



## Submission by the Motor Trades Association of Australia Limited (MTAA) into the introduction of the Master Industry Code of Practice

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## Executive Summary of Recommendations

### MTAA Recommends:

- Provisions within the proposed Master Industry Code of Practice should not impose additional costs and / or potential litigation for automotive businesses servicing, maintaining and repairing heavy vehicles (unless agreed to under contract by parties involved and in compliance with Australian Law).
- Further clarity is provided concerning what constitutes '*reasonably practicable*' and '*relevant*' measures to protect businesses from litigation under Chain of Responsibility (CoR) laws and as outlined in the code. For example, the extent to which automotive businesses that service, maintain and repair heavy vehicles can / should influence the actions of vehicle operators (as stated within provisions within the code) is unrealistic in some operational contexts.
- Further clarity is provided on protections for automotive businesses servicing, maintaining and repairing heavy vehicles that are *not* signatories to the code. For example, does compliance with existing laws and regulations suffice in protecting business from litigation associated with CoR requirements?
- Automotive businesses that service, maintain and repair heavy vehicles consider becoming signatories to the code if it provides increased business opportunities. MTAA considers this to be an individual business commercial decision.
- The code may help regulate the commercial arrangements between vehicle operators and contracted heavy vehicle maintenance and service providers.
- Further clarity is provided on how the code's provisions align with other Government regulation such as Australian competition and consumer law (including franchising and warranty arrangements).
- Further clarity is provided on requirements of third parties to comply with provisions in the code. For example, insurance companies.
- Further clarity is provided on enforcement procedures and certification of inspection officers.

## National Heavy Vehicle Regulators Review

- MTAA supports any effort to increase the safe operation of heavy vehicles on Australian roads.
- MTAA appreciates the efforts by the National Heavy Vehicle Regulator (NHVR) to develop a draft Master Industry Code of Conduct to set industry standards to support supply chain parties in meeting their CoR obligations under Heavy Vehicle National Law (HVNL).

## Feedback on the Master Industry Code of Conduct

- MTAA provides the following feedback on the proposed Master Industry Code of Conduct. This feedback has been provided by MTAA Member Associations and their member businesses. Many of these member businesses provide services to parties or are parties in the supply chain of a heavy vehicle and many are businesses that service and repair heavy vehicles.
- MTAA is concerned about the broadness, extent and complexity of the obligations under the code. For example, some member businesses believe it is impractical and unreasonable for businesses who service and repair vehicles to ‘engage and consult with other parties in the supply chain as *relevant* to foster productive, efficient, innovative and safe supply chain relationships’ (Master Code of conduct, p. 12) that go beyond normal business relationships. MTAA questions the subjectivity of the term ‘*relevant*’ within this instance.
- Vehicle standards are incorporated into provisions the code. For example, Section 26C stipulates that ‘each party must, so far as is *reasonably practicable* ensure the party’s conduct does not directly or indirectly cause or encourage the driver of the heavy vehicle to contravene this Law; or another person, including another party in the chain of responsibility, to contravene this Law’ (Master Code of conduct, p. 80.). MTAA questions the subjectivity of the term ‘*reasonably practicable*’ within this instance.
- In contrast to concerns about the subjectivity of some terms within the Code, some automotive businesses questioned whether, in relation to fatigue management, the code would be interpreted so rigidly that it would fail to take into account the practicalities of the logistics industry, such as roadworks, accidents, mechanical failure, and punctures.

- MTAA seeks clarification on the extent of responsibility of businesses servicing and repairing heavy vehicles under the code. For example, do provisions within the code have additional requirements / obligations / liabilities / implications than those stipulated in Australian Design Rules, HVNL and Heavy Vehicle (Vehicle Standards) National Regulation, the National Heavy Vehicle Inspection Manual (NHVIM) and other state and Commonwealth legislation (i.e. *Australian Competition and Consumer Act 2010* [CCA] and Australian Consumer Law [ACL]) regarding the servicing and repair of heavy vehicles?
- In other words, is adherence and compliance to existing laws and regulations *reasonably practicable* measures for protection against litigation under 'Chains of Responsibility' requirements?
- MTAA seeks clarity on requirements of third parties to comply with provisions in the code. For example, what are the requirements of insurance companies to cover cost of vehicle repairs if they are not signatories of the code? Furthermore, what is the liability of businesses undertaking vehicle repairs if they are not provided the resources from insurance companies to adhere to CoR requirements?
- MTAA advocates that businesses who undertake heavy vehicle servicing and repairs (including completing performance modifications in accordance with manufacturers' requirements) are **not** responsible / liable for the unsafe use or miss-use of vehicles by vehicle owners and operators. Nor are they responsible / liable for those who undertake other activities within the heavy vehicle supply chain (i.e. loading and unloading cargo).
- MTAA advocates that business servicing and repairing heavy vehicles are not accountable for communicating CoR requirements or providing vehicle operational instruction (other than those specific to the safe operation of the vehicle as per manufacturer's instructions and required by Australian consumer and other legislation) unless agreed to under business contracts. For example as part of a fleet maintenance contract.
- MTAA seeks clarity on whether those enforcing the code will be authorised to inspect the work processes and premises of businesses undertaking heavy vehicle services and under what conditions?

- MTAA seeks clarity on the accountability under provisions of the code of businesses that service and repair vehicles when a safety failure or a warranty claim is caused by the failure of a manufacturer's part, rather than due to fitment.
- MTAA is concerned that some provisions in the code may increase the obligation of businesses that service and repair heavy vehicles to make recommendations to vehicle operators about adopting safer equipment and if this is the case; are they then accountable / liable for fitment or non-fitment.
  - For example the Code states: 'conduct a risk assessment of your vehicle standards obligations under the HVNL' and 'consider technological solutions to improve heavy vehicle safety when purchasing heavy vehicles and components – for example, electronic stability control, autonomous emergency braking, GPS-based telematic systems, in-cab driver (fatigue and distraction) monitoring lane tracking warning and assistance systems, to name a few' (Master Code of conduct, p. 82.).
- MTAA opposes any increase in liability for businesses that service and repair heavy vehicles for the operation of vehicles by vehicle owners and operators, nor are they liable for the selection of operating and safety systems and scheduling of maintenance (unless agreed to in contract between parties involved in a maintenance and servicing contract). Nor should they be responsible for 'obtaining explanation from operators on how vehicle standards requirements, maintenance and repairs, are managed within their business' (Master Code of conduct, p. 82.) (Again, unless agreed to in contract between parties involved in a maintenance and servicing contract).
- MTAA is concerned of increased liability and costs for businesses that service and repair heavy vehicles as a result of being signatory to the code as they are more likely not to become a signatory of the code.
- Although MTAA opposes provisions within the code that may impose costs and increase liability for businesses that service and repair heavy vehicles, MTAA supports the ability of businesses that service and repair heavy vehicles to make commercial decisions to sign up to the code and expose themselves to increased scrutiny if the provisions within the code increases their influence within the supply chain and increases their ability to get work. This may include

businesses that are involved in maintenance contracts with vehicle operators. As page 82 of the code notes , businesses can be responsible (and accountable) to:

- implement a preventative (or periodic) maintenance program including regular servicing of vehicles, components and equipment – for example:
    - refer to service schedules recommended by the manufacturer or supplier. Service periods may vary based on the operating conditions and may need to be more frequent than the manufacturer’s recommendations – for example, heavy vehicles frequently operating on unsealed roads, or regularly transporting over size over mass loads, or exposed to harsh environments
    - the maintenance schedule should include identified service periods that describe the tasks to be undertaken
    - note: maintenance and repairs should be carried out by a person with appropriate skills, experience and qualifications
  - confirm the vehicle is fit for use and identify a vehicle that is unsafe before operation – for example, daily check – a documented instruction for basic visual safety checks to detect problems with critical safety components
  - record and report any unsafe vehicles, faults or defects before, during or after operation (as soon as possible) – for example, documented repair request form. All major or serious faults, including safety related faults, need to be fixed before the vehicle is returned to service
  - implement a system to identify and prevent from being used by a driver any non-compliant or faulty vehicle that does not comply with heavy vehicle standards – for example, tag out and remove from service or keep the vehicle keys in a secure location such as a locked key box or lockout trailing equipment airlines.]
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- MTAA supports the increased safety of heavy vehicle operation and is confident that most licenced businesses that service and repair heavy vehicle have the skills and knowledge to maintain heavy vehicles and manage vehicle fleets.
  - Some MTAA member association’ business constituents who undertake the loading and unloading of vehicles are concerned by the breadth and complexity of the code regarding this activity and their legal obligations and liability; particularly those associated loading by other parties (i.e. interstate) with whom they have no control.



- MTAA seeks clarity on the capacity for roadside inspectors to enforce the code correctly in circumstances where inspectors do not have sufficient qualifications and experience of heavy vehicles. The advanced technology in heavy vehicles requires appropriate levels of training and/or accreditation for inspectors and this should be a requirement within the code.
- MTAA urges the code's provisions optimize electronic log books and the increased phasing out of paper based documents without reducing the rigour associated with managing paper-based and electronic log books.
- MTAA opposes any discrimination against businesses that do not sign up to the voluntary code particularly as MTAA advocates that in some operating contexts the provisions of the code may be impractical.

## Summary

- MTAA supports the introduction of the code and its ability to assist in facilitating and managing arrangements between businesses that service and repair heavy vehicles and vehicle owners and operators; particularly in regards to CoR requirements.
- However, MTAA opposes increased costs and liability for businesses that service and repair heavy vehicles unless agreed to between parties involved in a servicing and repair contract. MTAA also opposes any discrimination of businesses that are not signatories to the code and that in some operating contexts; the provisions of the code may be impractical and are not 'reasonably practicable'.

END OF SUBMISSION