

Draft Heavy Vehicle National Law

Submission by the Bus Industry Confederation



May 2011

INTRODUCTION

The Bus Industry Confederation of Australia (BIC) is the peak body representing Bus Operators, manufacturers and parts and service suppliers in Australia.

The Industry has from the establishment of the NRTC made the point that buses are not trucks and to treat them under one category heading of “heavy vehicles’ was going to be problematic and this continues to be the case.

Unfortunately this separation of bus and truck has not happened in most instances and as a result the bus and coach industry has ended up with national laws that have little relevance to the practical operations of bus and coach services or the risks associated with operating such services.

Walking and talking freight, the nature of a generally low kilometre industry, the absence of commercial pressures related to time and a tightly regulated industry are not considered when Federal and State Jurisdictions address “heavy vehicle” issues and the national law.

These issues have emerged largely, the Industry believes, because of a lack of focus during the development of the National model legislation on:

- involvement of public transport bureaucrats (from each Jurisdiction) in the consultation process
- consideration of the long distance sector of the Bus and Coach Industry, (the tour and charter industry) that operates to service its customers, (people), and therefore operates within a completely different paradigm than trucking freight
- understanding of the specific public transport task undertaken by the Bus and Coach Industry and community and Government expectations regarding the delivery of these services
- existing accreditation and regulatory requirements (in each state) to enter the Industry and operate a bus or coach, unlike the trucking industry
- the overall better safety record of the bus and coach Industry

In effect a “One size fits all” approach has been introduced that does not fit. This can be seen from the variations to the model legislation emerging in different States for different types of transport providers, e.g. bus operators, livestock transporters, farmers etc.

Some issues vary from State to State due to different operational requirements and types of services provided; some are specific to one State such as the 200km exemption zone for work diaries in Queensland.

Following are the issues of concern to the Bus and Coach Industry regarding the current laws as well as concerns Industry has in regard to the operations of a National Heavy Vehicle Regulator (NHVR) and what role it might play in regard to some of the specific industry idiosyncrasies.

The aim of identifying these is to work with the NTC, NHVR and State Jurisdictions to achieve better outcomes for Industry, regulators and enforcement agencies.

FATIGUE AND DRIVING HOURS

Emergency Services and Unplanned Services

The BIC is seeking clarification on progress relating to exemptions for emergency services within the driving hours legislation to include rail replacement or unplanned bus services.

The aim is to enable bus and coach operators to continue to provide these unplanned services with a level of reasonable protection in the legislation.

The BIC sees that all of these services should have an exemption applied as part of national laws as has occurred in NSW and Victoria.

Work Diaries

The BIC has argued that work diaries were designed to address concerns about the trucking Industry. The industry believes that the work diary is not practical for the bus and coach industry, based on the nature of the passenger task, which operates predominantly on set routes and timetables under government contract and within State based accreditation schemes.

On this basis the BIC has sought for Government contracted bus services to be exempted from requiring a work diary.

The NSW government has decided that:

- Ministry of Transport Government contracted services; (school and route) will not require a work diary whatever the distance

- Any driver doing other work (e.g. coach or charter) within a 100km radial distance from base will not require a work diary. (This is 200km in Queensland which BIC believes should be the national legislative requirement for buses)

- Any driver doing other work (e.g. coach or charter) where distances are greater than 100km radial distance from base will require a work diary, (as above).

BIC believes that a national approach should be adopted in regard work diaries as per the NSW model except that all States should make the radial distance from base limit 200km as operates in Queensland for buses.

AFM and BFM and Standard Hours (Bus)

The BIC retains the view that AFM and BFM arrangements should form part of existing State based accreditation requirements.

BIC understands that Transport NSW has agreed a process allowing a group application for AFM for a number of operators providing “nightrider” services.

BIC would like to investigate with the NTC and the NHVR the opportunity to develop a national template for both BFM and AFM based on the NSW model.

The national BFM template could then be adopted as part of existing State based bus accreditation arrangements, providing across Industry, fatigue management. The AFM template would be taken up by those operators who would require greater flexibility due to the unique services they may operate such as “nightrider” services.

The BIC would like to reconfirm its support for the continuation of the Standard Hours (Bus) package as a core component of the national driving hours laws

Rounding Off Rest Breaks

The BIC is seeking clarification regarding the requirements of the driving hour's laws concerning the rounding up/down of work time and rest time. "The rounding off" rule.

Attached is a Bus NSW document that outlines the problem for the bus sector in NSW and the impact that such requirements are having on services, bus driver shifts, costs and efficiency.

It seems that the regulations were designed for the work and rest times of truck drivers without any recognition or consideration of the impact on the bus industry and the delivery of timetabled passenger services.

The BIC seeks clarification of the regulation and recording requirements and to be consulted on a national approach to this issue.

Counting Time

This issue relates to the counting of a 24 hour period for recording and enforcement purposes.

The BIC believes the most sensible approach is that adopted by NSW and Qld Jurisdictions where a 24 hour period is counted from the end of a major rest break only (i.e. the 7 hours between shifts) and not as occurs in Vic and SA where 24 hours is counted from the end of any rest break (i.e. could be the 7 hours but could also be the 15 min break).

The BIC understands that the NTC has presented this position to ATC and it has been stalled by Victoria. There is unanimous Industry support from the NSW and Queensland approach from the trucking and bus and coach industry and should be adopted.

National Workplace, Health and Safety Laws

The Industry has expressed concern that the development of national workplace, health and safety laws in relation to the management of fatigue imposes a further level of regulation and reporting which is already adequately covered by the driving hour laws.

The NWH&S laws should do no more than reflect the requirement of the driving hour and chain of responsibility laws already in existence and the NTC and NHVR should be strongly advocating for this approach.

PERFORMANCE BASED STANDARDS – NETWORK ACCESS

The Bus Industry has sought to streamline the approach to obtaining road network access for controlled access buses (buses >12.5m up to 14.5m) by all jurisdictions agreeing:

- Vehicle specifications to obtain a permit to operate a controlled access vehicle
- promoting an agreed approach to mapping the controlled access network as permits are issued
- allowing all vehicles within the controlled access bus specification to access the network without having to apply for another permit
- PBS should not exclude vehicle types that used to operate under the controlled access regime or force them to undertake the PBS approval process to operate.

A problem that currently exists is the lack of consistency between States in regard the rear overhang and frontal swing requirements for buses to obtain a controlled access permit.

The Australian Vehicle Standard Rules 67 (AVSR) sets out the requirements for controlled access buses. Despite the AVSR some states, most notably Queensland and NSW have allowed greater rear overhang provisions.

Queensland

“Rear overhang of the bus not to exceed the lesser of 4.7 metres or 70% of the distance between the centre of the front axle and the rear overhang line.”

New South Wales

“Rear overhang of a controlled access bus must not exceed 70% of the distance between the centre of the foremost axle and the foremost extremity of the rear overhang or 4.9 metres, whichever is the shorter length.”

The tail swing discrepancy impacts in a number of ways;

1. it effects the 2nd hand bus market and where controlled access buses can be sold into some states
2. it limits innovation in vehicle type, for long vehicles 13.5m to 15m, articulated vehicles and double deck vehicles
3. the adoption of the AVSR has seen vehicles previously provided controlled access by permit forced into the costly PBS process

The BIC believes that the AVSR should be amended to reflect the NSW approach. Usual controlled access permits processes in each State would then be followed involving a vehicle traversing the route to undertake an audit of the suitability to operate on the route.

If a permit is provided this would then become part of the controlled access network and available to all vehicles that meet the AVSR (amended).

In regard to Performance Based Standards the BIC argues that the scheme was developed with trucks and productivity in mind and has limited innovation in buses.

The BIC believes that a review of the PBS should take place that includes the social and environmental benefits of buses when undertaking its passenger task being considered as part of the PBS application and consideration process.

Minor dimensional issues such as rear overhang or frontal swing can and have stopped innovative vehicles being approved.

A number of items should also be excluded from a PBS assessment for buses based on their inability to affect the dimensional performance or capability of the bus, these are engine, transmission, body type/brand, differentials and tyres.

The PBS system needs to be flexible enough to apply weighting to the decision making process rather than a straight pass and fail approach.

By including social and environmental considerations in a PBS (Bus) system, vehicles with minor and inconsequential factors that currently deny access to innovative vehicles on the network could be operating on the roads.

The Bus and Coach network should also be clearly mapped in every State with all controlled access roads identified. This should include roads that semi trailers, B Double and road trains combinations have been provided access.

Importantly the National Heavy Vehicle Regulator must have the capacity to override State jurisdiction road managers in regard access of PBS and controlled access vehicles to the network.

INDUSTRY ACCREDITATION

Each State requires that in order to operate a “commercial passenger vehicle”, the operator must be accredited.

The accreditation programs vary from State to State in regard to the requirements and reporting. Accreditation is directly tied to obtaining a State Government School, Route or other passenger transport contract or operating another type of commercial passenger vehicle, e.g. charter.

The BIC has argued that accreditation should be national based on an agreed set of standards and reporting requirements that set a safety and operation benchmark that is mutually recognised across State borders for all registered buses.

If States wish to impose conditions above the agreed benchmark that would be fine as long as mutual recognition of the base is agreed.

The BIC for example has argued that BFM should form part of all existing bus accreditation requirements to deliver an across the board safety benefit.

The BIC is not sure of the NHVR role in bus industry accreditation if any. The BIC is supportive of working with the NTC and NHVR to see an agreed national accreditation approach introduced for “all registered buses” which is then managed by jurisdictions.

This would ensure that the water was not muddied between the operator and State Government contractual arrangements and at the same time capture operators who previously operated outside any safety/accreditation regime.

The BIC believe that a broad accreditation safety net is required and this would improve the overall safety performance of the bus fleet, provide the opportunity to better manage security issues related to buses and terrorism (at airports for example), raise the standard of the overall fleet for passengers and tourists and remove ‘fly by nighters’ in the deregulated sector of the industry.

LICENSING AND DRIVER AUTHORITY

The BIC supports the need for a national licensing approach that mutually recognises licenses between jurisdictions and allows easy transfer of licenses without having to undertake further driver testing or medicals etc. The license should be accepted on face value for meeting all the requirements to drive in each State.

The Bus Industry has the extra requirement for drivers in each State to obtain a driver authority to drive buses. This includes depending on the State, police checks, working with children authority and duplicated medical checks.

It would be useful to streamline these requirements on a national basis if possible to allow direct transferability if drivers wish to work in other States

VEHICLE MASS AND LOADING

The NTC in 1999 recommended that bus GVM be increased from the arbitrary 16t to the manufactured GVM 18t for 2 axle buses with equivalent increases for 3 axle and 4 axle buses.

In 2011 no increase in GVM has been agreed despite the fact that the tare weight of vehicles has increased over time due to a range of legislated requirements such as accessible transport standards, the introduction of new emission standards, through to the contracted requirement for buses to be air conditioned.

All of these factors have increased the tare weight of the bus. There is only so much bus manufacturers of buses can do to lighten the vehicle to allow these buses to operate within legal limits when full of passengers and bags without impacting on the structural integrity of the vehicle. This point has been reached some time ago.

At the same time the last decade has seen an increase in the overall weight of the Australian population. Combined, these factors mean that some buses when full, usually at the start or end of a service run, are operating illegally. This places operators and Governments in a precarious legal liability position if an accident were to occur.

The simple solution is to increase the GVM to the actual capacity of the chassis, (usually 18t) and align with European mass limits in the same way that Australia is harmonising with ECE vehicle standards. It makes no sense, to harmonise with ECE vehicle standards and at the same time have unique mass limits for Australia.

The European mass limits take into account the mass impact of new vehicle standards. Australia has decided to set an impractical lower limit that is having perverse effects.

The issue of individual axle mass for buses is also a concern, especially for coaches and chartered services. Coach operators have little control over a number of factors which make it almost impossible to accurately ensure that individual axles are not overloaded. Despite the views held by some that buses are in some way the same as airlines and should be able to manage this issue the circumstances are vastly different.

The factors are;

- no control over the individual weight of passengers or where they might sit
- no control over baggage and its weight
- no control on loading the luggage in a way that can guarantee that axle weights are not exceeded
- no control over luggage movement that can occur when the vehicle is in operation and is picking up and dropping off new passengers

The BIC is calling for bus mass limits to be increased as outlined. If necessary the industry is willing to pay an incremental registration price to achieve this outcome. This is not an admission of increased road damage as buses are already operating in this way on the road network and a majority of time are underweight, but may be a solution to this important issue.

CHAIN OF RESPONSIBILITY

The BIC supports the chain of responsibility laws as a means to ensure that undue pressure or circumstances do not result in drivers or bus managers having to breach road laws to complete the passenger task.

Enforcement of chain of responsibility laws continues to be focused on road and the driver and to have full effect must have the resources to investigate throughout the supply chain.

Chain of responsibility should equally apply to regulators and jurisdictions.

VEHICLE INSPECTIONS

The BIC supports a mutually recognised national inspection regime. The BIC believes that physical inspection of vehicles does nothing more than ensure that the vehicle was roadworthy on the day the inspection took place, incurs a cost in undertaking the inspection and a productivity loss as the vehicle is off the road for a day.

BIC believes that existing State based bus operator accreditation and audit requirements for vehicle maintenance should be accepted as meeting roadworthiness requirements as an alternative compliance option to a physical vehicle inspection and mutually recognised by all jurisdictions.

DATA CAPTURE AND ANALYSIS

This is an important area where there is a lack of co-ordination in relation to route and school buses and to long distance, charter and express bus services.

The BIC sees that the NHVR has a role in coordinating and capturing key data in regard to the heavy vehicle fleet including all buses 4.5t and above.

The data to be collected and analysed by NHVR should be agreed between the NTC, NHVR, Jurisdictions and Industry.

Data collected should include:

- bus registration details by State and bus size (passenger capacity)
- bus accidents by State and bus size
- number of State contracted buses by bus size
- number of State owned buses by bus size
- number of community transport buses by bus size
- Bus age
- Cross border activity by buses

TRANSFER OF REGISTRATION

The BIC supports the changing of the model law to require both the buyer and the seller of a vehicle to notify of the transfer of registration to better manage the risk that the register of vehicle reflects the responsible operator.