

Our ref: OGC - AHT – 243
Your ref: COR 2007 003914



Mr. Josh Munro
Coroners Registrar
Coroners Court of Victoria
Level 11, 222 Exhibition Street
Melbourne VIC 3000

Dear Mr. Munro,

I refer to the recommendations arising from the Coronial Investigation of Twenty-six Rail Crossing Deaths in Victoria, Australia ('Rail Crossing Deaths') and the Inquest into the Death of Graeme Andrew Dunne - COR 20073914 ('Dunne').

The National Heavy Vehicle Regulator ('NHVR') is a statutory body corporate established through the co-operative legislative action of participating states and territories, including Victoria. Its primary function is to secure the objects of the Heavy Vehicle National Law ('HVNL'), by providing the functions set out in section 659(2) of the HVNL. Its functions have included, since January 2013, the administration of aspects of the National Heavy Vehicle Accreditation Scheme (NHVAS) as the agent or delegate of the states and territories. The NHVR will shortly be responsible in its own right for the management of the NHVAS.

Recommendation 1: That the National Heavy Vehicle Regulator ensures that the National Heavy Vehicle Accreditation Scheme (NHVAS) is expanded to include all Victorian heavy vehicle operators who perform their own maintenance in-house (Rail Crossing Deaths and Dunne).

The NHVAS Maintenance Management Module includes a number of requirements that may reduce the likelihood of a fault of the type the subject of the Dunne inquest. The module requires the daily checking of the vehicle to identify fluid leaks, maintenance of a fault report log and comprehensive fault reporting system, institution of a system to monitor and manage fault repairs, and a requirement to document the tolerances and wear limits for major components complying with manufacturer's specifications.

The NHVAS is established in the HVNL as a voluntary scheme. The only means by which the NHVR could extend its application under the law as it stands, would be by:-

- Applying under section 600 of the HVNL for a supervisory intervention in the case of a person considered by a court to be a systematic or persistent offender; or
- Inclusion of participation in the scheme as a condition of the granting of a particular mass or dimension authority or vehicle standards exemption.

Neither approach would provide the breadth of application Dr. Hendtlass's recommendation seeks.

I can envisage no mechanism that would compel the inclusion of operators who perform in-house vehicle maintenance in the scheme other than by legislative amendment. This amendment could be made to the HVNL itself (in which case responsible Ministers must unanimously agree to it) or by a local derogation to the HVNL in Victorian law. I understand the Chief Executive Officer of VicRoads is replying separately on this matter.

Notwithstanding the substantial disapplication of the *Subordinate Legislation Act 1994 (Vic)* under section 6 of the *Heavy Vehicle National Law Application Act 2013 (Vic)*, the preparation of a regulatory impact statement would ordinarily accompany a statutory rule which imposed an economic, social or other burden on a sector of the public. This process allows for public consultation and seeks to ensure the proposed legislative action comprehends all relevant issues. Given the imposition of mandatory NHVAS participation on the category of persons described in the recommendations would represent such a burden, I am in discussion with the Chief Executive Officer of VicRoads as to the most appropriate way to progress this issue. I will advise you of the outcomes of those discussions.

The NHVR has recently been requested by The Hon. Duncan Gay, MLC (NSW Minister for Roads and Ports) to perform a comprehensive review of the effectiveness of the NHVAS Maintenance Management Module as a result of the compliance activities taken subsequent to the recent tragic incident at Mona Vale. Dr. Hendtlass's recommendations will be considered in the course of that review and I will report back to you again on the outcomes of that process.

Recommendation 2: The code of practice adopted by the NHVAS ensures that mechanics performing maintenance work have access to and comply with the manufacturer's instructions in relation to maintenance (Rail Crossing Deaths and Dunne).

The NHVAS does not explicitly adopt a code of practice in relation to heavy vehicle maintenance. The HVNL does allow for the production of a statutory code of practice in relation to heavy vehicle modifications, but it is doubtful it would apply to the repair of a heavy vehicle component such as an axle.

The *NHVR Code of Practice for the Approval of Heavy Vehicle Modifications*, which will come into force at the same time as the HVNL, explicitly recognizes that the heavy vehicle manufacturer's recommendations take precedence over the code of practice provisions, and requires that all modifications approved by Approved Vehicle Examiners must comply with the original vehicle manufacturer's recommendations when available.

The *NHVR Code of Practice for the Approval of Heavy Vehicle Modifications* adopts *Vehicle Standards Bulletin 6* ('VSB 6'), published by the Commonwealth Department of Infrastructure and Regional Development, and requires compliance with its contents for heavy vehicle modifications.

VSB 6, although limited in its application to the modification of vehicles, rather than their routine maintenance and repair, explicitly emphasizes the importance of compliance with a vehicle manufacturer's recommendations. It does so at clause 4 (Precedence of ADR's and Manufacturer's Guidelines) in Part A Section A, clause 5 (General Requirements) of Section E (Front Axle, Steering and Wheels/Tyres), and clause 7 (Options For Demonstrating Compliance) of Section E.

VSB 6 also advises that all axle welding must be performed by a qualified welder and in accordance with the manufacturer's welding instructions (see also Checklist E1, Front Axle Installation, and Checklist E2 Steering Alteration of Section E).

While amendment to the *NHVR Code of Practice for the Approval of Heavy Vehicle Modifications* would not produce the change sought by this recommendation, Dr. Hendtlass has identified a potential gap in the regulatory guidance material relevant to repairs and safety standards currently available to facilitate voluntary compliance. This suggests there may be a need to ensure there is sufficient information provided to the heavy vehicle industry as to the importance of

manufacturer's specifications in the maintenance of vehicles, and the appropriate standards for performing maintenance checks and repairs generally. The NHVR is currently reviewing the availability of these materials.

Recommendation 3: The NHVR amends the code of practice for maintenance of heavy vehicles to require inspection and of brake pads and push rods weekly or fortnightly. (Rail Crossing Deaths only)

There is no code of practice for the maintenance of heavy vehicles adopted by the NHVAS or otherwise under the HVNL. The standards with which the NHVAS requires compliance require the documentation of the tolerances and wear limits for major components complying with manufacturer's specifications to indicate vehicle maintenance requirements. This recommendation will be considered in the course of the review mentioned under Recommendation 1 and I will report back to you on the outcomes of that process.

Additional Matters

I would like to take this opportunity to note that the area of the heavy vehicle maintenance and repair is the subject of extensive regulatory intervention at the national level. Operators of these vehicles are required to provide proof of inspection at initial registration, obliged to notify a motor vehicle registrar in the case of significant modifications, and are subjected to conventional compliance assurance processes involving the random or targeted interception of vehicles. Vehicles registered elsewhere than in Victoria are also subjected to an annual inspection process (unless the operator is exempted through their participation in the NHVAS).

Further, an offence is committed under the HVNL if the condition of the vehicle, or any of its components (including an axle, for example) or equipment makes the use of the vehicle unsafe or endangers public safety. Any person who uses or permits the use of such a vehicle is liable to a penalty of up to \$6,000 in the case of an individual, or \$30,000 in the case of a body corporate.

Thank you for raising these matters with me.



Please contact Mr. Raymond Hassall, General Counsel, on (07) 3309 8540 should you wish to discuss these matters.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Richard Hancock', is written over a light blue horizontal line.

Richard Hancock
Chief Executive Officer
National Heavy Vehicle Regulator