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1 Context

Key points

The Transport and Infrastructure Council (Council) has directed the National Transport Commission to review the Heavy Vehicle National Law.

The review will commence in January 2019 and initial recommendations will be provided to the Council by November 2020. Drafting of a new Heavy Vehicle National Law is expected to commence in 2020/21.

1.1 Objectives

The objective of the Heavy Vehicle National Law (HVNL) Review is to deliver – from a first principles perspective – a modern, outcome-focussed law regulating the use of heavy vehicles that will:

▪ improve safety for all road users
▪ support increased economic productivity and innovation
▪ simplify the HVNL, its administration and enforcement of the law
▪ support the use of new technologies and methods of operation, and
▪ provide flexible, outcome-focussed compliance options.

1.2 Background

The HVNL was enacted in 2012 and commenced in 2014 and replaced 13 model laws and six state and territory transport related laws. The objective of the reform was to implement a seamless, national, uniform and coordinated system of heavy vehicle regulation in a way that:

▪ promotes public safety
▪ manages the impact of heavy vehicles on the environment, road infrastructure and public amenity
▪ promotes industry productivity and efficiency in the road transport of goods and passengers by heavy vehicles, and
▪ encourages and promotes productive, efficient, innovative and safe business practices.

In many respects, the HVNL represents a compromise between the views of jurisdictions, industry and other key stakeholders. The result has been inconsistency. The law has not been adopted by two jurisdictions. Participating jurisdictions derogate (i.e. depart) from the HVNL in their local HVNL applications laws. There is inconsistent application and enforcement of the HVNL.

The HVNL comprises more than 800 sections and is supported by five Regulations. Together these provisions can be inconsistent in approach, difficult to read and interpret, onerous for industry to comply with and difficult for the National Heavy Vehicle Regulator (NHVR) to administer.

Many parts of the HVNL are complex, prescriptive and reflective of an era when access to digital technology and innovation was not a consideration.
The HVNL does not recognise that in many situations (such as regional or remote Australia) or in different industries regulated under the law (such as agriculture, mining, cranes) a “one size fits all” approach to regulation is not appropriate.

In this context the Council agreed in May 2018 that the NTC should bring forward the planned review of the HVNL and supporting regulations by two years, to commence in January 2019.

In November 2018 the Council agreed to the Terms of Reference for the HVNL Review (Appendix A).
2 Heavy Vehicle National Law Review

Key points
The review of the HVNL will be conducted from first principles and result in an entirely new law that will better meet the original intent of heavy vehicle regulation.

2.1 First principles

The NTC will adopt a first-principles approach to the HVNL Review. Rather than simply looking to the existing law as a starting point, assumptions underpinning the existing law will be drawn out and tested. The review of the HVNL will result in an entirely new law. Ministers have asked the NTC to consider closer alignment with modern regulatory models, such as the Model Work Health and Safety Act.

The HVNL Review aims to deliver a new law that—

- targets the highest priority risks
- aligns harms and risks to controls
- is proportionate to the identified risks
- is fair, transparent and appellable
- is enforced fairly and predictably, and
- encourages a shift in the balance from traditional roadside enforcement to back of house

—while improving the efficiency in handling the National freight task.

The NTC will also consider the outcomes of related projects being led by the NHVR, Transport Certification Australia, the Commonwealth and the Productivity Commission.

2.2 Scope of the Review

The scope of the Review will include the entirety of the HVNL (which includes the Regulations), other than the performance of the National Heavy Vehicle Regulator.

The Review will consider matters such as:

- whether the objects of the HVNL remain appropriate and clear
- whether the HVNL is fulfilling its objects
- closer alignment with model Work Health and Safety Law
- the benefits of increasing national consistency of heavy vehicle regulation, at the same time being able to adapt and apply sensibly to remote, regional and urban areas
- the varied tasks regulated under the HVNL and the capacity of regulated parties to comply with the HVNL
- opportunities to remove legislative barriers to efficient administration of the law
- opportunities to restructure and simplify the HVNL, remove redundancy and move detail down the hierarchy of legislative instruments, and
2.3 Desired outcomes of the law

The primary objective of the HVNL is to ensure that a heavy vehicle operates safely while delivering an efficient service – that is, a **safe and efficient heavy vehicle journey** (see Figure 1).

Fundamentally most harms – harms being risks to public safety and excessive public infrastructure wear and damage – occur during the journey. These harms are, however, heavily influenced by decisions and actions outside of the journey, which is why the HVNL regulates on- and off-road activities, and parties who can influence the safe and efficient journey.

The HVNL should manage harms, and aid efficiency and productivity, by regulating those who control or influence the component parts of a heavy vehicle journey.

A safe and efficient heavy vehicle journey relies upon:

- a **safe driver** – one who is well-trained, competent, fit for duty and alert when driving
- a **safe vehicle** that is registered, roadworthy and safely loaded, and
- the heavy vehicle is travelling on a **suitable route** – given its mass and dimensions – that minimises public safety risks and excessive impacts on road infrastructure.
Figure 1. Elements of a safe and efficient heavy vehicle journey

Parties in the Chain (Influencers)

- Fit for duty
- Authorised
- Safely loaded
- Meets standards
- Roadworthy
- Mass
- Dimensions
- Public safety
- Operating safely
- Competent
- Alert when driving

Safe Driver + Safe Vehicle + Suitable Route = Goal: Safe and Efficient Journey
Minimise harms through all components that make up the journey
2.4 Project framework

The regulatory outcomes of the law and the most appropriate regulatory mechanisms to achieve these outcomes will be key considerations of the review.

Figure 3 illustrates the identified regulatory outcomes under the HVNL (columns in green and grey boxes) – that is, what is regulated.

Figure 3 also illustrates how we regulate to manage harms and aid efficiency to achieve these outcomes. The regulatory mechanisms (rows in black and grey boxes) that will be explored during the review are:

- Applying a risk-based approach to regulating heavy vehicles, including three risk-based models
- Accrediting operators to deliver best practice, and
- Managing compliance, including enforcement and technology.

In the context of a freight task that is set to treble by 2050 (Infrastructure Partnerships Australia, 2009, p. v), and compliance and enforcement resources that are trending downwards relative to the freight task, the review will explore how accreditation and technology can be better utilised to encourage alternative and innovative compliance and enforcement options that are risk-based.

There are three risk-based approaches to regulating heavy vehicles that will be explored as part of the review (white boxes in Figure 3). These are:

- Prescriptive – the government is responsible for identifying risks and prescribing risk treatments; operators are responsible for implementing the prescribed treatments.
- Performance-based – the government is responsible for identifying risks and setting commensurate performance standards for risk treatments; operators are responsible for specifying and implementing risk treatments that meet those performance standards.
- Safety assurance – the government specifies an overall safety objective, and monitors outcomes; operators are responsible for identifying and managing risks to attaining the safety objective, and providing assurance of appropriate risk management policies and procedures to attain the safety objective.

The HVNL review will also consider other policy matters that fall outside the scope of the identified regulatory outcomes (column in green and white box in Figure 3).

To this end the NTC will release eight issues papers:

1. Risk-based heavy vehicle regulation
2. Effective fatigue management
3. Easy access to suitable routes
4. Safe vehicles
5. Safe people and safe practices
6. Accrediting operators to deliver best practice
7. Managing compliance, and
8. Other policy matters.
These issues papers will address the priority areas identified in the terms of reference. These are:

- improved fatigue management (safe driver)
- safe and efficient access (suitable route)
- accreditation for safer operations (accrediting operators)
- telematics, technology and data (managing compliance)

The purpose of the issues papers is to seek:

- views on the current state of the HVNL
- problems with the current state
- broad solutions to the problems identified, and
- confirmation that we have not omitted anything.

Following consultation on each of the eight issues papers and the release of a summary of outcomes, a consultation Regulatory Impact Statement will be developed and published. At the conclusion of the consultation, a decision Regulatory Impact Statement will be presented to the Council for consideration. For further details on the policy cycle and project timing see Section 3.

Figure 2. Heavy Vehicle National Law Review deliverables
Figure 3. Heavy Vehicle National Law Review framework

Regulatory outcomes

Issues Paper 1
Risk-based approach to regulating heavy vehicles
Prescriptive
Risk identification: Government
Risk treatment: Government
Risk control: Industry

Performance-based
Risk identification: Industry
Risk treatment: Industry
Risk control: Industry

Safety Assurance
Risk identification: Industry
Risk treatment: Industry
Risk control: Industry

Issues Paper 2
Effective fatigue management
• Alertness of the driver

Issues Paper 5
Safe people and safe practices
• Competent
• Authorised
• Fit for duty
• Operating safely

Issues Paper 4
Safe vehicles
• Authorised vehicle
• Meets standards
• Roadworthy
• Safely loaded
• Performance Based Standards

Issues Paper 3
Easy access to suitable routes
• Mass and dimensions
• Public safety
• Productive and safe use of road infrastructure

Issues Paper 6
Accrediting operators to deliver best practice

Issues Paper 7
Managing compliance
• Enforcement
• Technology

Issues Paper 8
Other policy matters
3 Process

Key points
The Transport and Infrastructure Council has agreed to a governance structure for the HVNL Review.
The HVNL Review will follow the policy and legislative development cycle that is used in all projects at the NTC.

3.1 Governance structure
The governance structure for the HVNL Review is illustrated in Figure 4. The role of each group is, in broad terms, explained below.

<table>
<thead>
<tr>
<th>Group</th>
<th>Role</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transport and Infrastructure Council</td>
<td>Council will consider the recommendations of the Expert Panel and NTC together.</td>
</tr>
<tr>
<td>Transport and Infrastructure Senior</td>
<td>The NTC’s final reform proposals will be presented to the Transport and Infrastructure Senior Officials’ Committee (TISOC) for endorsement before Council’s consideration.</td>
</tr>
<tr>
<td>Officials’ Committee</td>
<td></td>
</tr>
</tbody>
</table>
| Expert Panel                               | The Expert Panel (EP) has been appointed by Council to consider and provide independent advice and insight to the NTC and the Council on technical and policy matters. The EP is independent and has six members. The EP is responsible for developing and providing detailed submissions prior to Council outlining its response to the NTC’s proposed amendments to the HVNL policy, alternate recommendations as appropriate and any additional insight/considerations for Council’s deliberation. The Chair is Peter Harris. The other members of the Expert Panel are (at January 2019):  
  ▪ Sharon Middleton  
  ▪ Andrew Ethell  
  ▪ Gary Mahon  
  ▪ Gary Liddle, and  
  ▪ Louise Bilato. |
| Jurisdictional Strategic Oversight Panel    | The Jurisdictional Strategic Oversight Panel (JSOP) will provide high-level strategic advice to the NTC and Council from a government perspective. The JSOP comprises senior level |
officers from all jurisdictions. The JSOP provides the forum for resolution of technical or policy issues that cannot be agreed at the working group level.

<table>
<thead>
<tr>
<th><strong>Policy groups</strong></th>
<th>Two policy groups will assist with the review by representing regulators’ and industry perspectives.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>▪ The Heavy Vehicle Regulators Panel (HVRP) will include police and members from the NHVR, Western Australia and the Northern Territory agencies with responsibility for regulation of heavy vehicles.</td>
</tr>
<tr>
<td></td>
<td>▪ The Industry Advisory Group (IAG) includes members representing heavy vehicle operators.</td>
</tr>
</tbody>
</table>

| **Working groups** | The NTC will establish working groups to assist in specifying problems and identifying workable policy solutions. These groups will inform and advise the NTC in developing recommendations for reform to Council. These working groups will be convened as the policy work proceeds. |
3.2 Policy cycle

The HVNL review will follow the policy and legislative development cycle that is used in all projects at the NTC. This is a repeatable policy cycle which includes the development of an issues paper, consultation Regulatory Impact Statement and decision Regulatory Impact Statement.

To keep the HVNL review focused and recognising the different stakeholders and interests involved a predictable process (as shown in Figure 5) will be applied:

- developing issues papers and consulting on those papers
- summarising issues and feedback, and developing and consulting on a regulatory impact statement, and
- developing a decision regulatory impact statement for senior officials and transport ministers’ consideration.
The NTC’s policy processes are based on the Australian Policy Cycle (Althaus et al., 2013) and are comparable to other independent statutory agencies such as the Australian Law Reform Commission and the Productivity Commission.

Unlike the Australian Law Reform Commission and the Productivity Commission, the NTC is also required to undertake three additional tasks:

- facilitate agreement of six state, two territory and the Commonwealth governments (as well as the Australian Local Government Association - ALGA) to the policy proposals through multi-lateral negotiations
- turn the agreed policies into proposed legislative changes, and
- facilitate agreement of six state, two territory and the Commonwealth governments (and ALGA) to the detailed proposed legislative changes that are consistent with the agreed policy, through multi-lateral negotiations.

For the Australian Law Reform Commission and the Productivity Commission:

- governments are not obliged to follow their advice
- are not involved in brokering agreement across jurisdictions to the proposed changes, and
- do not draft legislative changes to be adopted by each jurisdiction.

However, unlike those other agencies, the NTC does not just propose policy changes, it:

- seeks to gain agreement to the proposed changes by each jurisdiction through the Transport and Infrastructure Council, and
- drafts the legislation and again seeks agreement from the Transport and Infrastructure Council to agree to the detail of the legislation.

Given the NTC’s role in facilitating agreement to policy and legislative changes, the proposals will reflect the need for national consensus.
Table 2. Developing reform – comparable organisations

<table>
<thead>
<tr>
<th>Step</th>
<th>Aust. Law Reform Commission</th>
<th>Productivity Commission</th>
<th>NTC - HVNL Review</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Preliminary</td>
<td>Research and discussion with experts and stakeholders</td>
<td>Government initiates an inquiry</td>
<td>NTC consults with key stakeholders on issues for reform and approach</td>
</tr>
<tr>
<td>2. Terms of reference/scope</td>
<td>Develop terms of reference (and scope)</td>
<td>Treasurer sends reference to Productivity Commission (PC)</td>
<td>Transport and Infrastructure Council approves terms of reference (and scope)</td>
</tr>
<tr>
<td>3. Preliminary examination of relevant key issues</td>
<td>Release Issues Paper and invites submissions</td>
<td>Distributes issues paper to focus attention and invites written submissions</td>
<td>Release Issues Paper (for each identified area), invite submissions and consults</td>
</tr>
<tr>
<td>4. Set out draft proposals for reform</td>
<td>Release Discussion Paper - set out draft proposals for reform and seek further consultation</td>
<td>Publishes a draft report or position paper and invites further submissions</td>
<td>Releases a Consultation Regulatory Impact Statement consistent with COAG’s A Guide for Ministerial Councils and National Standard Setting Bodies Consults on the proposed policy changes</td>
</tr>
<tr>
<td>5. Settling policy proposals</td>
<td>Produces final report</td>
<td>Produces final report</td>
<td>Develops a Decision Regulatory Impact Statement for consideration by the Transport and Infrastructure Council</td>
</tr>
<tr>
<td>6. Seeking policy agreement</td>
<td>The Australian Government responds</td>
<td>The Australian Government responds</td>
<td>All ten members of the Transport and Infrastructure Council consider the Regulatory Impact Statement</td>
</tr>
<tr>
<td>7. Drafting instructions</td>
<td></td>
<td></td>
<td>Prepare drafting instructions to amend the law so as to implement Council’s agreed reforms. Consult with jurisdictions, amend as necessary.</td>
</tr>
<tr>
<td>8. Draft law</td>
<td></td>
<td></td>
<td>Work with Parliamentary Counsel</td>
</tr>
</tbody>
</table>
3.3 Timing

The HVNL review will produce:

1. The eight Issues Papers (by the end of August 2019)
2. A summary of outcomes, and

We will consult broadly on each of these papers.

The NTC’s policy recommendations will be presented to Council for consideration in November 2020 in the form of a Decision Regulatory Impact Statement.

Council will, in conjunction, consider any independent recommendations from the Expert Panel.

The agreed policy recommendations will be translated into law, regulation and other instruments from November 2020, with draft legislation presented to Council as available.

The consultation approach is explained in further detail in Section 4.
### Table 3. HVNL review timing

<table>
<thead>
<tr>
<th></th>
<th>2019</th>
<th>2020</th>
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<tbody>
<tr>
<td></td>
<td>Jan</td>
<td>Feb</td>
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<tr>
<td><strong>Approvals</strong></td>
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<tr>
<td><strong>Drafting</strong></td>
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<tr>
<td><strong>Public Consultation</strong></td>
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Heavy Vehicle National Law Review Approach v1.1 April 2019
4 Consultation approach

Key points
The NTC wants to give everyone affected by the HVNL an opportunity to have a say. Stakeholders will have the opportunity to participate in the review through a variety of forums including a dedicated consultation website, regular newsletters, co-design workshops, working groups and engagement activities in regional and remote Australia.

4.1 Consultation purpose
The NTC will use a range of policy development tools and engagement options to:
▪ design policy options to meet regulatory goals
▪ test policy options
▪ recommend preferred policy options, and
▪ translate agreed policy to legislation.

4.2 Who will be consulted
In conducting the review, the NTC will consult with relevant organisations and stakeholders, including:
▪ heavy vehicle operators and heavy vehicle industry associations
▪ state and territory governments, including non-participating jurisdictions
▪ local governments
▪ the Commonwealth Government
▪ the National Heavy Vehicle Regulator and other regulators
▪ other regulated parties and their representatives (such as the National Farmers’ Federation)
▪ enforcement agencies and police
▪ other government entities, and
▪ the Australian community.

4.3 How consultation will occur
The NTC wants to give everyone affected by the HVNL an opportunity to have a say. Stakeholders will have the opportunity to participate in the HVNL review through a variety of dedicated forums including:
▪ interactive consultation website
▪ regular newsletters
▪ co-design workshops
▪ working groups
▪ engagement activities in regional and remote Australia, and
Planned engagements will be publicised on the HVNL Review website and in regular newsletters.

Table 4. Consultation channels

<table>
<thead>
<tr>
<th>Channel</th>
<th>How stakeholders can participate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interactive consultation website</td>
<td>The NTC will use a dedicated consultation website to engage with all stakeholders affected by the HVNL. The website will contain the most up-to-date information on the review, including upcoming consultation details and access to all published documents. The consultation website will be interactive and encourage stakeholders to have their say. Stakeholders will be able to contribute to the review through surveys, forums and quick polls on the website. See <a href="http://www.hvnlreview.ntc.gov.au">www.hvnlreview.ntc.gov.au</a>.</td>
</tr>
<tr>
<td>Regular newsletters</td>
<td>The NTC will send a regular newsletter to stakeholders to provide an update on the review and advise on opportunities to participate in the review. The newsletter will be sent to stakeholders who subscribe to receive updates on the review. Stakeholders can contact the NTC at <a href="mailto:HVNLreview@ntc.gov.au">HVNLreview@ntc.gov.au</a> to be added to the newsletter distribution list.</td>
</tr>
<tr>
<td>Co-design workshops</td>
<td>Targeted co-design workshops will be run in different locations across Australia. The purpose of the co-design workshops is to develop a shared understanding of the problem, understand different perspectives and develop workable policy solutions. The NTC will invite representatives from jurisdictions, industry, the regulator and others to attend and participate in co-design workshops.</td>
</tr>
<tr>
<td>Working groups</td>
<td>The NTC will rely on working groups, with membership representing a broad cross section of stakeholder interests and views, to assist in defining problems and designing workable policy solutions. These working groups will comprise specialist and/or technical representatives from jurisdictions, industry, the Regulator and others who agree to advise the NTC on its development of recommendations for reform to Council.</td>
</tr>
<tr>
<td>Engagement activities in regional and remote Australia</td>
<td>The NTC will undertake consultation in regional and remote Australia to ensure the broader Australian community and industry are given the opportunity to participate in the review. Where possible, the NTC will leverage existing industry and local government forums and events where government and the heavy vehicle industry will already be in attendance to provide an update on the review and hear from the community.</td>
</tr>
<tr>
<td>Industry associations</td>
<td>Stakeholders will also be able to have their say on the review through their relevant industry association. The NTC will work closely with industry associations to ensure the views of their members are considered in the development of policy recommendations.</td>
</tr>
</tbody>
</table>
Appendix A Terms of Reference

Establishment

1. The National Transport Commission (NTC) will review the Heavy Vehicle National Law and its supporting regulations (collectively, the HVNL).
2. The review will commence on the approval of these terms of reference by the Transport and Infrastructure Senior Officials Committee (TISOC) on behalf of the Transport and Infrastructure Council (the Council).

Purpose

3. The purpose of the review is to deliver – from a first-principles perspective – a modern, outcome-focussed law regulating the use of heavy vehicles that will:
   a. improve safety for all road users
   b. support increased economic productivity and innovation
   c. simplify the HVNL, its administration and enforcement
   d. support the use of new technologies and methods of operation, and
   e. provide flexible, outcome-focussed compliance options.

Governance

4. The NTC will:
   a. conduct the review on behalf of the Council
   b. report on review progress to the Council, including consultation findings, and
   c. develop and propose policy recommendations to the Council.
5. The NTC will report and propose policy recommendations to the Council via the Transport and Infrastructure Senior Officials’ Committee (TISOC).

Scope and key considerations

6. The review will consider:
   a. whether the objects of the HVNL remain appropriate and clear
   b. the efficacy of the HVNL in fulfilling its objects
   c. closer alignment with model Work Health and Safety Law
   d. the benefits of increasing national consistency of heavy vehicle regulation, able to adapt and apply sensibly to remote, regional and urban areas
   e. the varied freight task and capacity of those in the road freight supply chain to comply with the HVNL
   f. opportunities to remove legislative hurdles to efficient administration of the law
   g. opportunities to restructure and simplify the HVNL, remove redundancy and move detail down the hierarchy of legislative instruments, and
   h. the capacity of the law to accommodate new business models, digital technologies and data.

Priorities

7. Without limiting its scope, the review will address the following priorities:
a. safe and efficient heavy vehicle access, including simpler, quicker and more amenable access decision-making processes
b. a risk-based approach to regulating fatigue, based on evidence, to reduce complexity and administrative burdens
c. an improved accreditation framework, designed to inspire and embed more innovative, more efficient and safer compliance
d. the increasing use of technology and data for regulatory purposes, and
e. any other priorities identified during the review.

Regarding other reviews

8. The review will regard the outcomes of:
   a. the Commonwealth’s Review on Oversize Overmass Access Arrangements
   b. the Inquiry into National Freight and Supply Chain Priorities and the National Freight and Supply Chain Strategy
   c. the NHVR’s Review of Heavy Vehicle Accreditation Systems
   d. Transport Certification Australia’s improvements to the Intelligent Access Program
   e. the NHVR’s introduction of the Electronic Work Diary
   f. the NTC and Alertness CRC’s Heavy Vehicle Fatigue Data Research Project, and
g. any other relevant reviews.

Consultation

9. In conducting the review, the NTC will consult with relevant organisations and stakeholders, including:
   a. the Commonwealth Government
   b. state and territory governments, including non-participating jurisdictions
   c. local governments
   d. the National Heavy Vehicle Regulator
   e. the trucking industry and trucking industry associations
   f. other regulated parties and their representatives
   g. enforcement agencies and police
   h. Austroads
   i. Transport Certification Australia, and
   j. the Australian community.

10. In addition to the consultation described in section 9, an expert panel (Panel) will be convened to guide the review. The Panel:
   a. will comprise members nominated by TIC
   b. will have an independent chair
   c. will guide the NTC on the review,
   d. consider the current operation of the HVNL
   e. propose opportunities to improve policies underpinning the HVNL; and
   f. provide independent advice to Council on the direction of the review.
11. The review will also be oversighted by the Jurisdictional Strategic Oversight Panel (JSOP), comprising deputy secretary / deputy director general level officers, to facilitate government engagement and collaboration.

12. Industry will be comprehensively engaged via a variety of dedicated forums.

**Completion and implementation**

13. The review will be completed by the end of 2019 and the NTC will provide recommendations to the Council for approval. Recommendations may be provided to the Council prior to the review’s completion.

14. The NTC will lead drafting of proposed legislative amendments from mid-2019, based on approved recommendations.
Appendix B Reference List
