drivers in commonly encountered non-English languages.

4.12 Mass, height & length limits

- General Mass Limits (GML) allowed for heavy vehicles will be increased to match the current Concession Mass Limits (CML).
- Ministers have agreed to increase the general access height limit from 4.3m to 4.6m and vehicle length from 19m to 20m, pending further technical analysis and confirmation of appropriate controls. These changes will help boost industry productivity and reduce the need for some permits.

These changes are foreshadowed but not in the exposure draft legislation. The CVIAA supports the proposals.

The CVIAA notes that a general change in vehicle height coupled with higher axle mass limits could result in the centre of mass height increasing. To lessen the roll-over risk, heavy vehicles that are 4.6m high should have a working roll-stability system.

4.13 PBS administrative streamlining

Proposed amendments to **Part 1.4 PBS** implement Ministerially endorsed policy to shift prescriptive and administrative detail from the **HVNL** into the regulations.

The CVIAA understands that this is aimed at improving the approval and administration processes rather than changing technical standards.

4.14 New offenses re-created for displaying signs that are not applicable

An operator who crosses a border into Western Australia or Northern Territory could find that the operation conditions, including signage requirements change. This highlights the need for a national approach to vehicle standards and operating requirements. The CVIAA urges Western Australia and the Northern Territory to adopt as much of the HVNL into its legislation as practicable.

4.15 Amendments to chapter 6 Vehicle operations – driver fatigue management

This is not a key area of interest for CVIAA. The CVIAA supports development of enhanced ways of reducing driver fatigue.

4.16 Frameworks to deal with new technologies

This aspect is not in the current proposals. The details are to be worked out in a future stage. Apparently, TCA-type entities will be established or appointed as needed. The CVIAA supports the concept and would like to know more about the proposal.

