



**ROAD TRANSPORT FORUM NEW ZEALAND INC
SUBMISSION**

**IN RESPONSE TO
PROPOSED CHANGES TO LEGISLATION RELATING TO
OVERWEIGHT AND HIGH-PRODUCTIVITY MOTOR
VEHICLES**

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Submission of Road Transport Forum New Zealand Response to: Proposed changes to legislation relating to overweight and high-productivity motor vehicles

1.0 ROAD TRANSPORT FORUM NEW ZEALAND

1.1 Road Transport Forum New Zealand (RTFNZ) is a nationwide organisation of voluntary members drawn from the road transport industry and includes owner-drivers, fleet operators and providers of services to freight transport operators. The Forum provides services and public policy advocacy for its members.

1.2 The Forum's Constituent Associations include:

- ▶ *National Road Carriers (Inc)*
- ▶ *Road Transport Association NZ Region 2 (Inc)*
- ▶ *Central Area Road Transport Association (Inc)*
- ▶ *Road Transport Association NZ Region 4 (Inc)*
- ▶ *Combined Owner Drivers Association (S.I.) Inc*
(Trading as NZ Trucking Association)
- ▶ *Road Transport Association NZ Region 5 (Inc)*

1.3 The Forum's Associations have approximately 4,000 members and associate members who operate in excess of 17,000 trucks and truck combinations over 3,500 kg GVM/GCM^[1] or 80% of the hire and reward truck fleet in New Zealand. The road transport industry turns over approximately \$6 billion a year transporting more than 80% of New Zealand's land-based freight. Some 23,000 people or about 1.5% of the workforce are directly employed in road freight.

^[1] GVM Gross Vehicle Mass
GCM Gross Combination Mass

2. INTRODUCTION

- 2.1 When one first reads the document and sees the proposed alignment of policy and penalties for permit breaches for both over weight and higher mass HPMVs and the corresponding changes in aggregated penalties highlighted by table 1 page 47 the initial response is that this proposal represents a positive step forward. However, despite the positive changes alluded to above operator sensitivities have been highlighted by other aspects of the proposed changes in particular the weighing tolerance relativity between 44 tonne combinations compared to the tolerances applicable to HPMV and overweight permit operated combinations. Furthermore the increase in penalty for non-permitted vehicles operating above their statutory mass limits has also drawn some criticism. We suspect a number of industry participants have overlooked the penalties have not been reviewed for many years and yet they still consider any increase unjustified. Conversely, other opinions have recognised the proposals in this document differ markedly from the more onerous proposals outlined in the MOT VDAM Engagement Document.
- 2.2 The alignment of tolerances for HPMV and overweight permit vehicles has not found acceptance with a number of our members and there is clearly an aspiration by some to have the 44 tonne tolerances e.g. 1.5 tonne deposited in the breach of permit criteria for HPMVs. Likewise there is considerable sensitivity around the axle group tolerance for HPMVs being reduced back to 500kg from the 1000kg interim tolerance.
- 2.3 These concerns will be amplified with specific comment within the submission section of our response and, where appropriate, we will relate these concerns to the proposals where feedback is requested.

3. SUBMISSION

- 3.1 The document in the executive summary, in the view of the Transport Agency, implies institutional overloading is occurring to an extent which can only be corrected by increased VDAM mass compliance and by taking a relatively even handed approach whilst avoiding the unnecessarily harsh breach of permit consequences of aggregated penalties currently experienced by overweight vehicle operators and some HPMV higher mass vehicle operators.
- 3.2 The proposed solutions at a principle level is hard to argue against especially when page 7 highlights an intention to reduce penalties and moderate permit breaches.
- 3.3 The tolerance of 500 kg for vehicles operating under permit is a step forward in that it codifies into law what has historically been a purely concessional administrative approach to overweight permit compliance covered by agreement between the CVIU and the Transport Agency. The 1000 kg tolerance for HPMVs has likewise been an interim concessional arrangement and much like the 500 kg tolerance is not supported by statute. Interestingly, the overweight permit regime has had the additional support of major and minor permit breach system outlined in the Agency's overweight permit policy for some years which itself has been open to question around its legality.
- 3.4 The proposal to move to a more authoritative legal platform for both tolerances and the major/minor breach approach is a step forward. Furthermore, treating overweight permit vehicles including HPMVs by way of the same process is also positive.

3.5 The legacy factor of the 1.5 tonne tolerance for weights over 33 tonnes sits as an interesting outlier within the scope of the present enforcement and compliance discussion. Arguably, retaining this tolerance is predicated on the probability that a typical 44 tonne combination sits within the infrastructure capacity design envelope and poses a lower risk than vehicles that load the network above this limit. However, the Forum has no desire to see the 1.5 tonne tolerance reviewed and is simply making an observation and notes the penalty for unpermitted vehicles and combinations with two or more axles will also increase (refer to table 3 page 49 and the discussion on weighing tolerances on page 13).

4. OVERLOADING WITHOUT PERMITS (PAGE 12)

4.1 The discussion in this section attempts to quantify the significance of vehicles exceeding the prescribed limits. WiM data indicates an increase of 2.7% from 2011 – 2012. Interestingly, the WiM machines cannot detect legally approved higher weight vehicle operations so the actual numbers of vehicles operating above their approved limits is always open to speculation. The commentary basically takes the view that the paucity of enforcement and the actions of a small recidivist group can provide the necessary grounds upon which a majority mass compliance solution can be put in place which, in our view, is an unfortunate approach to policy development.

5. WEIGHING TOLERANCES (PAGE 13)

5.1 We have already discussed the 1.5 tonne tolerance for vehicles with a gross weight of more than 33 tonnes.

5.2 Removal of the 3 tonne tolerance for the 60 tonne gross vehicle weight would appear an acceptable amendment for as far back as the 1990s when the tolerances were defined as finite values instead of percentages, it was recognised as an aberration.

5.3 The rationale for a 500 kg tolerance for permit vehicles now being adopted into law is a move away from the concept of administrative concessional tolerances, however, certain sectors such as logging operators and those in the operating environment make the point that 500 kgs is unacceptably low. They cite operational difficulty in meeting this constraint and plausibly argue the 1000 kg tolerance (used as the interim concession) would be a more realistic approach to mass management especially when coupled with the 500 kg gross weight tolerance on a vehicle or combination. The 1000 kg tolerance provides significantly more flexibility around meeting permitted axle set and axle group loadings. This would help operators avoid unnecessary but potentially unmanageable permit breaches that will occur with lower tolerance. The proposition supporting the 1000 kg axle group/set tolerance must always be read in conjunction with the 500 kg gross vehicle or combination mass tolerance and therefore any concerns about infrastructure damage and safety risks is largely offset by tightly managed gross mass tolerance.

6. TOLERANCES ON AXLES VERSUS SETS

6.1 We note the two example permit forms referring to axle mass limits. While these may simplify the approval system and bridge and pavement analysis they do not reflect how vehicles are designed. Individual axles fit within specified sets and vehicles are supported by axle sets or axle groups. The axle issue is unique to permit operation and more applicable to overweight permit type operation where axle masses are determined using a variety of mathematical calculations against specified reference loads.

6.2 In the case of HPMVs axle mass limits other than single axle sets e.g. front steer axles are covered by specified axles set limits. The need to show individual axle weight within sets is an anachronism – a carry over from the overweight permit regime. Given that all HPMVs whether those

operating Class 1 Part A limits or Part B HPMV limits or a combination of both the permit should show the set limits where the combination is supported by axle sets. This proposition is based on the fact that HPMVs are operated pursuant to table weights.

- 6.3 The problem with the current crop of permits for HPMVs is that in many cases the individual axle limits (in sets) are below legal Class 1 limits for both the sets and the axles. In some cases the front axle limits are lowered below the tare mass. There is no logic in this approach whatsoever. If a 50 Max HPMV is operating to Class 1 axle and axle set limits the permit should only show the table where the combination gross weight exceeds 44 tonnes, all other axles and set limits being governed by Part A table weights as set out in the VDAM Rule.
- 6.4 Interestingly, the 500 kg tolerance for axles on HPMVs lowers the acceptable and well established load sharing tolerance that is based on 10% of the axle mass derived from the axle set mass divided by the number of axles in the group. In a 3 axle trailer set the individual axles mass allocated by the Part A limits is 6600 kg – the set allowed is 18000 kg. In a tandem group the axle set mass is 15000 kg and the axle limit is 8200 kg. Conceivably, an HPMV should have one axle (in a set) high and the other low simply due to the allowable load sharing performance, the high one exceeding what is stated on the permit. The 1000 kg interim tolerance over axle sets provided a better opportunity to compensate for this axle load sharing design requirement.
- 6.5 The concern that 1000 kg is too generous does not hold water when balanced against the 500 kgs on the gross combination weight. If one axle set is 1000 kgs over permit limit another axle set would have to be at least 500 kg lower if the permit weight of the 500 kg applicable to the combination gross is not going to be exceeded. The 1000 kg per axle set also reflects the way vehicle can typically be weighed – using axle sets and not axles. Weighing axles can only be achieved when axle/wheel

scales or a dynamic axle scale are used. The former is inconvenient and difficult to carry out at the roadside and the latter is a fixed in-ground device. In practice, most vehicle weighing is carried out using plate scales whether full length or short length scales and these typically focus on axles sets. From every perspective using a 500 kg tolerance over axles for adjudicating an HPMV permit compliance is a perversity that the industry cannot afford.

7. WEIGHING TECHNOLOGY

7.1 Page 13 makes reference to vehicle and Police weighing capability improvements over preceding years. The commentary creates an illusion that somehow vehicles can be fitted with sophisticated on board scales that will be able to determine actual weight with a high degree of accuracy and repeatability. Although vehicle on board weighing systems have improved they are none-the-less prone to a raft of environmental induced inaccuracies. They predominantly work on the basis of weights on axle groups, not individual axles. Likewise, the use of "split weighing" to determine axle weights within individual axle groups by using plate scales is a practice that has been discouraged within various enforcement jurisdictions around the world. It is simply not possible to correctly ascertain individual axle weights using the split weighing methodology.

7.2 In our view, there are ample illustrations of situations where neither the operator nor enforcement staff are capable of determining individual axle weights within an axle group. Inevitably there will be insufficient precision for a successful prosecution. The basis of using axles group mass for compliance provides a better opportunity for operators to comply and for enforcement staff to gather the appropriate evidence. The outlier in this discussion is the spaced single axle or steer axle on trucks or single steer drawbar trailers. These can be weight accessed individually as can special axles on overweight permit combinations.

7.3 The discussion document also assumes the current crop of enforcement weighing devices are “accurate”. Accuracy is somewhat a relative term as it relates to both calibration methodology and calibration frequency. It is generally accepted that no two weighing devices are equal. The range of scales and their mechanisms from which the weight measurement is derived differ greatly in both performance and design. Furthermore, vehicle induced effects can influence the quality and accuracy of weight measured as can the process of weighing a vehicle with multiple axles and axle groups. Reducing the tolerance to 500 kg for axles completely ignores the probable impact of these external influences on the weight measurement. Consequently operators will be more likely to be convicted on the strength of an overweight measurement where they have limited ability to mitigate external influences. This situation occurs now but the more generous tolerance of 1000 kg and the fact that it applies to an axle group and not individual axles can somewhat offset these factors.

7.4 If the Agency is determined to use the 500 kg per axle proposition for permit vehicles then there should be an obligation to ensure the equipment used for obtaining operator convictions is regularly calibrated to specified standards.

8. PERMIT TRANSFERABILITY (PAGE 16)

8.1 The proposal that mass permits not be transferrable is not supported. The approach outlined implies the permit is issued to a TSL holder and not a vehicle. It is somewhat interesting that liability for a vehicle is transferrable if the TSL holder label is replaced with another. We detect the Agency has some concerns about historical compliance performance around permitted operated vehicles and one way of managing possible unacceptable operation of vehicles is to hold to the concept of the vehicle and permit being tied to a TSL holder. It is possible an online approval facility could be set up through the Agency to enable a substitute TSL holders to take custody of the vehicle. The concept would be built on the

TSL holder identity being confirmed by NZTA before custody of the vehicle and permit transfer is able to take place. A tracking system would support any required enforcement process.

9. SECTION 3 (PAGE 16)

9.1 Section 3 offers both a summary of the proposals as well as a series of individual questions seeking a response.

9.2 The summary refers to critical conditions. 3(2)(a) refers to exceeding GVM or vehicle design limits but there has been some discussion within the RUC regulatory environment concerning the inadequacy of the term GVM which is only provided for in the Traffic Regulations 1996. The Land Transport Act 1998 refers to Gross Laden Weight and Gross Weight. The connection to GVM and other ratings such as design gross mass or front and rear axle mass is connected only obliquely to the Land Transport Act and potentially could create some difficulties if the language and meaning of these terms are not specifically catered for. In terms of the specific proposals we will endeavour to comment on the relevant ones in the order they occur.

10. PROPOSAL 1 (PAGE 18)

10.1 The Forum supports the concept of the three critical conditions referred to on page 18 in 2a, b and c. The size of the fixed penalty is difficult to argue against when compared with the present scheme where permits are voided and the penalty equates to an aggregated value over each and every axle group being derived from the difference between the vehicle's standard mass limits versus the mass or weight of the vehicle measured at the roadside.

10.2 The third paragraph under this section alludes to permit vehicles operating above the legal mass off route seems to offer a reasonable solution to manage this aspect of vehicle mass compliance. The off-loading proposition and impact of arranging the overweight portion of this load to bring the vehicle back into standard mass conformity should be sufficient deterrent for operators not to stray off specified permit routes.

10.3 We will address the issues around additional conditions on permits under our response to Proposal 4.

11. Section 126 Land Transport Act 1998 - Off-loading of overweight vehicles

11.1 (1) An enforcement officer must direct the driver of a heavy motor vehicle or transport service vehicle on a road to keep the vehicle stopped or remove it to a place of safety approved by the officer and remain stopped there, if –

- (a) the weight of a heavy motor vehicle or transport service vehicle on a road is measured by, or at the direction of, an enforcement officer; and
- (b) the gross weight of the vehicle, or the weight on a wheel, axle, or group of axles of the motor vehicle, exceed by 10% or more –
 - (i) a prescribed weight restriction applicable to that motor vehicle; or
 - (ii) a weight or loading restriction specified in the vehicle's certificate of loading.

11.2 (2) The vehicle must remain at the place to which it is directed under subsection (1) until either –

- (a) part of the load is removed or the load rearranged so as to reduce the gross weight and the weight on every wheel,

every axle, and every group of axles of the motor vehicle to not more than –

- (i) the maximum prescribed weight applicable to that motor vehicle;
and
- (ii) a weight or loading restriction specified in the vehicle's certificate of loading, or
- (b) a permit in writing is issued under this Act to permit the motor vehicle to proceed along a road with its load.

11.3 Under section 2.3(3) now Clause 5.1(5)(b) shows the vehicle must have the correct RUC Licence. Although this requirement relates to indivisible loads it captures container transport trucks which by the load characteristics are considered indivisible loads. Our understanding is that the amendments proposed are focussed on infrastructure preservation and bridge design limits. We question the need to refer to RUC compliance when that is covered off under the RUC Act which is packaged with its own penalties.

12. PROPOSAL 2 – CARRYING AND PRODUCING A PERMIT

12.1 If we now refer to Rule amendments an aspect that remains unclear and not specifically addressed is the off-loading provisions for permitted vehicles. The discussion regarding overweight permits indicates the permit mass limits as the reference point for compliance 2.3(1) – new clause 5.1(3) page 26 but off loading is only discussed in respect of non- permitted vehicles and not permitted vehicles on approved routes. Reading section 126 Land Transport Act 1998 below, it could be interpreted that an overload of 10% on a permit vehicle enables the load to be adjusted or off-loaded to meet the permit mass to meet the permit weight and adjusted back to the standard limit applicable to the vehicle. This particular situation would be an unlikely critical condition for gross

weight (though it has occurred in the past) but is likely to occur from time to time with axle loads being exceeded by 10%. We believe clarification is necessary in the amended Rule.

12.2 Section 2.3 (3) covering Clause 5.1(6) and proposal 2 relating to carrying of permits is written around the indivisible load option reflects a continuation of paper based monitoring systems. The requirement should be amended to being able to produce a permit on request. If it is able to be displayed in a ready readable form on an electronic device such as a tablet, this should be allowed. The accompanying documents referred to are more difficult to resolve, particularly container documentation, as this information is usually electronically provided by the consignor/originator to the receiver of the goods or their agent. The duty to carry a printed permit is a bit archaic in today's age, if it is electronic it would available to the police through NZTA.

12.3 Even with paper permits available, the police sometimes dispute what is on the permit. According to a few reports police officers have not been able to fully comprehend the details. This issue is more related to route approvals and route reference data such as R.P. numbers.

13. PROPOSAL 4 – CONDITIONS ON PERMITS

13.1 "The vehicles off route provision in this and other sections of the draft Rule should state categorically this only applies where the vehicle exceeds the standard mass for type as specified in the VDAM. The mischief only occurs when a vehicle above standard limits is off its specified route. Conversely, if the vehicle is unladen it is irrelevant off route unless the permit specifies unladen travel is also route constrained.

- 13.2 The reference to “additional conditions” has the potential to be problematic and the broad interpretation of the section proposed for the rule does not specifically limit a local authority or RCA developing some unique interpretation of additional conditions to protect local rate payer interests. “Additional conditions” should be limited to infrastructure protection requirements. “Additional conditions” needs to be defined in scope.
- 13.3 2.3(2) Section 2 provides something of an outline for additional conditions but then 5.1(4)(f) is pretty much an open opportunity to add anything such as the example mentioned above.
- 13.4 While the Agency seems to want standardised permit formats the additional condition options seems to be heavy haulage specific. With HPMVs and 50 Max we would argue these conditions are totally unnecessary as the RCA would have already determined the acceptability of the route with the vehicle approved to operate at either Class 1 mass limits or HPMV Part B AVAM route mass limits.
- 13.5 Unnecessary additional conditions on permits provide another opportunity for police to detain vehicles while they qualify the vehicle and permit against the additional provisions, which is another unnecessary impediment to freight efficiency.
- 13.6 The concept of “additional conditions” also raises an issue with permits generally and these should be kept to a minimum on permits. This applies to vehicle attributes which are already covered off by the engineer’s attribute sheet without which the permit would not have been issued. This means it is unnecessary to identify vehicle details that are already covered by vehicle rules and legislation.

13.7 Page 43 provides some examples of additional conditions which in our view are unnecessary. For example tyres and roll stability are covered in the general requirements that apply to all vehicles. Vehicle use on prohibited motorways would be covered by the route description - likewise with rail crossings. A permit should only be issued where any rail crossing has already been approved prior to the permit application being submitted. It is not necessary to repeat the rail crossing approval information on the permit.

14. SECTION 6 PROPOSAL TO AMEND REGULATIONS PAGE 44/45

14.1 This part of the draft Rule relates to amendments to the Offences and Penalty Regulations. We are confident we have commented on the reduced tolerances and revised penalty provisions in some detail already.

14.2 From a philosophical perspective, there is a view that behavioural change and deterrence could be better achieved through increase exposure to enforcement. Increasing penalties and reducing tolerances in a relatively low investment approach to achieving the desired compliance outcomes and also does nothing to ensure there is sufficient enforcement capability appropriately deployed and displayed. If the present status quo is not improved the operators currently exposed to enforcement interaction will simply be the same group as at present. The point is often made that increased intervention with enforcement staff is more effective than increased penalties which implies the current penalties and loss of productivity time has a significant impact given the way operators interpret the cost of compliance.

- 14.3 There is no doubt the police must invest in more sophisticated information intelligence to ensure better distribution of enforcement capability.
- 14.4 On a matter of principle we cannot overlook the relationship between lowering the tolerance to 500 kg and the performance and use of enforcement weighing equipment that will be used as evidence for convictions. We accept we have already communicated on this but we have elected to reiterate some of our earlier comments and amplify them accordingly.
- 14.5 The draft Rule refers (page 13 Weighing tolerances) to the present tolerance being in place to reflect the variability of accuracy of the weighing devices that have been historically used in New Zealand. This is not quite correct. The tolerances were deemed necessary due to the variety of weight measurement methodologies used in New Zealand, e.g. full plat weigh bridges, road side weighing and dynamic axle weighers. We have already discussed the practical limitations associated with split weighing axles in axle groups.
- 14.6 In reality in terms of weighing devices nothing has changed. The police can use any calibrated weighing device they like taking the weight measurement shown or aggregated from various weight measurements as evidence for prosecution.
- 14.7 With the potential reduction in tolerances and the typical variations generated by the weighing methodology and in some cases inherent in the weighing equipment design, this must force a rethink in terms of equipment calibration and weighing equipment user training.

14.8 In the current environment where measured vehicle weights are no longer contestable and arguments in mitigation have been ruled out by the Interfreight case (Interfreight Ltd v Police (1997) 2 NZLR 688) – operators are now convicted by the strict liability interpretation of measured weights.

This is a significant issue when laid against the current Measurement of Weight Notice provisions and a proposed vehicle and axle set tolerance of 500 kg.

14.9 The Australian government through the National Measurement Institute recognises this point and even though the Australian States have held onto a range of measurement adjustments (tolerances) for enforcement weighing of vehicles, they also have a very strict process set down for weighing device use and calibration frequency covered off in the National Measurement Institute Weighbridge Operators Manual. This manual covers off the factors that result in inaccurate weight measurement and is far superior to the loose approach covered by NZS Measurement of Weight Notice. If relatively low tolerances are to be considered it behoves the prosecutors and enforcement agency to rigorously manage the accuracy and performance of the devices that will be employed to convict operators under the provision of strict liability.