

From Your Editor-in-Chief



The National Heavy Vehicle Regulator (NHVR) has been busy again. This month we look at an NHVR first as well as catch you up on why Advanced Fatigue Management (AFM) has been making headlines.

The NHVR recently obtained its first supervisory intervention order against a Victorian operator. Such orders are available as an alternative to hefty fines, with a view to imposing a compliance supervision and assessment scheme on offenders to ensure that they lift their game when it comes to safety.

Registered Industry Codes of Practice (RICPs) were feted as one of the industry-forward aspects of the Heavy Vehicle National Law (HVNL) amendments of 2018. However, since the guidelines for such codes were published in 2017, a total of one code has been registered. Why has this project stalled and what is in store for the future?

Echoing this theme, we review AFM. This scheme was intended to provide transport operators with greater flexibility in how they manage their fatigue compliance and performance, but it has had a softer uptake than expected. We consider how this might be addressed.

Happy reading.

Nathan Cecil
Partner, Holding Redlich
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Have Registered Industry Codes of Practice stalled?

Nathan Cecil, Partner, Holding Redlich

The 2018 amendments to the HVNL welcomed a new era of safety and efficiency in the road transport industry as a proactive approach to risk management was heralded. RICPs were introduced to help eliminate or minimise the likelihood of incidents. However, since the NHVR published guidelines for the development and submission of RICPs in 2017, only one such code has been registered. In this article, we unpack why this might be.

Three years ago, the HVNL was considered to be too long, too complex and overly prescriptive. Although it still has its shortcomings, this initial round of changes allowed parties to more proactively and flexibly manage Chain of Responsibility (CoR) risks in the way that best suited their business.

RICPs were considered to be a significant part of this. Under the provisions of these codes, parties in the CoR or representative industry bodies could develop compliance codes of practice that reflected best industry practice. Subject to meeting certain content and style requirements, those codes of practice could be registered under the HVNL. Once registered, they could be relied upon by anyone in the CoR as authoritative guidance on risk identification, assessment and the range of best practice measures to reduce CoR safety risks and meet the primary safety duty.

Essentially, these codes of practice could be used as a guide by parties in the CoR, from which they could select from the range of stated CoR risk management approaches those that best suited their business.

➤ Continued on page 2

Lessons in dimensions

Charlie Coleman, Lawyer, Holding Redlich

Have you ever had a really close call when driving, where it felt like had the paint been thicker on your vehicle, you would have scraped another passing car or truck? That feeling is all too common on Australian roads, where the size of modern vehicles has made small b-roads more difficult to pass, especially on single carriageways. In this article, we look at the case of *Busbridge v Police (2015)* to learn some lessons in dimensions.

Under the HVNL, there are strict rules and regulations surrounding the configuration of regulated heavy vehicles. These specific requirements of are set out in the *Heavy Vehicle (Mass, Dimension and Loading) National Regulations (the Regulations)*. The Regulations ensure that both heavy vehicle operators and other road users are safe when driving on Australia's roads, while also mitigating traffic congestion and unnecessary delays.

That is also why offences regarding breaches of dimensions are taken seriously by public authorities, including the NHVR. Ignorance of, or the application of old versions of, the Regulations is not an excuse for driving a vehicle that exceeds the dimension limits imposed by law. In short, if the vehicle doesn't conform, then you will be liable under the HVNL. Let's take a look at this within the context of the Supreme Court of South Australia's decision in *Busbridge v Police (2015)*.

BUSBRIDGE'S CASE

Busbridge's case concerned an appeal made by Mr Busbridge against a finding by a magistrate that he was guilty of driving a heavy vehicle that did not comply with prescribed dimensional requirements in breach of the HVNL.

The appellant was working for an equipment transport company. In the course of his employment he was required to pick up and deliver machinery.

➤ Continued on page 4

— HELPDESK QUESTION OF THE MONTH —

Do my drivers still need to carry a CWD for transporting an empty freight container? (answer on page 7)

For questions regarding your current issue, or to get answers from our Helpdesk, email us at: helpdesk@coradviser.com.au

'Rogue' removalists result in new restrictions and requirements

Content Editor, Partner Press

The Victorian Transport Association (VTA) joined state authorities in a stern response to the actions of COVID-19 positive NSW furniture removalists who contributed to Victoria's fifth lockdown. The unfortunate situation has resulted in restrictions across the state and new requirements on freight and logistics workers.

New COVID-19 cases in Victoria last month necessitated the reintroduction of restrictions on movement across the state which has, once again, impacted the road transport industry. Further to this, there are new requirements for freight and logistics workers operating across borders.

VTA CEO Peter Anderson said, "The majority of freight drivers have done a magnificent job during the pandemic of keeping supply chains moving. It is most unfortunate the irresponsible actions of these individuals have brought the transport industry into some disrepute."

The situation is complex, however, as removalists often work under conditions that make social distancing impossible and where heavy lifting can make the use of masks too restrictive.

Effective immediately, transport workers travelling into Victoria from red zones will be required to get a Covid test every three days, instead of every seven, and always carry evidence with them of a current negative test result.

In addition to also carrying a valid permit for entering Victoria, drivers must also carry a letter from their employer, supervisor and/or customer confirming they are interstate linehaul drivers carrying out essential transport work.

The government is also banning furniture removal transport into Victoria by professional and recreational owner-driver type furniture removal operators.

In announcing the new restrictions to VTA members and the freight industry, Anderson noted that it is important for operators to reiterate to drivers the imperative of always following CovidSafe guidelines and requirements, including QR code check ins, mask wearing, hand hygiene and social distancing. ■

► Continued from page 1 "Have Registered Industry Codes of Practice stalled?"

The goal was that by referring to and relying on an RICP, parties in the CoR did not have to develop CoR risk management practices from scratch, or 'reinvent the wheel'.

Seven other codes are in various stages of development, with the earliest one first being notified in April 2017.

The bulk of the funding for the development of the codes has come from the Commonwealth's Heavy Vehicle Safety Initiative grants program which has dished out approximately \$1.4 million to the developers of prospective codes.

Despite these codes being touted as greatly beneficial for industry, only one has reached the registration stage in over 4 years and after a \$1.4 million spend.

Preliminary investigations suggest that the following issues might be contributing to the expense, time lag and lack of progress in getting more codes out there to help industry:

- Lack of clarity from the NHVR as to their requirements and expectations for the content and drafting of RICPs. It has been suggested that the 'goal posts keep moving', requiring repeat, lengthy and costly revisions.
- Competing goals to be achieved by RICPs whereby the industry wants useful, practical guidance and the NHVR wants a comprehensive standard against which it can assess compliance.
- Are RICPs too complex? The requirements imposed to meet the goals of the regulators

mean that the codes can come out just as long and complex as the legislation itself, providing little clarity or explanation. Further, the codes are more likely to be used by smaller business without the internal resources and expertise to tackle CoR compliance on their own, but uptake will be low if the codes add to the complexity being faced by those businesses.

- (Mis)alignment with the Master Code. RICP guidelines provide that codes cannot overlap. The NHVR initially pursued the development of the generally applicable and broadly encompassing 'Master Code', which is the only code that has been registered. Subsequent codes were intended to be supplements to the Master Code and not overlap or duplicate content. However, that may mean that subsequent codes are not complete on their own and parties in the CoR have to refer to the specific code relevant to their industry or operations and the Master Code as well, adding complexity to the process.

So, what is being done? The NHVR released a discussion paper seeking feedback from industry on the experience and aims to be achieved with RICPs. Submissions closed on 2 July 2021. We will monitor the situation and report further when the NHVR outlines its response to the feedback and the future approach to RICPs. Hopefully, industry and the NHVR can work together to unlock the potential of RICPs so that they can provide industry with the guidance that it needs. ■

First Supervisory Intervention Order from the NHVR

Joshua Clarke, Lawyer, Holding Redlich

The NHVR has recently obtained its first Supervisory Intervention Order (SIO) against a Victorian driver, indicating its commitment to ongoing heavy vehicle safety education as a keystone of its enforcement approach.

In March 2020, a heavy vehicle driver in Victoria was pulled up for breaches of loading and dimension requirements. The vehicle, which was loaded with a tautliner truck body and chassis and other metal items, was secured only with a single 1x50mm strap. The items on the tray of the truck were completely unrestrained. Additionally, the vehicle was found to exceed its permitted dimension requirements by 380mm on its width, 270mm on its height and 1,020mm on its rear overhang. The driver had previous minor risk convictions for similar offences under the HVNL.

The driver was convicted in April this year of severe breaches of load security, width and load overhang requirements, and a substantial breach of height requirements. For these four contraventions, the driver faced a fine of up to \$35,000 under the HVNL.

However, rather than pushing for a large fine, the NHVR instead sought an SIO from the court. An SIO is a flexible order a court can make to attempt to improve a convicted person's compliance with the HVNL. An SIO could, for example, direct the person to attend an intervening program, implement new systems and procedures and submit compliance reports to the NHVR. Such an order could also appoint another person to guide the offender and monitor his or her progress.

Given the seriousness of this incident, the driver did not escape without a \$750 fine and paying the NHVR's costs in addition to the SIO which requires the driver to complete a load restraint course within 12 months at the driver's expense.

This case demonstrates that the NHVR is prepared to reach further into its regulatory toolkit, beyond pecuniary penalties, when dealing with repeat offenders. This is a welcome development in the name of improving behaviour on our roads, preventing accidents and protecting drivers and the wider public. ■

SMS: Keeping safety simple

Nathan Cecil, Partner, Holding Redlich

When things seem too complex or convoluted, it can be helpful to go back to basics. There's a lot to be said for keeping things simple. The numerous long-winded provisions of the HVNL are still a barrier to understanding and ultimately to safety on our roads. One of the most straightforward tips we can provide is to implement a Safety Management System (SMS) to tackle safety and compliance. So, what can an SMS do for your business? Let's break it down.

The industry turns to reliable systems and frameworks to ensure parties in the CoR are doing everything reasonably practicable to ensure safe transport activities. One of the best ways to do this is to have an SMS and relevant controls in place, such as business practices, training, procedures and review processes that:

- identify, assess, evaluate and control risk;
- manage compliance with speed, fatigue, mass, dimension, loading and vehicle standards requirements through identified best practice;
- involve regular reporting, including to executive officers; and
- document or record actions taken to manage safety.

> DEFINITION: SAFETY MANAGEMENT SYSTEM (SMS)

An SMS is a practical framework to give businesses the chance to step back, assess their HVNL obligations and implement systems to manage the safety of their transport activities.

KEY COMPONENTS

Safety risk management: What processes can be implemented to identify, assess, treat or minimise, monitor and report safety hazards and risks?

Safety policy & documentation: What will the business do to manage safety? What policies and procedures can be documented to demonstrate a commitment to safety to explain how safety risks and key safety personnel will be managed?

Safety promotion & training: What measures and training can be implemented to promote safety objectives and policies, to effectively train staff around safety and to encourage employees to express views on safety openly?

Safety assurance: What measures can be implemented to internally investigate incidents and monitor safety performance? How can the business adapt its safety measures to changing activities? How can the business improve its safety systems?

HOW DOES AN SMS WORK?

An SMS seeks to provide an integrated approach to safety management across a business's transport activities involving heavy vehicles and across its organisational levels (from operational staff to management to executive officers). As opposed to a policy document, these systems are a broader business framework, a 'live' tool for business's to strive for HVNL compliance. They work best when they are in play, allowing all levels of the business to give feedback on what works and does not work to ensure the safety of its transport activities.

WHY GO WITH AN SMS?

An SMS can help you:

- **Manage HVNL obligations:** The key components of an SMS listed above walk you through considerations your business should take account of to achieve HVNL compliance.
- **Demonstrate compliance with HVNL obligations and safety assurances:** An effective SMS will provide systems for you to document compliance with obligations. You can use this to monitor the efficacy of your safety systems and to demonstrate compliance with HVNL obligations in the event of HVNL charges.
- **Demonstrate compliance with your executive duty:** Executives are accountable for their business's safety practices. Executives can turn to their SMS as a way to achieve compliance with their due diligence obligations and to document compliance with this obligation.
- **Promote your business:** You can use your SMS, in particular policies, procedures and your compliance history as a tool when bidding for business. We see that more frequently contracts include warranties around compliance with HVNL obligations and that KPIs include HVNL compliance criteria. An SMS can give you, your customers and your business partners more confidence that you will be able to deliver on your obligations, which also work to reduce their risk profile.
- **Minimise risk exposure:** An effective SMS should stave off risks of safety incidents and potential prosecution. As a result you endeavour to keep the costs of compensation, damages and legal costs off your books in the long term.
- **Harmonise business procedures:** An effective SMS covers front end and back end business compliance but it doesn't seek to duplicate the same tasks. By tackling compliance holistically you

may be able to reallocate resources better in your business to achieve better compliance outcomes for overall less costs.

- **Reassure employees and prospective employees:** Having an effective safety system makes you a more desirable employer.

An SMS can give you, your customers and your business partners more confidence that you will be able to deliver on your obligations.

SMS OBSTACLES FOR SMALL BUSINESSES

Establishing a full-blown SMS for your business can seem like a costly undertaking. Consider the following tips to make this process less intimidating:

- Share resources and/or join an industry network to give you compliance resources and templates that you can adapt to your business operations.
- Develop a handbook for drivers and suppliers with your expectations for safety and compliance.
- Train drivers, employers and subcontractors in your compliance or operations handbook and conduct a yearly refresher.
- Think about investing, where you can, in technology that can help you with compliance, e.g. GPSs to monitor driver behaviour.

FRAMEWORKS YOU CAN RELY ON

Using these systems in your business are not mandatory however they can go a long way in ensuring you are keeping up with your HVNL obligations and conducting business in an efficient way that promotes and prioritises safety. Lawyers can assist with developing safety compliance policy documents and compliance monitoring arrangements for your SMS. There are also businesses such as TruckSafe that provide a set of standards that work as a framework for safe work practices. Demonstrating compliance with measures such as TruckSafe standards provides a strong defence in the event of investigation by the NHVR. ■

► Continued from page 1 “Lessons in dimensions”

In March 2014, the appellant was driving a prime mover towing a semi-trailer on the Eyre Highway. The semi-trailer was loaded with an air seeder, which is a large piece of agricultural machinery. The trailer also carried four larger tyres as well as hoses and other items that were used with the air seeder. The prime mover and trailer displayed signs indicating that it was an oversize mover.

However, the tyres were not attached to the air seeder. Rather, two tyres were stacked on top of each other, while the other two tyres were placed side by side, so that they protruded from the back of the trailer.

Under the HVNL, there is a requirement that a regulated heavy vehicle, together with its trailer, must not exceed 2.5m in width.

The appellant was stopped by police at Penong, where they conducted a heavy vehicle compliance check. Under the HVNL, there is a requirement that a regulated heavy vehicle, together with its trailer, must not exceed 2.5m in width.

Police conducted various measurements and found that, although the air seeder was within the regulated dimensions, the separated tires protruded 500mm over the prescribed limit.

At this point, police directed the appellant to present any exemption on which he might be able to rely for the breach of the HVNL. The appellant produced a Commonwealth Gazette and a copy of the *Code of Practice for the Transport of Agricultural Vehicles as Loads from 2008 (the Code)*. Under the operation of the Code of Practice and the Gazette, there was an exception afforded to motor vehicles towing agricultural equipment that exceeded the dimensions prescribed by the Heavy Vehicle National Law in the event that an agricultural vehicle cannot be divided without great difficulty, expense or risk of damage.

Ultimately, because of the protruding tyres, Mr Busbridge was charged with an offence under section 102 of the HVNL. The section provides:

102—Compliance with dimension requirements

1. A person must not drive on a road a heavy vehicle that (together with its load) does not, or whose components do not or whose load does not, comply with the dimension requirements applying to the vehicle.

Maximum penalty:

- a. if the heavy vehicle does not have goods or passengers in it—\$3 000; or
- b. if the heavy vehicle has goods or passengers in it—
 - i. for a minor risk breach—\$3 000; or
 - ii. for a substantial risk breach—\$5 000; or
 - iii. for a severe risk breach—\$10 000.

In defence of the offence, Mr Busbridge argued that all of the tyres, including those protruding beyond the dimension limits, were a part of the air seeder. Therefore, the dimension exemption afforded to him under the operation of the Code also covered the protruding tyres, even if they were detached from the body of the machinery.

The magistrate ultimately did not accept this line of reasoning. The magistrate found that, although the tyres were component parts to be attached to the air seeder, these were transported separately. As such, they did not conform to the exemption allowable by the Code.

The magistrate in the local court found that Mr Busbridge had contravened the HVNL and he was convicted of an offence under section 102.

APPEAL

In the appeal, Mr Busbridge’s first ground of appeal was that the magistrate erred in finding that the exemption did not extend to the protruding tyres. Mr Busbridge argued that the entire load was component parts of the agricultural vehicle and that, ultimately, the magistrate failed to account that the Code permitted combinations of agricultural machines and implements to be transported under the exemptions.

Mr Busbridge’s second ground of appeal was that the magistrate erred by not providing adequate reasons.

Courts will not afford leniency for any millimeter that extends beyond the dimensional restrictions imposed at law.

Justice Parker of the Supreme Court of South Australia upheld the magistrate’s decision, and enforced the penalty against Mr Busbridge. Ultimately, Justice Parker found that the “Code does not apply to the carriage of the tyres because the air seeder could be divided from the tyres without great difficulty, expense or risk of damage”.

The appeal was dismissed and Mr Busbridge was held liable for his contravention of section 102.

HOW TO AVOID A CONVICTION LIKE BUSBRIDGE

As set out in the Supreme Court of South Australia’s decision, courts in Australia will take a ‘black-letter’ approach to the interpretation of the requirements imposed on drivers under the HVNL. That is, courts will not afford leniency for any millimetre that extends beyond the dimensional restrictions imposed at law, even if it happens to be a loose tyre.

The legislation prescribing the limits on dimensions are detailed and, in some instances, difficult to follow. Unfortunately, this is not a defence to any breaches of the HVNL. That is why it is so critical to have robust systems in place so that you know the exact dimensions of any load that you are carrying, and factor in any exemptions that may be afforded to you.

► Continued on page 5

► Continued from page 4

In Busbridge's case, he was present when the truck was being loaded by another party. However, he neglected to undertake any checks himself — he trusted what the company loading the truck told him. Ultimately, that is what cost him the penalty, the stress and expense of legal proceedings.

In order to make sure that you are compliant with the HVNL's dimension requirements, ask yourself the following questions:

1. What type of vehicle am I operating?
2. Is my heavy vehicle more than 2.5m wide? This excludes rear vision mirrors, signalling devices and side-mounted lamps and reflectors, anti-skid devices.
3. Do I have removable load restraint equipment attached to my heavy vehicle? If so, does the maximum distance across the body of the heavy vehicle, including the equipment, exceed 2.5m?

4. Is my heavy vehicle taller than 4.3m high?
 - a. Is it a vehicle to carry cattle or livestock? If so, is it taller than 4.6m?
 - b. Is it a vehicle with two decks to carry vehicles? If so, is it taller than 4.6m?
5. Do I have an exemption applicable to the width, height or length of the heavy vehicle or load?
6. Who has loaded the vehicle?
7. Have I checked the dimension requirements prior to commencing the journey? Have I double-checked that the dimensions comply with the HVNL?

These questions are simple to answer and, ultimately, will ensure compliance with the dimension requirements mandated by the HVNL.

Implementing robust systems that you can rely on at the time of loading, such as through using checklists to ensure compliance, will go a long way to keep you from landing in a similar situation to Busbridge. ■

Categories of offences for load restraint breaches Charlie Coleman, Lawyer, Holding Redlich

As with Busbridge's case, the NHVR and other public authorities, will prosecute even the most minor breaches of the HVNL. With on-road incidents, the stakes are too high to let safety slide.

Under the HVNL, there are three categories of offences. The NHVR has provided advice as to what type of offences will fall in each of these categories.

For laden vehicles and combinations, breaches of dimension limits that are caused by the load, like in Busbridge's case, are categorised in the table below. ■

TABLE: CATEGORIES OF OFFENCES FOR LOAD RESTRAINT BREACHES

DOWNLOAD 

| | Categories | Dimensions |
|--|-------------|---|
| Overall width <i>Applies to overall width offences where the breach is caused by the load</i> | Minor | Up to 39mm over the maximum permissible width limit |
| | Substantial | 40mm up to 79mm over the maximum permissible width limit |
| | Severe | 80mm or more over the maximum permissible width limit |
| Projecting loads <i>Applies to loads that project from one or both sides of a vehicle where the breach is caused by loads the load</i> | Minor | Up to 39mm over the maximum permissible width/projection limit |
| | Substantial | 40mm up to 79mm over the maximum permissible width/projection limit |
| | Severe | 80mm or more over the maximum permissible width/projection limit |
| Overall height <i>Applies to the overall height breaches where the breach is caused by the load</i> | Minor | Up to 149mm over the maximum permissible height limit |
| | Substantial | 150mm up to 299mm over the maximum permissible height limit |
| | Severe | 300mm or more over the maximum permissible height limit |
| Overall length <i>Applies to overall length breaches where the breach is caused by the load length</i> | Minor | Up to 349mm over the maximum permissible length limit |
| | Substantial | 350mm up to 599mm over the maximum permissible length limit |
| | Severe | 600mm or more over the maximum permissible length limit |
| Rear overhang <i>Applies to rear overhang breaches where the breach is caused by the load</i> | Minor | Up to 349mm over the maximum permissible rear overhang limit |
| | Substantial | 350mm up to 599mm over the maximum permissible rear overhang limit |
| | Severe | 600mm or more over the maximum permissible rear overhang limit |

The place for technology in HVNL compliance

Melanie Long, Associate, Holding Redlich

It is becoming increasingly apparent that access to data can transform how we conduct our transport activities. Utilising technology improves operations, reduces costs and brings safety to the forefront which benefits both business and other road users. Technology can help cover key areas of HVNL compliance in relation to fatigue, speed and mass management. In this article, we encourage you to consider the place for technology in your business.

Global navigation or positioning systems (GPS), alertness-monitoring technology, electronic work diaries (EWDs), speed limiters, telematics and electronic mass measurement technology such as On-Board Mass (OBM) systems are all things you might be familiar with. These technologies can assist heavy vehicle operators and their drivers with HVNL compliance. So, how do you know if your business is getting the most out of technology?

1. Fatigue management

Compliance with fatigue management laws has been made easier in recent years by EWDs, alertness-monitoring technology and GPS.

- As discussed in June's *CoR Adviser*, EWDs are an alternative to written work diaries and are devices or systems that monitor and record drivers' work and rest hours. They are designed to improve the accuracy of time recording by drivers and to reduce administrative burdens around record keeping for drivers and operators under the HVNL.
- Alertness-monitoring technology is designed to monitor and recognise symptoms of driver fatigue, sleep and distraction. Often systems notify drivers, operators and employers if drivers show signs of fatigue.
- GPS monitor the location of heavy vehicles and record their journeys. GPS systems can also be used to cross-check the accuracy of written work diaries and EWDs.

2. Speed management

To support compliance with speed management obligations (heavy vehicles of more than 4.5 tonnes Gross Vehicle Mass (GVM) must not travel in excess of 100km/h), there are speed limiters and electronic speed management systems. Speed limiters are devices that limit heavy vehicles maximum speed and thus prevent drivers from breaching speed maximum speed limits applied to their heavy vehicles.

Electronic speed management systems, often referred to as telematics, use satellite tracking and wireless communication technology to monitor, among other things, the speed of heavy vehicles. This technology can include GPS.

3. Mass management

Recently, operators have been increasingly using electronic mass measurement technology to demonstrate and evidence compliance with HVNL obligations. This technology includes OBM systems which are integrated on-board weighing systems that allow for real-time load management data of gross and axle weights to be fed to drivers and operators alike.

HOW TO MAKE THE MOST OF THESE TECHNOLOGIES

The installation and use of the above technologies will go a long way in assisting operators and drivers in complying with their HVNL obligations. However, they will be even more effective if they are introduced with training for the relevant users and implemented within broader safety policies and procedures. Relevant training is paramount to ensure that these technologies are used and operated properly and that the data they provide is interpreted correctly. For example, in the case of OBM systems, drivers in particular must be able to understand the data being fed to them so that can then use it to adjust and correct their vehicle's load as required.

Relevant training is paramount to ensure that these technologies are used and operated properly and that the data they provide is interpreted correctly.

Additionally, accounting for these technologies in wider safety policies and procedures is important. This is particularly the case when you consider that operators have a primary duty to ensure so far as reasonably practicable the safety of their transport activities. For example, in the case of fatigue management technology, a device which allows the driver and operator to detect fatigue is one thing, but if there are no policies and procedures in place to inform drivers and operators as to what to do next when a driver is exhibiting signs of fatigue, then the technology loses its benefits. So, using this example, there should be a corresponding procedure for when a fatigue management device signal signs of fatigue, such as requiring the driver to pull over at the next rest station and call their operator to determine next steps, including the cessation of work in circumstances where the appropriate rest cannot be taken.

IS TECHNOLOGY THE ANSWER TO HVNL COMPLIANCE?

When compared to previous methods, for example written work diaries, and when used in combination with sound safety policies and procedures, the use of technology is a great answer to ensuring HVNL compliance. Ultimately, however, technological solutions are tools to assist with HVNL compliance. Their use does not in and of itself ensure compliance. At the end of the day, the responsibility to ensure they are operating within the realms of the HVNL lies with parties in the chain.

TAKEAWAYS

- There is a range of technologies covering the main aspects of HVNL compliance available to heavy vehicle operators to assist with HVNL compliance and their primary duty.
- Technologies combined with sound safety policies and procedures is the best way to ensure compliance with HVNL.
- The introduction and implementation of technologies go a long way to assisting compliance but ultimately they are not substitutes for the responsibility which is ultimately placed on operators and drivers alike to ensure compliance with the HVNL. ■

HELPPESK

Each month we publish some of our top questions from the *CoR Adviser Helpdesk*.

To ask your question today, email: helpdesk@coradviser.com.au.

Please note: All identifying details are removed for reasons of confidentiality.

Whether your concerns are about recent legislative changes, difficulty ensuring compliance of others in the supply chain, or the steps you need to take to protect yourself, our team of lawyers is ready to answer your questions.

NHVR Registration Checker App

Q I operate a large fleet of vehicles and often have difficulty keeping track of my registration renewals. Are there tools out there I can use to help with this?

A The NHVR Registration Checker is an app for smartphones (**App**) that allows users to view critical information associated with the registration of any heavy vehicle in any state (except the NT) on demand.

Through the App, you will immediately be able to locate information about a vehicle by:

- entering the vehicle's registration number; or
- taking a photo of the physical number plate.

The App will then display relevant information about that particular vehicle held by your relevant transport authority. Such information includes registration status and upcoming expiry date, vehicle make, model, colour and Gross Vehicle Mass/Gross Combination Mass. It also includes Accreditation module and labels or Performance Based Standards (**PBS**) approval information if the vehicle is enrolled in the NHVR's Accreditation scheme and PBS scheme.

You are not currently able to make changes to registration details through the App.

Helpfully, the App allows you to save up to 50 registration numbers. This means fewer headaches for individuals and companies, like yourself, who operate a large fleet, as you will now be able to access important information about your entire fleet on demand.

Can I do anything about non-compliance in the industry?

Q Some of my drivers have complained about drivers from a particular company constantly breaking road rules and pushing the boundaries of the HVNL, e.g. speeding, overloading vehicles and using clearly inadequate load restraints. Is there anything we can do about this?

A For operational safety issues in the context of heavy vehicle transport activities, your driver can call the Heavy Vehicle Confidential Reporting Line (**HVCRL**), 1800 931 785. The HVCRL is a secure, national, confidential reporting line that your driver can report:

- an incident that affects, or may affect, the safety of a heavy vehicle or its operation;
- a procedure, practice or condition that may endanger the safety of the driver and others, such as passengers, other road users or the community; and/or
- a procedure, practice or condition that is non-compliant with the HVNL.

Examples of behaviour that can be reported through the HVCRL include drivers inadequately restraining loads, utilising unauthorised oversized vehicles or even using heavy vehicles that are non-compliant with modification standards.

As for violations of road rules, such as driving while intoxicated or using a mobile phone, these should be reported immediately to the police. The police are the appropriate authority for any issues that pose an immediate safety risk to a person.

If you see other contractors or people in the supply chain breaching the HVNL or road rules, drivers should be encouraged to identify these breaches in an incident report.

Anyone who calls the HVCRL can find out what action was taken by the NHVR by calling back 8 weeks after the initial report and providing the unique code that was given at the time.

If you have downloaded the NHVR Registration Checker to your phone, you can call the HVCRL directly through that.

Rules around transporting empty containers

Q Do my drivers still need to carry a Container Weight Declaration (**CWD**) for transporting an empty freight container?

A Yes. A driver must not drive a vehicle loaded with a freight container unless they have a complying CWD for the container. The requirement for a complying CWD is not dependent on whether the freight container is empty or loaded. While on the road, drivers must keep a copy of the CWD in or about the vehicle at all times.

A CWD is a written declaration of the weight of a freight container and its contents. It may be either in hard copy, electronic form or a placard attached to the freight container. It may also be comprised of several documents in different formats (e.g. in an email, on a printed sheet of paper and on a mobile phone). The important thing for compliance purposes is that the whole CWD, in whatever form, can be produced to an authorised officer on request.

Transport operators must ensure their heavy vehicle drivers do not transport freight containers by road using the vehicle without a complying CWD for the freight container. Also, an operator must ensure that a freight container is not given to a carrier who will be transporting the container further unless the carrier has been provided with a complying CWD or the information contained in the complying CWD. ■

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Pushback to promotion of Advanced Fatigue Management

In recent weeks, the NHVR has been making headlines due to its AFM campaign, which has sparked controversy in the industry. In this article, we take a closer look at what AFM is and unpack some of the criticism it has received.

Over the month of June, NHVR representatives travelled across Australia offering free consultations with the aim of helping operators decide whether AFM could be suitable for their business.

On 20 June 2021, the Sunday Morning Herald published an article by Michael Koziol highlighting that AFM had many critics who claim that it allows operators 'to work drivers harder'. Further to this, the article claimed the application process is 'difficult, time consuming and costly' and ultimately not worth the hassle.

So, why has the NHVR been promoting AFM and does it simply allow operators to put their drivers on a more 'gruelling' schedule?

A CLOSER LOOK AT AFM

AFM has been in place since 2008 as an alternative to standard hours (12 hours a day) and Basic Fatigue Management (BFM) (14 hours a day). The NHVR describes AFM as the most flexible work and rest hours option available. This is because AFM allows operators and drivers propose their own work and rest hours based on their business' needs. As a result, and in contrast to standard hours and BFM, AFM allows drivers in the eastern states of Australia to work up to 15.5 hours in a 24-hour period and even more elsewhere, which is the subject of most of the controversy when it comes to AFM.

OBTAINING AFM ACCREDITATION

In order to obtain AFM accreditation, operators must demonstrate that they understand the risk these extended working hours can pose to safety and demonstrate that they can and will take steps to off-set these risks. The NHVR uses seven fatigue risk principles to judge the likelihood the proposed hours will cause driver fatigue and 10 AFM standards to assess the adequacy of an operator's fatigue risk management system. These principles and standard can be found on the NHVR's website.

ADVOCATES FOR AFM

The [Interim Research Report](#) conducted by the NHVR in 2019 into why the uptake of AFM remains low, found that there was a number of advantages being experienced by AFM operators, including:

- better compliance with fatigue management requirements under the Heavy Vehicle National Law (HVNL) compared with those working under standard hours and or BFM;
- better communication with drivers;
- above average safety culture; and
- an ability to legally meet certain project contract requirements (particularly in the natural resources sector) where this otherwise would not be the case under the other schemes.

Additionally, it found that AFM drivers typically work less hours than other drivers and that there were no fatal, serious or minor property damage incidents attributable to heavy driver fatigue for AFM drivers in the 12-month period investigated by the NHVR.

The NHVR also promotes AFM as having commercial benefits such as being able to complete routes more effectively than competitors, ease of use benefits due to the apparent ease of following and complying with AFM compared with other fatigue management systems and enhanced safety.

CRITICS AND DISADVANTAGES OF AFM

This same 2019 report found that the primary reason for the low uptake of AFM is that operators found the application process 'too difficult, time consuming and costly'. It also found that some AFM participants generally operated on BFM hours and only utilised AFM on an as required basis with one operator saying:

"We base our operations around BFM hours because it's easier for drivers to understand, it's what they're used to. We only use additional hours under our AFM accreditation on an as-required basis, for instance to get a driver home safely."

This statement suggests that perhaps the AFM is not as easy to understand as NHVR would like and that drivers are reluctant to change from what they know. This was certainly echoed in the Sydney Morning Herald article, in which truck driver Jimmy Ristovski said that, "No amount of technology can compensate for good driver and employer behaviour."

There also appears to be a fear among drivers, which does not appear to be supported by the data, that operators will abuse AFM and use it as an excuse to push drivers to the limit. Of course, one example of this is enough to deter many.

Finally, sitting somewhere on the fence are those that are in favour of AFM but who consider that a transition to this type of fatigue management needs to be gradual and only after the basics are met, including the uptake of the relevant technology such as EWDs and fatigue monitoring systems.

IS THE PROMOTION OR PUSHBACK JUSTIFIED?

Like any debate, there are legitimate and compelling arguments on both sides. But rather than focusing on these, the focus of both parties should instead be on moving towards a solution. At least initially, it seems the ball is firmly in the NHVR's court to address the difficulty of the application process and the concerns of drivers. So while a roadshow around the country promoting the commercial and safety benefits of AFM is a positive step, it may not address these two barriers to AFM uptake. In addition to addressing the above, a middle ground solution may be to have operators gradually move towards AFM whether this be by way of technology or by at first promoting the use of BFM and AFM in tandem. Then, once a higher uptake in AFM has been achieved and its benefits have been experienced, they can no longer be doubted or criticised. ■

IN THE NEXT ISSUE

OUT SEPTEMBER 2021

- Spotlight on dimension breaches
- The new approach to contraventions of the HVNL
- NHVR charges directors of prime contractor mining company over truck fatality