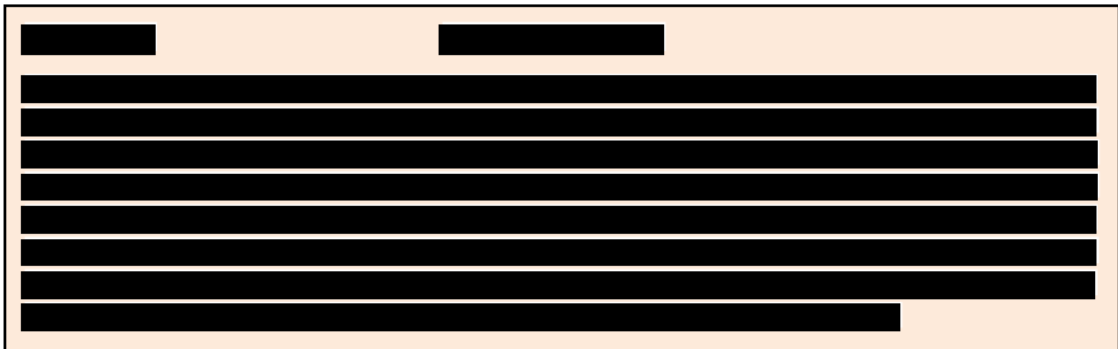


- The provision of information for counter-intelligence purposes
- The provision of permits or accreditations to entities to whom such would not ordinarily be given
- Facilitation or 'ease of process' to avoid regulatory controls and processes that ordinarily protect the public and industry
- Corruption (deriving direct benefits and advantages for favour given)

The NHVR also notes that in some instances, public servants and police may be unwittingly assisting or participating in organised crime activities.



2) Is the draft model for assessing risk of infiltration a helpful way to assess risk of organised crime group infiltration of lawful occupations and industries?

The NHVR considers that as a way to assessing the potential for infiltration, the model does achieve its purpose. The NHVR encourages a broadening of the specific purposes explanations however, as the examples may limit thinking for users without the benefit of a law enforcement background or deeper awareness of organised crime involvement in industry.

3) What changes or additions would you make to the draft model for assessing the risk of infiltration?

The NHVR is of the view that any additional tailoring of the risk assessments for industries being analysed, and more focussed upon the peculiarities of those industries, may be extremely beneficial.

4) Having regard to the regulatory tools described in Chapter 4, which regulatory tools are, or might be useful in addressing each of the risks identified in the draft model for assessing the risk of infiltration?

The NHVR notes that many of the proposed tools are not currently available under the *Heavy Vehicle National Law*, and some may require significant legislative reform to enable their application to the Heavy Vehicle industry. The NHVR believes though, that should such regimes be provided in the law, risks of infiltration may be better controlled by:

- Positive licensing regimes
- Negative licensing regimes
- Registration schemes
- Rules relating to re-entry

The NHVR notes that given the extent and breadth of the heavy vehicle industry (involving loaders, packers, schedulers, consignors, consignees, management, and drivers), and the volume of persons employed within the industry, it may prove unrealistic and largely impossible to restrict those who are employed in the industry, or maintaining effective

business controls. The NHVR notes that in some jurisdictions the Anti-Association laws do have such a power to exclude certain persons from certain occupations.

Regulatory regimes

- 5) For the purpose of preventing organised crime group infiltration of lawful occupations and industries, what are the advantages and disadvantages of regulation by:
- A traditional occupation or industry regulator such as Business Licensing Authority
 - Victoria Police
 - Both a traditional regulator and Victoria Police?

The NHVR is of the view that in all decisions regarding persons declared to be, or known associates of, organised crime group members, reliance ought to be placed upon police intelligence as an indicator of the overall risk posed by the individual; the responsibility though, ought to be a shared one. Insofar as the benefits and disadvantages of all three options are concerned, the NHVR offers:

	Benefits	Disadvantages
Regulator	Frees police from burden	Infiltration of regulators is also a risk
Victoria Police	Centralisation and focus with constancy of traditional role. Intelligence capability	Potential for subjectiveness Resource intensive
Regulator & Police	Uses 'horses for courses'	Could lead to conflicts of opinion

- 6) If a regulator is required to prevent the infiltration of organised crime groups into an occupation or industry, how does this affect, or how might this affect, the pursuit of its other regulatory purposes and objects?

The NHVR believes that the purposes and objects of the *Heavy Vehicle National Law* would be supported by the prevention of entities associated with organised crime. Although it is acknowledged that the current legal framework does not allow the prevention of entry to the industry for particular individuals or corporations, future reform may provide additional controls for companies and truck drivers.

The NHVR notes that whilst future reforms may provide licensing or accreditation regimes for companies and driver (e.g. under a Safety Management System regime), individuals performing roles/functions in association with the freight task (e.g. loaders, packers, consignors, etc.) may fall beyond the scope of such schemes.

- 7) In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries, is it useful to regulate entry into an occupation or industry?

The NHVR notes that although the tools for preventative exclusion are not currently available under the *Heavy Vehicle National Law*, the NHVR believes that by limiting entry to occupations and industry, the risks of infiltration may be better controlled. The NHVR cautions however, that because of the extent and breadth of the heavy vehicle industry (involving loaders, packers, schedulers, consignors, consignees, management, and drivers), and the volume of persons employed within the industry, such moves may limit the potential employment pool of the industry and prove somewhat impossible.

- 8) In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries, what are the costs and benefits of any of the following:
- Positive licensing regimes
 - Negative licensing regimes
 - Registration schemes
 - Rules relating to the effective control of a business
 - Rules relating to who may be employed in a business
 - Other entry-regulation tools that you would like to comment on?

With regards to the regimes listed, the NHVR offers:

	Costs	Benefits
Positive licensing regimes	Persons may be unduly excluded from roles and created a limited employment pool	Creating pre-conditions for drivers & others using objective preconditions can preclude members and associated of organised crime groups
Negative licensing regimes	May be difficult to 'break free' of historical offending and start afresh Difficult to implement and continuously monitor	Known members and associates of organised crime groups may be appropriately excluded
Registration schemes	Registration schemes can prove difficult to manage and monitor, draw significant resources, and can pose challenges when attempting to remove or cancel entities from schemes (e.g. QCAT, VCAT, etc.)	Registration and accreditation schemes would introduce requirements that provide visibility and intelligence, particularly for companies in the heavy vehicle industry
Rules relating to effective control of a business	Also requires high resource commitment and relies heavily upon self-reporting (which in the case of organised crime remains unlikely)	Similar to registration schemes, effective business controls could be established amid Safety Management Schemes, Work Health & Safety requirements, etc., and other controls for the manner in which industries must operate
Rules relating to who may be employed in a business	Controlling those who are employed in the heavy vehicle industry may adversely limit the employment pool, and would likely prove very difficult to enforce (especially in the event of false identification) Relies upon company accepting responsibility for probity checks Approach may be fettered by company owners who are also group members/associates resulting in 'gang only' staff	Could provide greater scrutiny over those employed May introduce greater integrity to the heavy vehicle industry

9) **In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries, what are the costs and benefits of group-based licence exclusions?**

The NHVR believes that group-based exclusions could appropriately limit access to the heavy vehicle industry, though also note that the *Heavy Vehicle National Law* provides no such regime. The NHVR also consider that the impact upon the employment pool, though not as adverse as individual regimes, would have impacts across the industry. It is the NHVR's view that group-based exclusions would be better suited to provisions from the various States' Anti-Association laws.

10) **In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries, is it useful to monitor an occupation or industry?**

The NHVR believes that as membership and association to organised crime groups is linked to an individual, greater value would be derived from a focus upon natural persons and their corporations, rather than specific occupations or industry.

11) **When monitoring an occupation or industry in order to prevent or detect the infiltration of organised crime groups, what are the costs and benefits of any of the following:**

- (a) Short licence periods/regular licence renewals
- (b) A complaints-based model versus an inspection-based model
- (c) Investigative powers (or particular investigative powers)
- (d) Prohibited practices
- (e) Continuous disclosure obligations
- (f) Other monitoring tools that you would like to comment on?

With regards to the regimes listed, the NHVR offers:

	Costs	Benefits
Short licence periods/regular renewals	Increased actual costs, loss of productivity and regulatory burden may result from shorter licence periods	Increased visibility for false identification, particularly if linked to facial-recognition technologies
Complaints-based model vs inspection-based model	With limited resources, providing a satisfactory response to complaints could be challenging, and inspections may be too infrequent	Provides targeting of persons of interest, and allows for intelligence-driven activity
Investigative powers	Introduces perceptions of over-policing and over-regulation by government	Provides appropriate tools to properly consider the links and associations with crime groups
Prohibited practices	Extremely difficult to enforce/control in the heavy vehicle industry, and would likely rely upon an investigation or whistle-blower	Addresses the behaviours/acts that facilitate organised crime activity
Continuous disclosure	Unless statutory requirements support disclosure under an appropriate regime, disclosure relies upon voluntary compliance – an occurrence unlikely for organised crime	Promotes a high standard of professionalism amongst those operating legitimate businesses

- 12) **What are the most useful ways of detecting people (particularly organised crime groups) who are operating in a lawful occupation or industry without the required authorisation (such as a licence)?**

The NHVR holds firm to the view that police intelligence should be the cornerstone of a prevention program. Only by assessing an individual for suitability, measured against factual and intelligence information, could a regime to exclude organised crime members and their associates be truly effective.

- 13) **Which enforcement measures are useful, or might be useful, in preventing organised crime group infiltration of lawful occupations and industries?**

Where supported by statutory provisions, and when applied in their proper context, the use of licensing, registration and business controls would all provide effectiveness in preventing infiltration to occupations and industry. The challenge remains the powers of various regulators to exclude or disrupt, in concert with police intelligence.

- 14) **In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries, is it useful to regulate the exit of people from an occupation or industry? Which tools are, or might be, useful for this purpose?**

The NHVR agrees that, at appropriate times, it may be entirely prudent to exit inappropriate persons and/or corporations from occupations or industries. Various States' laws (e.g. Queensland's Transport Operations (Passenger Transport) Act and the Tow Truck Act) provide avenues for initial exclusion, and departures from accreditation and authorisation schemes.

- 15) **Are there any problems with current information-sharing arrangements? If so, how might these problems be overcome? Information-sharing arrangements can refer to information sharing between regulators and Victoria Police, between different Victorian regulators, between Victorian and interstate regulators, and between any other agencies that hold relevant information.**

As a partner agency to the NHVR, Victoria Police are generally highly-responsive to requests, and regularly engage under information-sharing protocols. The NHVR notes however, that all States' jurisdictions are bound by Information Privacy laws that often hamper a freer, open exchange of relevant data and information.

- 16) **Please comment on the extent to which regulatory tools that may be used to prevent the infiltration of organised crime groups into lawful occupations and industries may:**

- (a) **Insufficiently protect the rights of people affected by decisions of the regulator**
- (b) **Insufficiently protect the rights of any other stakeholder**
- (c) **Impose additional burdens on regulators, courts and/or tribunals in relation to the provision of reasons for decisions and opportunities for review**

The NHVR is of the view that some decisions may be susceptible to impinging upon the rights people subject to such decisions; however, this must be tempered against the rights of society to reject the practices and behaviours of criminals and those that support or enable their efforts. Whilst the NHVR considers that an objective analysis of the evidence and intelligence surrounding the subject person may be prudent, it also recognises that the broader objective of preventing crime is paramount. Provision for a statement of reasons or an internal review of recommendations may provide a sufficient level of scrutiny, as would external review regimes (e.g. VCAT) and avenues for such safeguards are considered appropriate. Philosophically, the NHVR considers that the balance between the rights of an individual, the rights of stakeholders and regulatory burdens can only be considered against the desire or objective for the society to feel safe, to be free of the fear of crime, and to remove all benefits and advantages that may be derived by organised crime groups.

17) In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries:

(a) What issues are, or might be, better dealt with through legal responses other than occupation/industry-based regulatory regimes?

(b) What issues are, or might be, better dealt with through occupation/industry-based regulatory regimes rather than other legal responses?

The NHVR is also of the view that court orders that prevent declared persons (known members or associates of organised crime groups) may be a useful way in which to prevent infiltration. The courts, having properly considered the nature of a subject person's offending, and their use of, or propensity to use an industry or occupation to advance criminal enterprises, may be well positioned to order such restrictions as deemed appropriate in the circumstances.

It is the view of the NHVR that industry-based regulatory schemes are best suited to restricting entry, exiting offenders, and establishing business controls that prevent infiltration of occupations and industries.