



Submission to the Senate Rural and Regional Affairs and
Transport References Committee

Inquiry on the importance of a viable, safe, sustainable and
efficient road transport industry

5 November 2019

LIST OF RECOMMENDATIONS

1. The transport satellite account becomes a permanently government funded activity.
2. NatRoad submits the federal Independent Contractors Act could be changed so that the proscription on undercutting Award wages was made clearer. This prohibition would have to exclude payments where the independent contractor/owner driver clearly made a commercial decision to accept a lesser rate than the Award prescription because they would otherwise be travelling empty or they were involved with a backload. Hence, informed consent to such an arrangement should override any strengthened provision. That informed consent must have been reduced to writing.
3. The Government advance its planned review of the law relating to unfair contract terms.
4. The priorities identified by Infrastructure Australia that would enhance both safety and the efficiency of the freight task should be analysed, and appropriate funding allocated to their achievement.
5. The policy framework for Heavy Vehicle Road Reform be considered by the Committee with a view to better integration of the current Government policy with other reform proposals.
6. In order that the Heavy Vehicle National Law becomes fit for purpose all Australian governments fully support the outcome of the HVNL review.
7. The Committee recommend to the federal Government that the Department of Employment, Skills, Small and Family Business liaise with NatRoad in order to ascertain what current or future funding is available to assist with the development of the training pathways outlined.
8. A dedicated authority such as the Australian Transport Safety Bureau (ATSB) be given power to promptly and fully investigate serious heavy vehicle accidents and to share the results and recommendations publicly so that all industry participants can take appropriate action to reduce the road toll.
9. The investigative organisation's role (see Recommendation 8) encompass better research on trends and causal factors about heavy vehicle road safety, such as a growing difference between the level of improvement in the safety record of heavy articulated trucks when compared with heavy rigids.
10. The federal Government introduce a mandatory code for the road transport industry under Part IVB of the Competition and Consumer Act which would address harsh payment terms in transport industry contracts inclusive of a "pay when paid" prohibition and a maximum 30 day payment provision.
11. A federal consultative mechanism structured along the lines of the Road Freight Industry Council established in NSW be put in place federally.

INTRODUCTION

1. The National Road Transport Association (NatRoad) is pleased to provide a submission on important issues about the road transport industry raised by the Committee's terms of reference.¹
2. NatRoad is Australia's largest national representative road freight transport operators' association. NatRoad represents road freight operators, from subcontractors to large fleet operators, general freight, road trains, livestock, tippers, express, car carriers, as well as tankers and refrigerated freight operators. NatRoad's principal policy focus is on the regulation of heavy vehicles that is vehicles over 4.5 tonnes.
3. More than 75 per cent of non-bulk freight is transported by road. The road freight transport industry continues to play a major role in Australia's supply chain, with the ability to provide quick and reliable door-to-door delivery nationwide. The characteristics of the industry are next discussed as they provide the context to a number of the NatRoad responses to the terms of reference. Following that discussion, we set out the individual term of reference and the accompanying NatRoad narrative. Given the breadth of the terms of reference, we raise policy matters that we believe are critical for introduction as a means of underpinning a sustainable road transport industry.

INDUSTRY CHARACTERISTICS

4. There are a number of inquiries underway at present which are analysing various industry issues. The two main reviews are of the Heavy Vehicle National Law (HVNL) being conducted by the National Transport Commission² (NTC) and an inquiry by the Productivity Commission on national transport regulatory reform.³ We attach the NatRoad submission to the Productivity Commission as Attachment A, as a number of the issues contained in the Committee's terms of reference are also being investigated by the Productivity Commission.
5. For the HVNL review, the Australian Trucking Association, of which NatRoad is a member, commissioned Deloitte Access Economics to prepare a report⁴ (Deloitte report) on various issues. Chapter 2 of that report contains an analysis of the industry's characteristics.
6. Deloitte, for example, indicate that the industry is on a growth trajectory. They state that freight growth follows Gross Domestic Product (GDP) growth, and given Australia's strong economic performance, freight is expected to grow by 26%, to around 915 billion tonne-kilometres, by 2026. Road transport is a key element of the economy.
7. The Deloitte report notes that the structure of the industry is complex and covers small operators with a single vehicle through to multinational fleet operators. The industry covers those who only operate trucks and those who provide transport across modes. The industry also covers those

¹ Terms of reference: [https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural and Regional Affairs and Transport/RoadTransportIndustry/Terms_of_Reference](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport/RoadTransportIndustry/Terms_of_Reference)

² <https://www.ntc.gov.au/current-projects/heavy-vehicle-national-law-review/>

³ See the terms of reference and the issues raised by the inquiry here:
<https://www.pc.gov.au/inquiries/current/transport/issues/transport-issues.pdf>

⁴ March 2019 Report available at this link:

<http://www.truck.net.au/sites/default/files/submissions/DAE%20Economic%20benefits%20of%20improved%20regulation%20in%20the%20Australian%20trucking%20industry%20March%202019%20Final.pdf>

who may not own or operate their own equipment but focus on coordination (e.g. freight forwarders).

8. The report indicates a distinction between hire and reward and so-called “ancillary” operators. These ancillary businesses are firms whose main activity is not in transport, but they have fleets to transport their own products. NatRoad has both ancillary and hire and reward members.
9. One of the data deficiencies that have been identified by the NTC in the context of charting freight movements in Australia is the number of ancillary versus hire-and-reward vehicles involved in road freight.⁵
10. At the time of the publication of the relevant report⁶ the NTC said:

It is estimated there are 42,000 operators in the road freight transport sector, ranging from single truck operators to large multi-national corporations. The overwhelming majority (98.5%) of these were engaged in road freight operations (ANZSIC 611) with the remainder in the road freight forwarding sector (ANZSIC 6642).⁷

11. Whilst the statistics are not ideal, the NTC made estimates of a number of important aspects of the industry further indicating:

Australian Jobs data from 2015 suggests that 46% of truck drivers work in ancillary businesses and 54% in hire and reward, while 22% of courier/postal deliverers work in ancillary businesses and 78% work in hire and reward.⁸

12. The Deloitte report notes a further important characteristic of the hire and reward sub-sector: subcontracting plays an important role within the hire and reward fleet. Many of these subcontractors are owner-operators with no employees. Less than 0.5% of all operators own a fleet of more than 100 trucks, and 70% have just one truck in their fleet.⁹
13. Deloitte also notes that the industry is highly competitive and stated that in “2016-17, businesses in the broader Road Transport industry had a profit margin of 9.7%.”¹⁰ This margin is surprisingly high when compared with the lived experience of NatRoad members which is that 2-3% profit margin is common, albeit not a sustainable level. This has translated to lower rates of capital expenditure than counterpart sectors overseas with the ANZ Bank noting in respect of 2017 that “capex/sales is remarkably correlated however consistently 2 per cent less than larger global peers. This helps explain why Australia's average fleet age is more than twice as old as USA (14 years v 6.5 years).”¹¹
14. The NatRoad profit margin figure, whilst anecdotal, is substantiated in context. The road freight industry has a low market share concentration. The four largest companies accounted for over 15% of industry revenue in 2015-2016.¹² But the low market concentration figure belies the market power of the major companies in the road freight industry.

⁵ NTC *Who Moves What Where- Freight and Passenger Transport in Australia* August 2016 at p16
[https://www.ntc.gov.au/Media/Reports/\(D62E6EFC-36C7-48B1-66A7-DDEF3B04CCAE\).pdf](https://www.ntc.gov.au/Media/Reports/(D62E6EFC-36C7-48B1-66A7-DDEF3B04CCAE).pdf)

⁶ Ibid

⁷ Id at p32

⁸ Id at p33

⁹ Above note 4 at p 13

¹⁰ Ibid

¹¹ <https://infogram.com/road-transport-1hxr4z91p93y6yo>

¹² IBISWORLD Report 14610 *Road Freight Transport in Australia* April 2016 at 18

15. This market power is reinforced by the subcontract system within the industry, mentioned earlier. Larger companies often subcontract work to smaller owner-operators. Those owner operators have little power to influence prices. The characteristics which most distinguish the owner operator area of the market are fragmentation and intense competition.¹³ A significant number face business viability issues associated with their lack of power in the market and poor profit margins. Further, these small businesses lack economies of scale and suffer increased safety and operating costs.
16. There is, despite the Deloitte report, a lack of data about the road transport sector that substantiates how the industry characteristics we have outlined translate to on-ground, measurable trends.
17. The lack of data about important transport matters has led NatRoad to support Government efforts to improve this deficiency. In October 2018 the Australian Bureau of Statistics (ABS) brought together the total contribution of transport activity across all industries in the Australian economy, through the *Australian Transport Economic Account: An Experimental Transport Satellite Account*.¹⁴
18. The importance of this development becoming a permanent feature of the data landscape was emphasised by NatRoad in our submission¹⁵ to the Productivity Commission review mentioned earlier. We refer the Committee to paragraphs 66-71 in Attachment A which, as stated earlier, is a copy of the NatRoad submission to the Productivity Commission.
19. In that submission, we noted that having data which brings together the contribution of all transport activity to the economy is essential, especially in reinforcing evidence based decision making. We submit that the Committee recommend that the transport satellite account becomes a permanently government funded activity.

THE IMPORTANCE OF AN ENFORCEABLE MINIMUM AWARD RATE AND SUSTAINABLE STANDARDS AND CONDITIONS FOR ALL STAKEHOLDERS IN THE ROAD TRANSPORT INDUSTRY

20. The first part of this term of reference deals with enforceable minimum award rates. There is not a single rate as implied in the expression of this term of reference. The two main modern awards that affect the road freight task are the *Road Transport (Long Distance Operations) Award 2010* (Long Distance Award) and the *Road Transport and Distribution Award 2010* (Distribution Award) (together the Transport Awards).
21. The Transport Awards are unique in their inter-action. The Distribution Award's coverage is excluded per clause 4.2 of its terms where employees are covered by the Long Distance Award "whilst undertaking long distance operations." Therefore, the Distribution Award applies to transport operations unless a long distance operation is undertaken, or another modern award applies e.g. the *Waste Management Award 2010*.
22. The phrase "whilst undertaking long distance operations" is able to be ascertained via two definitions contained in both the Distribution Award and the Long Distance Award (clause 3.1 of

¹³ Ibid

¹⁴ <https://www.abs.gov.au/ausstats/abs@.nsf/latestProducts/5270.0Media%20Release1502010-11%20to%202015-16>

¹⁵ <https://www.pc.gov.au/data/assets/pdf/file/0014/243041/sub007-transport.pdf>

both). In essence, a long distance operation is one which exceeds 500 kilometres from a principal point of commencement to a principal point of destination or an interstate journey in excess of 200 kilometres.

23. As with other modern awards, the Transport Awards contain clauses about application and operation, consultation and dispute resolution, types of employment and termination of employment, classification and minimum wage rates, and hours of work and related matters. The classification system in the Transport Awards is in large part based on the particular vehicle a driver is driving in the course of employment: for example, a bicycle courier is a Grade 1 driver under the Distribution Award with most B-double drivers being classified at grade 7 under the Distribution Award. The Long Distance Award does not have the first two grades as set out in the Distribution Award; therefore, a grade 8 classification under the Distribution Award equates to a grade 6 under the Long Distance Award.
24. NatRoad is and has been involved with the long running review of modern awards currently being conducted by the Fair Work Commission. We have contributed to that process and the Transport Awards are subject to that process. The minimum award rates are established by the Transport Awards. They operate to provide an appropriate minimum safety net of enforceable conditions for the road transport industry.
25. Per section 134 *Fair Work Act, 2009 (Cth)* the Fair Work Commission has reviewed modern awards to ensure that “together with the National Employment Standards” they “provide a fair and relevant minimum safety net of terms and conditions.”
26. As with all modern awards the Transport Awards are important for the transport industry because they establish the terms and conditions of employment for most employers and employees in the transport industry. In fulfilling that function, modern awards establish the majority of minimum labour costs for an industry so they are important not only as safety net instruments but as a means to assess most of the cost of labour (items like workers compensation premiums and long service leave costs must also be incorporated into such costings.)
27. NatRoad submits that greater enforcement of the current law is required rather than new laws introduced where award wages and conditions are being undercut because of so-called independent contracting arrangements.
28. Subcontractor members of NatRoad are small business operators, not employees who require the paternalistic protection of labour laws. They want to be treated as independent operators of commercial businesses and be free to negotiate their own terms of trade. They hold fiercely to that outlook. Sub-contractors should be regulated by commercial laws rather than by laws which are built on an industrial relations perspective.
29. NatRoad is aware for example that the Transport Workers Union (TWU) has alleged that “many riders and ridesharing workers are made to become ‘independent contractors’ and as a result they are effectively paid below award rates and are denied basic benefits.”¹⁶
30. The quoted statement by the TWU ignores the protections currently available to independent contractors and to workers under the *Fair Work Act, 2009 (Cth)* (the FWA) and the *Independent Contractors Act, 2006 (Cth)* (the ICA). NatRoad commends greater enforcement of the current law in this context.

¹⁶Transport Workers Union of Australia *Submission to the Select Committee on the Future of Work and Workers* 30 January 2018 p3

31. Sections 357, 358 and 359 of the FWA provide protections against “being made” to become an independent contractor. These are sufficient protections, albeit that they are currently being scrutinised in a process launched by the federal Government on 19 September 2019.¹⁷

32. As the Productivity Commission has noted:

Currently, there are three sections in the FW Act that are aimed at curbing the incentives for employers to instigate sham arrangements. These provisions prohibit an employer from:

- *misrepresenting an employment relationship or a proposed employment arrangement as an independent contracting arrangement (s. 357)*
- *dismissing or threatening to dismiss an employee for the purpose of engaging them as an independent contractor (s. 358)*
- *making a knowingly false statement in order to persuade or influence an employee to become an independent contractor (s. 359).*¹⁸

33. The Commonwealth has in place legislation which protects independent contractors. Indeed, the signal case showing the effectiveness of the ICA arose in the context of a transport industry matter: *Keldote Pty Ltd & Ors v Riteway Transport Pty Ltd*.¹⁹ That decision made it clear that one of the powers vested in the relevant court by the ICA was to avoid the undercutting of wages:

*Section 15(1)(c), like its predecessors, was partly designed to prevent the undercutting of wages.*²⁰

34. NatRoad supports the application of commercial law to subcontractor arrangements rather than an extension of labour law based regulation. It is important to maintain that distinction in the law. NatRoad is not, however, blind to two industry developments in the current market, developments fuelled by the highly competitive nature of the road transport industry discussed earlier.

35. NatRoad members report that appropriate training standards and barriers to entry of untrained operatives entering the industry are not in place. These developments are producing two undesirable outcomes. First, unskilled unsafe ‘operators’ are hindering the industry’s drive towards increased safety objectives and public respect. Secondly, ease of entry is allowing an oversupply of unskilled operators who are not adept at proper costing. This factor is lowering revenue levels to below sustainability for many skilled and compliant operators, particularly those who balk at accepting unfair contract terms, discussed below.

36. Accordingly, NatRoad submits the ICA could be changed so that the proscription on undercutting Award wages was made clearer. This prohibition would have to exclude payments where the independent contractor/owner driver clearly made a commercial decision to accept a lesser rate than the Award prescription because they would otherwise be travelling empty or they were involved with a backload. Hence, informed consent to such an arrangement should override any strengthened provision. That informed consent must have been reduced to writing.

¹⁷ See *Workplace Express Jail Time for Wage Theft Drawing Closer* 19 September 2019 which appends the AG’s Discussion Paper entitled *Improving Protection of Employees’ wages and entitlements: strengthening penalties for non-compliance* where sham contracting is discussed at p 9 et seq

¹⁸ Productivity Commission *Workplace Relations Framework Vol 2* (2015) at p813

¹⁹ [2008] FMCA 1167 (22 August 2008)

²⁰ Id at para 124

37. Sustainable conditions also require a change in the law to ensure that terms and conditions of contracts offered in particular to small business are fair. Members are increasingly concerned that contract conditions in the industry are creating unfairness and are adding to commercial pressures. These practices add to a culture that does not give safety the primary focus. NatRoad has expanded on these arguments in two submissions.
38. The first submission²¹ to the Heavy Vehicle National Law Review outlined the problem and sought a recommendation that there should be a step up in enforcement along the chain of responsibility. Customers who create, for example, unrealistic time slot requirements should be prosecuted, especially where the contract says that missing a time slot means the operator doesn't get paid but still must deliver the goods at another proximate time free of charge, a provision NatRoad has seen in contracts referred to us by members for assessment.²²
39. Operators believe that they are targeted for prosecution because it is easier for the authorities to take action against them as opposed to others who create the commercial pressures by requiring oppressive contract conditions to be met. Prosecuting those up the chain will assist with changing this outlook and also appropriately focus on those who are riding roughshod in an intensely competitive industry, as discussed earlier.
40. The second submission was in confidence to the Assistant Treasurer and is not therefore reproduced. But the arguments presented to the Assistant Treasurer are now replicated.
41. Whilst small business has had protection from unfair terms imposed by standard form contracts from 12 November 2016,²³ that protection needs to be strengthened because the current law is inadequate. Under the current law, penalties cannot be imposed against a customer for including or relying on an unfair contract term in a small business contract. An application needs to be made to a court and the court can then declare the identified unfair terms to be void and therefore not enforceable.
42. At present the Australian Competition and Consumer Commission (ACCC) or other parties can't get penalties to stop the practice of placing unfair contract terms in standard form contracts – they also can't issue infringement notices against companies that include unfair terms in their small business contracts. So, there is little reason for companies to take out these provisions from their transport contracts unless the ACCC uses scarce resources to take them to court.
43. We therefore have asked the Government to bring on a quick review of the law and to more strongly prohibit unfair contract terms. We want the introduction of penalties where unfair contract terms are placed in a contract.
44. We also said to the Assistant Treasurer that greater fairness in the industry can be brought about by the federal Government acting to introduce a mandatory code for the industry under Part IVB of the *Competition and Consumer Act 2010* (Cth) (CCA) which would address harsh payment terms in transport industry contracts inclusive of a "pay when paid" prohibition and a maximum 30 day payment provision, a matter taken up further below.

²¹ <https://www.ntc.gov.au/media/2060/ntc-issues-paper-risk-based-approach-to-regulating-heavy-vehicles-warren-clark-national-road-transport-association-natroad-may-2019.pdf>

²² Another common but unacceptable term is discussed here https://www.fullyloaded.com.au/industry-news/1909/natroad-throws-its-weight-behind-senate-probe?utm_source=Sailthru&utm_medium=email&utm_campaign=ATN%20eDM%2019%2009%202019&utm_term=list_full_yloaded_newsletter is so-called "hold harmless provisions"

²³ See <https://www.accc.gov.au/business/business-rights-protections/unfair-contract-terms>

45. We would ask the Committee to recommend that the Government advance its planned review of the law relating to unfair contract terms and that the Government introduce a mandatory industry code so that at the least payment terms in the industry are made fair and regularised.

THE DEVELOPMENT AND MAINTENANCE OF ROAD TRANSPORT INFRASTRUCTURE TO ENSURE A SAFE AND EFFICIENT ROAD TRANSPORT INDUSTRY

46. Appropriate road infrastructure, including suitable rest areas for heavy vehicles, is a critical component of the road freight task. It is vital that key interstate freight networks are upgraded for the expected increase in freight discussed earlier and are always accessible. Australian governments are aware of the challenges that planning in this area presents.
47. The Transport and Infrastructure Council (TIC) published the *National Freight and Supply Chain Strategy*²⁴ (the Strategy) and related Action Plan²⁵ in August 2019.
48. The Strategy outlines four critical action areas building on jurisdictional freight and infrastructure plans and ongoing national reform efforts, like Heavy Vehicle Road Reform (HVRR)²⁶ and the National Road Safety Strategy.²⁷ One of those action areas is “smarter and targeted infrastructure investment.”
49. That is certainly an area where reform is required; smarter investment requires better access planning. The road access restrictions that NatRoad members face every day, can be partly attributed to the road funding model which does not link the cost of road use with road investment. It is therefore difficult for road managers to recover the full cost of supplying, maintaining or upgrading road infrastructure so that it is suitable for heavy vehicles. As a result, road managers, including local governments, restrict heavy vehicle access to protect road assets.²⁸ This is a matter addressed at length in the recent NatRoad submission on access²⁹ to the NTC in the HVNL review process mentioned in paragraph 4 above.
50. Access for heavy vehicles is a crucial area for reform. An efficient freight supply chain should be able to operate 24 hours, 7 days a week. Requiring heavy vehicles to travel only during daylight hours or in certain specified time periods over less-than-optimal routes impedes productivity, increases operating costs and adds to road congestion. The current system needs a radical overhaul because it delivers inefficient outcomes. Planning for better road infrastructure is vital but without reform of access requirements at the same time, that planning is in part defeated.
51. Government has turned its mind to better infrastructure development for the freight industry. As indicated above, TIC endorsed the National Freight and Supply Chain Strategy and National Action Plan on 2 August 2019. The Strategy and Action Plan set an agenda for integrated national action across all freight modes over the next 20 years.

²⁴ <https://www.freightaustralia.gov.au/sites/default/files/documents/national-freight-and-supply-chain-strategy.pdf>

²⁵ <https://www.freightaustralia.gov.au/sites/default/files/documents/national-action-plan-august-2019.pdf>

²⁶ <https://www.transportinfrastructurecouncil.gov.au/publications/heavy-vehicle-road-reform.aspx>

²⁷ <https://www.roadsafety.gov.au/>

²⁸ For example, a principle in the *Hume Region Planning for Freight Pilot* is to limit the extent of local roads used by heavy vehicles, favouring State-managed roads: <http://greatershepparton.com.au/assets/files/documents/planning/freight-land-use/Hume-Region-Planning-for-Freight-Pilot-Strategy-Report.PDF>

²⁹ [https://www.ntc.gov.au/Media/Reports/\(263FEC41-ED59-0B28-1957-4159764910A4\).pdf](https://www.ntc.gov.au/Media/Reports/(263FEC41-ED59-0B28-1957-4159764910A4).pdf)

52. Whilst NatRoad commends the National Action Plan's goal setting, it would be useful for TIC to prepare milestones that would indicate a timetable for achieving the aims, albeit the position that TIC would like to see achieved by 2024 is set out against each target. Linkages with Infrastructure Australia priority plans, such as the most recent plan issued in February 2019³⁰, would also assist to better clarify how the government vision for freight meshes with identified infrastructure needs inclusive of proposed costs of the relevant infrastructure.
53. By way of example, Infrastructure Australia identifies that regional road network safety improvements must occur.³¹ High-risk sections of regional roads must be upgraded. The delivery of safer road infrastructure is a critical priority having regard to the following finding by Infrastructure Australia:
- The varied quality of Australia's regional road network is resulting in a high number of crashes and fatalities. Between 2008 and 2016, 55% of road fatalities in Australia occurred in regional areas. Relative to population size, the number of fatalities in regional areas was over four times greater than for major cities over the same period.*³²
54. NatRoad submits that the Committee should recommend that the priorities identified by Infrastructure Australia that would enhance both safety and the efficiency of the freight task should be analysed, and appropriate funding allocated to their achievement. This submission reinforces the outcome by 2024 envisioned from Action 1.2 from the National Action Plan which is for "All levels of government to improve and upgrade infrastructure in regional and remote areas to lift regional freight productivity, access and safety across all modes and delivery of essential goods and services to isolated communities."³³
55. Acknowledging that this is the third major inquiry underway that deals with the required policies to apply appropriate reform to the road transport industry, we draw the Committee's attention to paragraphs 11 and paragraphs 17 et seq of Attachment A. In those paragraphs, we urge the better evaluation of the HVRR process, excluded from the HVNL review and forming only part of the Productivity Commission's reference unless it is not practicable for the Commission to exclude cost reflective heavy vehicle pricing policies.
56. It is too early to establish whether the HVRR policies will be considered by the Productivity Commission. However, it seems that this question will be answered in November 2019 when the Productivity Commission is due to publish a draft report on the national transport regulatory reform reference. We would commend scrutiny by the Committee of the policies underpinning HVRR, particularly having regard to the matters raised by NatRoad in Attachment A.

³⁰ <https://www.infrastructureaustralia.gov.au/publications/infrastructure-priority-list-2019-project-and-initiative-summaries>

³¹ Id at p44

³² Ibid

³³ Above note 25 at p 8

THE REGULATORY IMPACT, INCLUDING THE APPROPRIATENESS, RELEVANCE AND ADEQUACY OF THE LEGISLATIVE FRAMEWORK, ON ALL STAKEHOLDERS IN THE ROAD TRANSPORT INDUSTRY

57. The Deloitte report mentioned in paragraph 5 of this submission sets out the developments which led to the HVNL being established.³⁴
58. The Deloitte report then shows how the promise of a single administering body and greater heavy vehicle safety and efficiency gains have not been fully achieved.³⁵ That is in part due to the design of the HVNL and the slow development of appropriate and effective policies.
59. This deficiency is mainly attributable to the way the HVNL has been implemented, especially at the State and Territory level. The HVNL is implemented by means of an applied law scheme, supported by regulations and other instruments. The law is introduced by Queensland and applied by all other participating jurisdictions (as their own state or territory law with their own specific derogations from the Queensland model); Western Australia and the Northern Territory do not participate.
60. The HVNL has been implemented in this way because the Commonwealth doesn't have the power to make laws with respect to road, rail and intermodal transport under the Australian Constitution. The HVNL is enforced by state and territory police and authorised officers of the National Heavy Vehicle Regulator and its delegates (with complete delegation to the NHVR having only occurred to date in South Australia, Tasmania and the ACT). But the manner in which the police and the road authorities enforce the law is not consistent, a matter explored in NatRoad's first submission to the HVNL review.³⁶
61. The HVNL review currently underway shows that the HVNL is not fit for purpose. It is vital that it is reformed to ensure that the law does not remain unresponsive and difficult to change, so that the HVNL is not another barrier to the efficient conduct of the road transport industry. We submit that the Committee should recommend that all Australian governments fully support the outcome of the HVNL review so that the law becomes fit for purpose.

THE TRAINING AND CAREER PATHWAYS TO SUPPORT, DEVELOP AND SUSTAIN THE ROAD TRANSPORT INDUSTRY

62. NatRoad considers that there is a need to allocate much greater industry and government resources to the issues associated with training and the development of career pathways.
63. A survey commissioned by Volvo Group Australia identified that employers find it difficult to recruit not just the quantity but particularly the quality of drivers needed. 52 per cent reported having issues attracting the quantity of drivers needed and 82 per cent had problems attracting the quality of drivers they expect.³⁷

³⁴ Above note 4 at p16-18

³⁵ Introduced at p 19 and then developed in detail in the balance of the report

³⁶ Above note 21

³⁷ *Professional Truck Driver Shortage: How driver availability impacts the transport industry & Australian society*, Volvo Group Australia, May 2016

64. This survey and others³⁸ consistently indicate strong support for improved driver training comprising a nationally recognised qualification combined with supervised on-the-job experience.
65. A key finding of the recent Austroads Review of the National Heavy Vehicle Driver Competency Framework³⁹ is that licencing regulators place value on practical experience in requirements for young drivers wishing to obtain a car licence. However, the same value is not applied to heavy vehicle licensing. Although there is a time-based requirement for the gaining or upgrading of a heavy vehicle licence, there is no prerequisite to have driven a heavy vehicle prior to that assessment.
66. A perhaps, unintended, but additional impact of this time-based requirement for heavy vehicle licensing is that it delays the natural progression of a young but otherwise highly competent driver in certain license categories. This is frustrating for those who would like to work in road transport, and potential drivers are more likely to change to a profession that offers faster job progression and earlier access. Licensing laws must be reviewed so that they better reflect the acquisition of skills and competencies.
67. There is a long-held belief in the industry that genuine competency in all facets of the driving task requires time and experience. This is why road transport operators value practical experience. This preference for practical experience is influenced by the industry's lack of confidence in the current training and assessment process. If the training process delivered a "job ready" driver attitudes will change.⁴⁰
68. However, investing in training and supervised experience is expensive, and with the low profit margins being experienced in the industry, discussed earlier, many operators have not been prepared to or are unable to make this investment.
69. An additional consideration is that while the training packages available (Certificates II, III and IV in Driving Operations) are nationally recognised qualifications, the inconsistent approach to delivery and unit selection (due to the program design primarily being driven by the particular Registered Training Organisation (RTO)) means that many operators view these qualifications as unreliable and ineffective in providing transferable core/baseline skill sets.
70. Further, insurers do not take the qualification into consideration when pricing a policy and operators generally do not believe there is any transferable benefit or increased business confidence in employing someone who holds these qualifications.
71. The heavy vehicle driver shortage is widely recognised as a significant challenge facing the road freight transport sector. The average age of current heavy vehicle drivers is around 53 years with a mere 15 per cent of drivers under the age of 30. With the road freight task expected to grow in the manner expressed in paragraph 6 of this submission and with older drivers retiring from the workforce, this problem will be compounded unless urgent action is taken.
72. While it might seem counter-intuitive to raise the bar on driver training and licensing at a time when road transport operators are grappling with a long-term, chronic driver shortage, it will eventually help the industry to attract more, and better qualified people.

³⁸ Truck Driver Skills: A survey of the Transport Industry, TAFE NSW, May 2016

Austrroads Research Report, Review of the National Heavy Vehicle Driver Competency Framework, 2018

³⁹ Austrroads Research Report, Review of the National Heavy Vehicle Driver Competency Framework, 2018

⁴⁰ Ibid

73. Part of the difficulty in attracting young drivers is that the occupation is not seen as a professional position and career pathways are not well developed or understood. The mapping of career paths is nearly non-existent despite the varied nature of the industry and multitude of potential roles ranging from yard hand and driver to compliance officer and general manager.
74. A properly founded career pathway is a series of connected education and training strategies and support services that enable individuals to secure industry relevant certification and obtain employment within an occupational area and to advance to higher levels of future education and employment in that area. For the road transport industry this process is currently inadequate and must be reviewed.
75. A Career Pathway for the road transport industry should include:
- Alignment of secondary and postsecondary education with workforce development systems;
 - Rigorous, sequential, connected, and efficient curricula, that “bridge” courses to connect basic education and skills training and integrate education and training;
 - Multiple entry and exit points;
 - Financial support or flexibility to accommodate the demands of the labour market in order to allow individuals to meet their ongoing financial needs and obligations;
 - Specific focus on local workforce needs, aligned with the skill needs of the industry sectors important to local, regional or state economies, and reflective of the active engagement of employers;
 - Curriculum and instructional strategies appropriate for adults, that make work a central context for learning and work readiness skills;
 - Credit for prior learning and other strategies that accelerate the educational and career advancement of the participant;
 - Services that have among their goals a focus on secondary and postsecondary industry recognised credentials, industry specific employment, and advancement over time in education and employment within the industry; and
 - Being founded upon and managed through a collaborative partnership between government, industry representatives, employers, education providers, and other industry stakeholders.
76. In an industry first, NatRoad in collaboration with PACCAR and the PACCAR Dealer Network announced its ‘Future-Ready’ program at the 2018 NatRoad Annual Conference.
77. One of the aims of the Future Ready program is to turn heavy vehicle operation into a nationally recognised trade. While there are many hurdles to overcome in making this a reality, in January 2019, NatRoad submitted a proposal to the Transport and Logistics Industry Reference Committee to develop a nationally recognised apprenticeship training model for heavy vehicle operators and included a proposed structure for a new qualification: Certificate III in Professional Driving.
78. NatRoad’s proposal for an apprenticeship style program would provide a school leaver with a progressive, experience-based grounding in the industry, leading to a combination heavy vehicle licence at around 20 years of age. In order to utilise this critical pathway employers must be willing to support the employment of young newly licensed drivers and licensing must be coupled with a robust training framework.

79. The apprenticeship program is designed to introduce standardised industry-led training without being employer or stream specific. It would also ensure that drivers are more prepared to meet and accommodate the changes occurring in the road transport industry with skills that are transferable to other roles within the transport and logistics sector, thereby offering drivers a more certain career path.
80. The Transport and Logistics Skills Forecast 2018 identified the following skills as the most important for the Transport and Logistics workforce over the next three to five years:
- Compliance
 - Health and safety
 - Driving
 - Operational
 - Digital
81. These priorities align with our proposal and reflect feedback from heavy vehicle operators when asked what they see as essential skill sets for drivers. Each year of training would include units covering the following areas:
- Health and Safety – given the high-risk nature of the road transport industry, it is essential that all drivers are able to ensure their own safety and that of other road users. Reducing the number of incidents involving heavy vehicles is a key concern of all state and territory road safety strategies. Safe, professional drivers will also improve the image of the industry.
 - Compliance – the road transport sector is highly regulated with heavy vehicle regulations designed to increase safety and protect road infrastructure. Heavy vehicle drivers who fail to understand these regulatory requirements can be individually penalised with heavy fines as well as risk exposing themselves and others to death or serious injury.
 - Driving – Licensing across each year will ensure organisations have a working asset, the driver shortage is being minimised and the progressive learning cycle is occurring with a building of ability and confidence.
 - Customer Service/Business Strategy – Drivers are the face of a business and of the road transport industry alike. A customer centric mindset is critical to ensure sufficient self-promotion and a positive impact on end users. Equipping drivers with a business understanding that highlights the important role each driver plays in their company is also an important element to the training matrix.
 - Clerical – Documentation and record keeping requirements are increasing due to the new Chain of Responsibility requirements and are also important business practices in the movement of goods. Drivers need to understand what documents are needed and how to process forms including delivery dockets, work diary records, permits and incident reports.
 - Mechanical - Employers require a basic mechanical ability of their drivers given the remote nature and varied working hours undertaken. Professional drivers need to be able to rectify minor mechanical problems competently. At a minimum, drivers should be able to relay critical information to the manager ensuring minimal down time and reduced risk to the general public.
 - Technology – digital literacy skills are needed to use new technologies and interpret data.

82. The above combination of themes ensures a gradual building of capability and practical skill sets as the trade progresses, inclusive of preparation for an increasingly digital era. Member feedback is that the training must deliver practical 'hands on' skills.
83. The skills acquired are in a progressive manner that would allow the apprentice to build capability and confidence and allows the employer to systematically introduce new tasks to the driver's role as the years progress and licenses are obtained successfully. The flow of units permits the employer to gain value from their staff member early and builds a solid foundation for a long-term candidate who brings worth to their organisation. Acquisition of the relevant skills of this kind should be bolstered by adding the newly framed occupation to the skills shortage list by occupation administered by the Department of Employment, Skills, Small and Family Business.
84. NatRoad believes that building on this project should involve both government and industry funding. NatRoad would ask that the Committee recommend to the federal Government that the Department of Employment, Skills, Small and Family Business liaise with NatRoad in order to ascertain what current or future funding is available to assist with the development of the pathways outlined.
85. Having government backing for the pathways envisaged would enhance confidence in a trusted, nationally recognised and effective training program. Other benefits of this proposal include:
- Better recognition of competency
 - More comprehensive driver training encompassing the full scope of skills
 - Increasing driver diversity
 - Increasing employment opportunities for school leavers
 - Shifting negative perceptions of truck drivers to show the industry as it is now, not as it has been.

THE SOCIAL AND ECONOMIC IMPACT OF ROAD-RELATED INJURY, TRAUMA AND DEATH

86. NatRoad has a strong commitment to improving road safety. Even one death on the road is too many. NatRoad's policies on road safety have been set out in detail in Attachment A.
87. As set out in paragraph 37 of Attachment A, road safety data should enable benchmarks to be prepared that in turn enables measurement of actual performance improvements in road safety against appropriate targets.
88. NatRoad believes also that further qualitative analysis of crashes involving heavy vehicles is needed. It is NatRoad policy that a dedicated authority such as the Australian Transport Safety Bureau (ATSB) be given power to promptly and fully investigate serious heavy vehicle accidents and to share the results and recommendations publicly so that all industry participants can take the appropriate action to reduce the road toll.
89. That role could also encompass better research on trends and causal factors, such as a growing difference between the level of improvement in the safety record of articulated trucks when

compared with heavy rigids.⁴¹ However, the newly created Office of Road Safety⁴² could subsume that task into its function described as being “the primary policy advisor to the federal ministers for road safety on matters related to delivering safe roads, vehicles, speeds, and people, and will draw together interdisciplinary expertise and experience to learn, share and channel effort towards proven approaches to reducing national road trauma.”⁴³

90. We submit that the Committee should recommend the establishment of a dedicated heavy vehicle crash investigative authority as a matter of urgency.

EFFICIENT COST-RECOVERY MEASURES FOR INDUSTRY STAKEHOLDERS, INCLUDING SUBCONTRACTORS

91. We refer to the discussion at paragraph 44 of this submission about the recommended introduction of a mandatory code for the road transport industry under Part IVBCCA.
92. In this context, NatRoad notes the findings of Australian Small Business and Family Enterprise Ombudsman (ASBFEO) in her final report entitled *Inquiry into the effect of the Road Safety Remuneration Tribunal’s Payments Order on Australian small businesses*.⁴⁴ Recommendation 11 in that final report is:

Given the strong support of owner drivers, the Australian Small Business and Family Enterprise Ombudsman should inquire into ways to reduce payment terms for owner drivers as part of its Inquiry into Payment Terms.

In that final report ASBFEO also records that:

*Payment terms and payment timeframes was a prominent issue in the small transport business industry. Owner drivers reported that they are, on the whole, reliable account payers and they were unanimous regarding an imbalance in payment structure in the industry.*⁴⁵

93. In the context of the evidence then received by ASBFEO and noted in the prior paragraph, the 30 day payment requirement was the only redeeming feature of the Road Safety Remuneration Tribunal’s (RSRT) regulatory framework. It was otherwise a disaster, as is evident from the ASBFEO final report.
94. In an industry which has a high proportion of small business operators who maintain their businesses on tight margins, discussed earlier in this submission, cash flow is king. Our members inform us that late payment increases financial and administrative costs, reduces the potential for investment, damages business relationships and adds to business uncertainty and failure.

95. Indeed, the ASBFEO encapsulated the trends that members discern where she stated that:

⁴¹ Explored in detail in the NatRoad paper referenced here <https://www.natroad.com.au/resources/increasingsafety-road-transport-towards-zero>

⁴² <https://www.infrastructure.gov.au/roads/safety/>

⁴³ Ibid

⁴⁴ The report considered the impact of the Payments Order of the Road Safety Remuneration Tribunal in the months leading up to commencement of the Payments Order as well as during its operation and after its abolition.

<http://www.asbfeo.gov.au/sites/default/files/documents/RSRT%20Payments%20Order%20Inquiry%20Report%20-%20FINAL.pdf>

⁴⁵ Id at 48

(S)mall businesses were more frequently falling victim to the unscrupulous payment practices of some big businesses and governments: 'From stipulating unfair payment terms in contracts, to simply not honouring agreed payment times, a number of big businesses are effectively treating the little guys as banks by forcing them to provide interest free-loans in the form of late paid or unpaid invoices'.⁴⁶

96. Member feedback is that extended payment terms provisions in contracts is not just an issue confined to smaller trucking operations. In the past, the industry generally worked on the basis of a 30 day payment from end of month. For example, for all work carried out in (say) January, payment would be made in the first week of March. This averaged about 45-50 days in payment terms. This was generally acceptable and seemed to be the norm for most industries (not just the road freight industry).
97. As the industry became more reliant on computer based accounting packages, it became common for payment terms to be 30 days from the date of invoice, payable weekly. So for invoices issued for (say) the week ended 15 January, payment would be received on about 20 February. Given the invoicing was undertaken weekly, payment would be received each week (as the 30 day period rolled around). Again, this appears to be an acceptable basis for payment.
98. However, member feedback shows that it is now becoming more common for larger businesses which seek to have freight contracts filled (often companies with overseas based parents) to require payment terms of up to 90 days from the end of the month plus 7 days, i.e. averaging up to 110-120 days from when the work was carried out. With these extended payment terms, road freight businesses are expected to carry a greater amount of debt and risk, with the consequences of a greater likelihood of business failure should the large customer default on the contract or further delay payment beyond the contracted date. This development also favours larger road freight operators which are generally more likely to have the capacity to fund the debt created or to fund the weekly wage and fuel costs which comprise the majority of operators' costs in the industry.
99. Member feedback is that voluntary protocols would be insufficient to solve the problem of extended payment terms.⁴⁷ Accordingly, NatRoad submits that a mandated code along the lines previously outlined in this submission is highly desirable.
100. This policy stance reflects Recommendation 12 from the ASBFEO inquiry which is as follows:
- The Australian Small Business and Family Enterprise Ombudsman recommends that the Department of the Treasury and the Australian Competition and Consumer Commission work with the industry to investigate developing a Code of Conduct for the road freight industry under the Competition and Consumer Act 2010 (Cth).⁴⁸*
101. Accordingly, we submit that the Committee recommend that the federal Government introduce a mandatory code for the road transport industry under Part IVB of the CCA which would address

⁴⁶ <http://www.skynews.com.au/business/business/national/2016/11/16/small-businesses-owed-over--26b.html>

⁴⁷ Substantiated in J Wiggins *Carnell urges notice for slow-paying contractors* Australian Financial Review 24 September 2019 p17 and p22 which makes the point that the Business Council of Australia (BCA) has a supplier payment code which commits signatories to pay suppliers within 30 days. The article speaks of one BCA member pushing out payment times to 65 days. The member the subject of the article is one of 60% of BCA members who have not signed the voluntary code.

⁴⁸ Above note 38 at p6

harsh payment terms in transport industry contracts inclusive of a “pay when paid” prohibition and a maximum 30 day payment provision.

THE IMPACT OF NEW TECHNOLOGIES AND ADVANCEMENTS IN FREIGHT DISTRIBUTION, VEHICLE DESIGN, ROAD SAFETY AND ALTERNATIVE FUELS

102. We refer to paragraphs 51 et seq of Attachment A that addresses the issue of vehicle design, particularly the issue of newer heavy vehicles being safer.
103. Attachment B is the NatRoad submission dated 28 August 2018 to the Transport and Public Works Committee of the Queensland Parliament in respect of its inquiry into transport technology. That submission sets out the NatRoad policies that relate to many aspects of this term of reference. We note that the Committee will report to the Queensland Parliament in June 2020.

THE IMPORTANCE OF ESTABLISHING A FORMAL CONSULTATIVE RELATIONSHIP BETWEEN THE ROAD TRANSPORT INDUSTRY AND ALL LEVELS OF GOVERNMENT IN AUSTRALIA

104. We note that the Transport Satellite Account work undertaken by the ABS, discussed earlier, showed the importance of road freight transport to the Australian economy. As mentioned at paragraph 69 of Attachment A:
 - Transport accounted for \$77 billion (4.6 per cent) of GDP in 2015-16;
 - Transport was integral to day to day activities in other industries which added a further \$45.3 billion (2.7 per cent) of GDP;
 - Transport activity accounted for one million (8.6 per cent) of total employed persons in the economy in 2015-16; and
 - Road transport generated \$137.2 billion in economic output. 60.6% of this was in-house transport activity, with for-hire transport activity contributing 39.4%.
105. The importance of the road freight task is recognised in New South Wales where NatRoad is represented on the Road Freight Industry Council that meets regularly with the transport portfolio Ministers. It is recommended that a similar body be established so as to have regular and planned meetings with federal Ministers on the growing agenda for the road freight industry that will be expanded further following the outcome of the current inquiry and the inquiries by the Productivity Commission and the National Transport Commission discussed earlier.
106. There would be merit in limiting membership of the relevant federal Ministerial consultative group to membership organisations that could provide feedback through elected officials. Those representatives are charged with proposing members’ views and therefore are more likely to provide authentic on ground feedback about policy proposals.



Submission to the Productivity Commission

Issues Paper: *National Transport Regulatory Reform*

27 June 2019

Introduction

1. The National Road Transport Association (NatRoad) is pleased to make a submission on the Issues Paper entitled National Transport Regulatory Reform¹ (Issues Paper) released by the Productivity Commission (PC) in May 2019.
2. NatRoad is Australia's largest national representative road freight transport operators' association. NatRoad represents road freight operators, from owner-drivers to large fleet operators, general freight, road trains, livestock, tippers, car carriers, as well as tankers and refrigerated freight operators.
3. This submission responds to a number of the issues raised in the Issues Paper, focusing solely on the heavy vehicle sector.
4. NatRoad is a member of the Australian Trucking Association (ATA). We are aware that ATA commissioned Deloitte Access Economics to prepare a report (Deloitte Report) that sets out the economic benefits to the Australian economy of introducing a set of policies that promote efficiency and consistency in the regulation of heavy vehicles.² That report is very useful in establishing some of the answers to the questions posed in the PC Issues Paper. We are aware that the PC has recited elements of this work in the Issues Paper.³
5. This submission shows in bold the specific question raised in the Issues Paper which we have addressed. Where the questions are thematic, we have indicated our general policy approach to the subject area. We have not responded to all questions posed.

Context: The Importance of Considering Heavy Vehicle Road Reform

6. As expressed in the terms of reference⁴, Government has asked the PC to assess the economic impact of reforms to transport regulation agreed to by the Council of Australian Governments (COAG) in 2008-2009. Those reforms relate to heavy vehicle safety and productivity, rail safety and maritime safety. The Government has also asked the Commission to recommend further reforms towards a more integrated national market for transport services.
7. The PC, however, has been constrained in its consideration with the terms of reference indicating as follows: "In undertaking its analysis, the Commission should exclude reform measures being progressed separately, such as cost reflective heavy vehicle pricing, as far as is practicable."
8. In the NatRoad media release dated 9 April 2019,⁵ we set out the problem that this term of reference creates. We make it clear at the outset of this submission that NatRoad's position as expressed in that release, is the introduction of cost reflective heavy vehicle pricing reform must be overseen by an independent price regulator, a matter that should be objectively assessed by the PC. We submit that the PC should recommend this step as a critical element of the introduction of the relevant reform. At the least, it would assist the

¹ <https://www.pc.gov.au/inquiries/current/transport/issues/transport-issues.pdf>

² <https://www2.deloitte.com/au/en/pages/economics/articles/economic-benefit-improved-regulation-australian-trucking-industry.html>

³ Above note 1 at p 11

⁴ <https://www.pc.gov.au/inquiries/current/transport/terms-of-reference>

⁵ <https://www.natroad.com.au/news/productivity-inquiry-national-transport-regulation>

cause of transparent and appropriate regulation for the PC to include analysis of this issue in its report.

9. NatRoad submits that independent price regulation for heavy vehicles is long overdue and is essential for maintaining the long term viability and productivity of the road freight transport industry. Independent price regulation should guide any steps to replace the current charging system which is based on a fuel based road user charge, administered as a reduction in fuel tax credits, and registration charges. The independent price regulator would be a vital agency to guide governments in establishing a relevant forward looking cost base, a step that must only be taken once other reforms are in place.
10. The future road funding model should be determined by an independent price regulator that could also assess the extent to which, for example, the road funding model should reflect community service obligations. These fundamental issues cannot be divorced from an assessment of issues that affect the productivity of the heavy vehicle industry; a matter further developed below. Many members have little or no faith in the manner in which the current heavy vehicle reform process is being undertaken.
11. We note that the term of reference quoted above sets out that the PC is given discretion to consider these issues if it is not practicable for them to be excluded. Accordingly, we submit that the PC should take into account issues associated with the Heavy Vehicle Road Reform (HVRR) programme⁶. This is particularly the case as the balance between the provision of basic road services to ensure social mobility, economic welfare, road safety and public security needs to be assessed against the main purpose of the HVRR reforms which is to “turn the provision of heavy vehicle road infrastructure into an economic service where feasible.”⁷ To be effective and free of political interference, that process must be guided by an independent price regulator and the PC’s input about the extent to which heavy vehicle road infrastructure may be converted into an economic service would be invaluable in this context. The HVRR cannot be separated from a consideration of integration of the national freight market as, when, (perhaps if) implemented, it will change the face of the heavy vehicle freight industry.

Risk Based as against Prescriptive Regulation

12. A relevant inquiry is that currently being undertaken by the National Transport Commission (NTC). It is undertaking a comprehensive review of the Heavy Vehicle National Law (HVNL).⁸
13. The first issues paper published by the NTC covers one of the information requests contained in the Issues Paper. The Issues Paper asks **what are the practical effects of prescriptive versus risk-management based approaches?** This question is answered by the NTC in its paper *A risk based approach to regulating heavy vehicles*⁹ with the conclusions of the NTC paper being reinforced in the NatRoad submission on that paper.¹⁰
14. In the NatRoad submission we highlight the HVNL does not currently resolve the tension between certainty by way of prescriptive requirements and the adaptability of performance based requirements. We explore how the HVNL seems to have a bet each way, forcing all

⁶ <https://www.transportinfrastructurecouncil.gov.au/publications/heavy-vehicle-road-reform.aspx>

⁷ Ibid

⁸ <https://hvnreview.ntc.gov.au/>

⁹ <https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.ntc-hvnlawreview.files/5715/5382/1099/Risk-based-approach-to-regulating-heavy-vehicles-Issues-Paper1.pdf>

¹⁰ <https://www.ntc.gov.au/media/2060/ntc-issues-paper-risk-based-approach-to-regulating-heavy-vehicles-warren-clark-national-road-transport-association-natroad-may-2019.pdf>

operators and regulated parties to run a safety management system in a prescriptive regulatory environment. This must change with a greater focus on enforcement that is suitable to a modern, efficient industry. The HVNL is a poor piece of legislation. In particular the HVNL is different in scale and style from comparable laws. The HVNL is unduly large and highly prescriptive, with a lot of detail in the primary legislation.

15. The differentiation of the HVNL from the other legislative models that the PC is considering is not justified by any objective characteristics of the size and number of operators in the industry, the nature of their businesses or the technical nature of the activities regulated. The HVNL was formulated based on what was expedient as a means of establishing so-called national regulation at the time of its introduction. It has not been implemented in Western Australia or the Northern Territory, and that is unlikely to occur even following the NTC review currently underway. Further, every participating jurisdiction has derogated from the HVNL. It has categorically failed to deliver greater efficiencies for the industry when compared with the aims of COAG.
16. NatRoad submits that the current inquiry is able to assess the gap between expected benefits from the COAG reform and those achieved, having regard to the anomalies and inconsistencies referred to in the prior paragraph and which have been articulated in the first NTC review paper. The Deloitte Report mentioned in paragraph 4 of this submission shows that adopting the policy positions set out in the Report could have major cost savings for the Australian economy, inclusive of \$13.6 billion in cost savings measured in net present value terms to 2050.¹¹

PC Adding Value

17. One of the questions raised by the PC in the Issues Paper is: **“In the light of the other reviews relating to heavy vehicles where do you think the Commission could best add value to the policy and reform agenda?”**¹² We have essentially answered that question in the prior discussion, particularly in relation to HVRR.
18. In that context, we refer again to the point made earlier about the need for the establishment of an independent price regulator, with powers to set prices independently of government and to potentially perform a range of oversight activities related to forward-looking road expenditure. The appointment of the regulator should be an essential early component of HVRR reform. NatRoad strongly promotes the Government establishing an independent price regulator for heavy vehicle charges. Without the establishment of such a regulator the other elements of the next stages of the HVRR would be open to political rather than economic considerations.
19. It would be pointless to establish an independent price regulator if Commonwealth, state and territory governments are not bound by its pricing decisions.
20. NatRoad notes that states and territories will have to pass legislation conferring powers on the regulator, via a COAG decision. Although model legislation is an efficient method of bringing all states and territories under a single pricing regime, there needs to be a will for governments to do so and a need to commit to the details of HVRR that would provide the benefits that the PC is able to, and should, measure.

¹¹ Above note 2 at v

¹² Above note 1 at p 10

21. An independent pricing system would need to have at least the following two characteristics:
 - Governments would agree on the pricing rules to be used and the overall approach for the regulator to follow, shaped by PC recommendations.
 - Once the rules are established, the regulator would make and apply its pricing decisions. Its decisions would not be subject to ministerial approval or parliamentary disallowance.
22. In the current context, the importance of an independent price regulator as an economic regulator developing and setting service levels for the road network is vital. Service levels should be designed to facilitate high productivity vehicle access, future vehicle automation and facilities for heavy vehicles such as rest stops which are currently manifestly inadequate for facilitating the road transport task.¹³ The processes developed by the regulator should seek to eliminate any local council access charges and co-ordinate the road access process so that current inconsistent local government decision making is eliminated.
23. The independent price regulator should also regulate and monitor toll fees and landside port charges, given the current lack of transparency and fairness in setting tolls and landside port charges for heavy vehicles and a lack of uniformity and policy principles associated with the application of toll charges and landside port fees. This is an area where the PC's analysis is important.
24. In relation to roads which are tolled, we ask the PC to focus on the need for changes which would deal with these extant policy problems in Australia:
 - the lack of transparency and fairness in setting toll fees for heavy vehicles;
 - the lack of competition in private toll road operation;
 - heavy vehicle operators paying for road network improvements through increases in tolls without experiencing the promised efficiencies, and
 - governments forcing heavy vehicles to use tolled roads by banning them from alternative routes.
25. In relation to landside port charges, the Australian Consumer and Competition Commission (ACCC) has found that if infrastructure charges on landside transport operators are left unconstrained, they may continue to increase significantly over time. Australia's importers and exporters would then face higher charges to ship their goods than otherwise, and not significantly benefit from the additional competition between stevedores at the east coast ports.¹⁴
26. The ACCC report illustrates that the stevedores face no constraints on increasing infrastructure charges. There is no competitive or regulatory constraint to prevent further increases in charges. It also illustrates that the ACCC's price monitoring role is ineffective as a constraint.
27. NatRoad submits that constraints on the stevedores in this context is required so that they do not use those who service the ports to transport goods to and from customers to

¹³ See <https://www.fullyloaded.com.au/industry-news/1905/ata-in-rest-area-urgency-election-plea> by way of example

¹⁴ [https://www.accc.gov.au/system/files/1465 Container%20stevedoring%20monitoring%20report%202017-18 D08.pdf](https://www.accc.gov.au/system/files/1465%20Container%20stevedoring%20monitoring%20report%202017-18%20D08.pdf) at p 17

subsidise their profits. A finding along these lines by the PC would enhance the debate and lead to government action.

Safety Outcomes

28. There are a range of questions asked about safety in the Issues Paper.¹⁵ The first question is about **what impacts the national reforms have had on safety outcomes**.
29. The answer to that question is that there is no evidence to substantiate that any improvement or worsening in the safety record is linked to the passage of the HVNL. There is a need for much better research on the underlying causes of heavy vehicle road incidents and the key factors involved with identifying trends and patterns, a matter common to all elements of road safety, discussed further below.
30. The example of fatigue related incidents shows that there appears to be no measurable beneficial effect of the passage of the HVNL in controlling the risk of fatigue related incidents. Yet the HVNL has a very large number of highly prescriptive provisions directed to the control of the risk of driving whilst fatigued, centred around a range of pedantic administrative rules. National Transport Insurance data reported on by the National Transport Accident Research Centre¹⁶ shows that there has been a consistent level of fatigue incidents as a proportion of large losses from 2009 to 2017. This figure was at 10% in 2009 and 9.8% in 2017, after having increased in the supervening years.¹⁷ This statistic is also relevant in answering the PC's question as to **whether the HVNL reflects best practice safety regulation**: it does not. There does not appear to have been any conscious focus on designing best practice safety regulation at the time of the implementation of the HVNL.
31. The current reliance on prescriptive work and rest hours and on-road enforcement using work diaries is not the most effective way to manage fatigue. The current law can lead to a perverse outcome of being compliant but not always safe. A restructured HVNL should focus on controlling those risks that lead to on-road incidents. There should be a move away from an insistence on compliance with rules that are not directly related to risk, epitomised in the way the HVNL fatigue laws are currently written and enforced.

Other Contributions to Safety Outcomes

32. The Issues Paper asks: **What impact have other contributors to safety outcomes had since the reforms were introduced?** The area of road safety is in need of a policy revamp and greater focus. The question is not one that can be answered with precision. NatRoad commends greater study of this topic by the PC.
33. The starting point for an answer to the question posed is that the Government commissioned an independent report¹⁸ (Safety Report) into the National Road Safety Strategy 2011-2020¹⁹ (the 2011 Strategy). The 2011 Strategy was a failure. Statistics from the National Crash Database show that by the end of 2016 only 9.1% of the 30% target to reduce deaths had been

¹⁵ Above note 1 at p13

¹⁶ NTARC *Major Accident Investigation Report 2019*

<https://ntilimited.imagerelay.com/share/f509b79ae5124f34a8cc509e94057f>

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¹⁷ Id at page 17

¹⁸ Woolley et al *Inquiry into the National Road Safety Strategy 2011-2020* (September 2018) Cth of Australia

[https://www.roadsafety.gov.au/nrss/files/NRSS Inquiry Final Report September 2018 v2.pdf](https://www.roadsafety.gov.au/nrss/files/NRSS%20Inquiry%20Final%20Report%20September%202018%20v2.pdf)

¹⁹ <https://www.roadsafety.gov.au/nrss/>

achieved 6 years into the 2011 Strategy timeframe.²⁰ The Safety Report found that there was a failure to implement the 2011 Strategy in a meaningful way. Contemporaneously, the Transport and Infrastructure Council²¹ has issued a National Road Safety Action Plan 2018-2020 (National Plan)²² to support the implementation of the 2011 Strategy. This will occur “by ensuring that national efforts in the final three years of the NRSS are focused on strategically important initiatives.”²³

34. The Safety Report had as its first term of reference the identification of the key factors involved in road crash death and serious injury trends including increases in 2015 and 2016.²⁴
35. There was inadequate data to answer this requirement, with the authors of the Safety Report saying:

*The first term of reference for this inquiry could not be adequately addressed because of insufficient data on the full extent of influences on the road transport system. While exposure data exists, it is predominantly associated with motorised vehicles. Intermediate measures are also poor and sporadic, and something as simple as regular speed measurement across the network is often difficult to obtain across all jurisdictions. Enforcement data is also often limited in scope and difficult to interpret. The absence of this base data makes it extremely difficult to understand variations in overall patterns of crashes and injury and the underlying causes to observed changes.*²⁵

36. NatRoad agrees that there is inadequate data to understand variations “in overall patterns of crashes and injury” for the heavy vehicle sector. This is especially the case when seeking to attribute fault. There appears to be a conflict in the way in which heavy vehicles are “blamed” for fatal crashes. The answer to the question of contributing factors lies in the answer to the exploration of the notion of who is at fault, particularly as that question relates to on-road fatalities, a matter taken up in the below paragraphs.
37. Before turning to that discussion, we note that road safety data should enable benchmarks to be prepared that in turn enables measurement of actual performance against appropriate targets. But NatRoad believes also that further qualitative analysis of crashes is needed. It is NatRoad policy that a dedicated authority such as the Australian Transport Safety Bureau (ATSB) be given power to promptly and fully investigate serious truck accidents and to share the results and recommendations publicly so that all industry participants can take the appropriate action to reduce the road toll. That role should also encompass better research on trends and causal factors, such as a growing difference between the level of improvement in the safety record of articulated trucks when compared with heavy rigids.²⁶

²⁰ see National Road Safety Strategy 2011-2020 Implementation status report Nov 2017 p3 for verification of this statistic http://roadsafety.gov.au/performance/files/NRSS_Implementation_report_Nov2017.pdf

²¹ The Council brings together Commonwealth, State, Territory and New Zealand Ministers with responsibility for transport and infrastructure issues, as well as the Australian Local Government Association.

²² http://roadsafety.gov.au/action-plan/files/National_Road_Safety_Action_Plan_2018_2020.pdf

²³ Id at iii

²⁴ Above note 17 at p 6

²⁵ Id at p46

²⁶ Explored in detail in the NatRoad paper referenced here <https://www.natroad.com.au/resources/increasing-safety-road-transport-towards-zero>

“Blame” and Competitive Pressures

38. The PC asks two questions that are relevant to the issue of fault in heavy vehicle crashes and fatalities. It asks: **“What impacts do contracting practices and competitive pressures have on safety outcomes? How might these be addressed?”** These questions imply that there is a deliberate breach of the duty to ensure safety associated with “contracting practices and competitive pressures” which relates to the idea of fault on the part of the heavy vehicle driver/operator.

39. In the NSW Government Freight and Ports Plan 2018-2023²⁷ the following is said:

*While crash data does not include any conclusions as to fault, it does record the ‘key vehicle’ whose movement appears to have largely contributed to the crash occurring. Heavy trucks were the ‘key vehicle’ in 39 per cent of fatal crashes in 2015 to 2017 and 59 per cent of serious injury crashes from 2014/15 to 2016/17.*²⁸

40. Yet the idea that “fault” on the part of heavy vehicles is at the level set out in this extract is not substantiated by data where fault has been investigated. For example, work by the National Truck Action Research Centre (NTARC) published in 2017 that analysed major crash incidents in 2015²⁹ found that in losses with third parties not involving fatal injury the heavy vehicle was liable in 60% of the cases. But in collisions involving fatalities, the truck was not at fault on 93% of occasions.³⁰ In the report published in 2019 about 2017 fatalities, this figure fell to 83%³¹ with NTARC stating “that for a decade this figure had never been outside of the band between 80-100%.”³²

41. A similar statistic was isolated by PricewaterhouseCoopers (PwC) in its final report on the Road Safety Remuneration System³³, mentioned below, where PwC found that “in 2013, the driver was only at fault (due to speed, fatigue etc.) in 18 per cent of heavy vehicle fatalities.”³⁴

42. This is an important statistic because the Transport Workers Union (TWU) promotes safe rates as the principal way to lower deaths and serious injuries in the heavy vehicle industry, blaming “commercial pressures” and like factors for heavy vehicle incidents. We do not support a link between fixing of prices for owner-operators in the industry and improvements in safety. The TWU wants to bring back the Road Safety Remuneration Tribunal (RSRT) to set freight rates for owner drivers, a policy that would have been implemented had the Australian Labor Party (ALP) been successful at the recent federal election.

²⁷ https://www.transport.nsw.gov.au/projects/strategy/nsw-freight-and-ports-plan_

²⁸ Id at p71

²⁹ NTARC 2017 Major Accident Investigation Report [https://www.nti.com.au/files/files/20147 NTARC Report/C666 NTI 2017 Accident Investigation Report LR 2.pdf](https://www.nti.com.au/files/files/20147%20NTARC%20Report/C666%20NTI%202017%20Accident%20Investigation%20Report%20LR%202.pdf)

³⁰ Id at p12

³¹ Above note 16 at p 8

³² Ibid

³³ [https://docs.jobs.gov.au/system/files/doc/other/2016 review of the rsrs.pdf_](https://docs.jobs.gov.au/system/files/doc/other/2016%20review%20of%20the%20rsrs.pdf_)

³⁴ Id at p 46

43. The model on which the RSRT was based was not appropriate to improve road safety. At best, the evidence was indirect and based on correlation rather than cause. Indeed, the foundational National Transport Commission report³⁵ on the issue indicated [emphasis added]:

*While it **cannot be shown that low rates of pay and methods of payments directly cause truck crashes**, a point argued by several submissions, it can be shown that low rates of pay and performance-based payment systems do create an incentive for, or encourage, other on-road behaviours which lead to poor safety outcomes.*³⁶

44. The “incentive-based” argument is rejected as a cause of road trauma. It was not and remains an inadequate rationale for the creation of the RSRT (or any similar body) which not only did not improve road safety but was a drag on the community’s resources and led to a range of adverse outcomes for owner-drivers. Indeed, the PC found, in the context of its inquiry into regulation of the agricultural sector, that:

*The road safety remuneration system (including the former Road Safety Remuneration Tribunal) imposed costs on businesses, including farm businesses, without commensurate safety benefits, and its abolition has reduced this burden.*³⁷

45. The RSRT’s Orders could not by their nature affect road safety. The Contractor Driver Minimum Payments Road Safety Remuneration Order 2016 (the Payments Order) was issued by the RSRT on 18 December 2015 and was initially due to commence on 4 April 2016. It set minimum rates of pay on a per kilometre and per hour basis for contractor drivers undertaking routes either in supermarket distribution or long distance operations. The Payments Order contained schedules setting out minimum rates hirers were required to pay contractors depending on factors such as the driver’s transport worker grade (based on the type of vehicle being driven) and the class of vehicle.

46. It is plain from the PWC report mentioned earlier that the Payments Order could not materially affect road safety as indicated by the following extract [emphasis added]:

*According to our analysis, the costs of the Road Transport Order outnumber the benefits, by \$3 in cost to every \$1 of benefits. Our best case scenario analysis shows the Road Transport Order would have to decrease the impact of road accidents in the economy by over 20 per cent for the benefits to outweigh the costs. In 2013, the driver was only at fault (due to speed, fatigue etc.) in 18 per cent of heavy vehicle fatalities. Since the Road Transport Order operates to control fatigue and speed, **but cannot impact the behaviour of small vehicle drivers, pedestrians, road conditions and other factors**, it is highly unlikely a 20 per cent reduction can be realised, if these factors where the driver is at fault only amounted to 18 per cent of*

³⁵ National Transport Commission *Safe Payments: Addressing the Underlying Causes of Unsafe Practices in the Road Transport Industry 2008* [https://www.ntc.gov.au/Media/Reports/\(98BF9D12-47C6-5EAF-EEA8-BCE6B19EAEB8\).pdf](https://www.ntc.gov.au/Media/Reports/(98BF9D12-47C6-5EAF-EEA8-BCE6B19EAEB8).pdf) especially at pages 7-10

³⁶ Id at p19 our emphasis

³⁷ Productivity Commission Inquiry Report *Regulation of Australian Agriculture* (Nov 2016) Finding 9.2 at p380 <https://www.pc.gov.au/inquiries/completed/agriculture/report/agriculture.pdf>

*fatal crashes in 2013. Furthermore, we have used conservative estimates in our analysis leading to the likely conclusion that an appropriately enforced Order would impose far greater costs on industry than safety benefits.*³⁸

47. Any analysis should be undertaken as the PC presaged in the report on the agriculture sector as follows:

The Australian, state and territory governments should review the National Heavy Vehicle Regulator (NHVR) as part of the planned review of the national transport regulation reforms. The review should: • *assess the efficiency and effectiveness of heavy vehicle regulations, including the scope to improve the allocation of responsibilities under the national system* • *identify ways in which new funds allocated following the abolition of the Road Safety Remuneration Tribunal could best be used by the NHVR to improve road safety in all states and territories.*³⁹

48. The other issue to note is that on 4 October 2018, the Australian Government announced a Review of National Road Safety Governance in response to recommendation 6 of the inquiry undertaken into the 2011 Strategy.⁴⁰ In our understanding, the recommendations of the Departmental Taskforce that is examining the issue will assist to shape the establishment of an Office of road safety and form part of a comprehensive implementation plan for the recommendations from the Safety Report.⁴¹

49. The Morrison Government has also promised to allocate \$5.9 million for a new Federal Office of Road Safety to drive reforms, improve coordination and performance reporting, and promote road safety in partnership with the states, territories, local governments and stakeholders.⁴² The PC's recommendations about how this Office could best achieve its functions within an integrated transport network would be welcomed by NatRoad. We submit that the Office should be responsible for co-ordinating and/or commissioning much better research on the underlying causes of heavy vehicle crashes and the key factors involved with identifying trends and patterns.

Changes to the Current System to Improve Safety

50. The Issues Paper poses the following question: **What changes, if any, to the current system would improve safety outcomes?**

51. The recommendations of the Safety Report are endorsed by NatRoad.

³⁸ Ibid

³⁹ Above note 37 at p380

⁴⁰ <https://www.roadsafety.gov.au/nrss/2019-governance-review.aspx>

⁴¹ <https://www.liberal.org.au/our-plan-keeping-australians-safe-our-roads>

⁴² Ibid

52. One of the recommendations from the Safety Report is that there be rapid deployment and accelerated uptake of proven vehicle safety technologies and innovation.⁴³ It highlighted the delay in mandating electronic stability control (ESC) in trucks and buses and roll stability control (RSC) in heavy trailers as a failure of the current system to embrace technology that makes a real difference in on-road safety. NatRoad supports mandating ESC and RSC as well as introducing measures that support the adoption of newer heavy vehicles that incorporate a larger number of safety features than older vehicles.⁴⁴
53. Improvements to heavy vehicle design and the addition of safety features make a proven contribution to the nature and severity of crashes.⁴⁵ NatRoad has developed a number of policies that aim for improved freight efficiencies, reduced emissions and less heavy vehicle road trauma. One of those policies is reducing the age of the Australian truck fleet by promoting the purchase of new heavy vehicles. That is a key to achieving these goals, especially in relation to safety outcomes.
54. NatRoad has promoted with Australian State and Territory governments research which shows that replacing taxes on insurance and motor vehicle registrations with a broad-based property tax could make Australians up to \$1.5 billion a year better off. In this context stamp duty should be abolished as it is an inefficient tax as well as being antiquated and out-of-step with a modern revenue system.⁴⁶
55. Newer trucks are safer. This is especially the case for trucks and trailers that are purchased in the next eighteen months. ESC/RSC will be mandated for new heavy vehicle trailers from July 2019 and for most new heavy trucks from November 2020. At the time that this new regulation was introduced the Government estimated that about 20 per cent of heavy vehicle fatalities can be linked to rollovers or loss of control, so by having advanced braking systems fitted an estimated 126 lives can be saved and the number of serious road injuries reduced by more than 1,000.
56. Getting a newer truck would also increase the fuel efficiency of the business, fuel being the most important cost element for road freight businesses. The single biggest variable in fuel economy in a truck is the driver. New trucks have automated transmissions that are programmed to change gears to maximise fuel efficiency rather than relying on the skills of the driver to achieve the same ends.
57. Electric drive trucks with their obvious fuel benefits and low emissions are likely to become commercially viable over time, but NatRoad does not see that happening in under a decade. However, when they are introduced into the market the reduced emissions that flow from their use should be recognised and operators should be rewarded for embracing the new technology. For example, stamp duty incentives already exist in New South Wales in that

⁴³ Above note 17 at p 52

⁴⁴ The average age of the Australian Truck Fleet in 2018 was 14.8 years.

⁴⁵ <https://roadsafety.transport.nsw.gov.au/downloads/safety-technologies-heavy-vehicles.pdf>

⁴⁶ <https://www.natroad.com.au/news/time-review-stamp-duty-heavy-vehicle-registrations>

new heavy trailers registered there are exempt from stamp duty per s270C *Duties Act, 1997 (NSW)*. Otherwise stamp duty is collected at \$3 per \$100, or part, of the vehicle's value.

58. The transition to alternatively powered fuels also means that heavy vehicle road price reform, discussed earlier in this submission, must be properly introduced so that the burden of fuel excise does not fall increasingly on the heavy vehicle sector. NatRoad proposes that the HVRR must look at the industry through a new prism: how those reforms can make the industry safer and more efficient with an emphasis on the uptake of new technology. In order to do that heavy vehicle charges must be fair, transparent and be stamp duty free, overseen by an independent price regulator.

HVNL Interaction with WHS system

59. The Issues Paper poses the questions: **How does transport safety regulation interact with other regulatory schemes, for example, workplace health and safety regulation? Where there is conflict, what issues arise as a result? How should this conflict be addressed?**⁴⁷
60. These questions are all explored in the NatRoad submission⁴⁸ to the NTC mentioned in paragraph 13 of this submission.
61. In short, a number of offences under the HVNL would also constitute offences under the harmonised WHS laws and the WHS laws of Western Australia and Victoria. Section 18(3A) provides that if an act, omission or circumstances constitute an offence under the HVNL and a primary WHS law, an offender is not liable to be punished twice for the act, omission or circumstances. It is imperative that the WHS laws and the HVNL are better aligned and that a provision of this kind remains in a restructured HVNL.

Questions about maintenance of State systems and regulatory burden

62. The Issues Paper poses a number of questions about inconsistencies between participating and non-participating HVNL states⁴⁹ and about operators' regulatory burdens. These issues are explored in the recent NatRoad submission to the NTC referred to in paragraph 13 of this submission.
63. NatRoad submits that the regimes for fatigue and access in WA are better models for the subject areas than the law reflected in the HVNL. They add to efficiency and represent a much more favourable regulatory burden that reflected in the provisions of the HVNL. That proposition is only set out in respect of fatigue management in the NatRoad submission.

⁴⁷ Above note 1 at p13

⁴⁸ <https://www.ntc.gov.au/media/2060/ntc-issues-paper-risk-based-approach-to-regulating-heavy-vehicles-warren-clark-national-road-transport-association-natroad-may-2019.pdf>

⁴⁹ Above note 1 at p16 and 17

Questions about productivity

64. We focus in particular on what improvements to the current system could improve productivity outcomes. The question of indirect benefits is also traversed.
65. The Australian Government is currently developing a National Freight and Supply Chain Strategy.⁵⁰ The main objective of the Strategy is to lift the productivity and efficiency of Australia's freight supply chain. The 2017 Inquiry into *National Freight and Supply Chain Priorities* (the Priorities Report) identified as a priority the need to identify and remove barriers to the efficient operation of freight networks and supply chains by benchmarking freight performance domestically and international through identifying, collecting and sharing relevant data.
66. NatRoad supports greater levels of research and data gathering about a large number of the issues the road transport industry faces. Good policy development depends on evidence-based decision making. A large amount of information is already collected by various government agencies and by industry. But it is fragmented and inconsistent which makes it difficult to provide a complete picture of supply chain performance and to compare the performance over a time series.
67. There is an urgent need to ensure better quality information is available to underpin government and industry decision-making for the freight sector, as identified in the Priorities Report.⁵¹

*Supply chain activity and performance must be measured to monitor domestic and global competitiveness over time and identify areas where action is required to maintain and improve productivity. A national approach to data consistency across jurisdictions is essential. Performance data should inform the need for capital expenditure and maintenance, regulatory and governance reform, and measuring progress, including implementation of the National Strategy.*⁵²

68. The paucity of data relating to transport discussed in the context of heavy vehicle incidents is also reflected in assessing its contribution and in measurement at the sectoral level of the economy. In October 2018 the Australian Bureau of Statistics (ABS) brought together the total contribution of transport activity across all industries in the Australian economy, through the Australian Transport Economic Account: An Experimental Transport Satellite Account. 53
69. The ABS data illustrates:
- Transport accounted for \$77 billion (4.6 per cent) of GDP in 2015-16;
 - Transport was integral to day to day activities in other industries which added a further \$45.3 billion (2.7 per cent) of GDP;
 - Transport activity accounted for one million (8.6 per cent) of total employed persons in the economy in 2015-16; and
 - Road transport generated \$137.2 billion in economic output. 60.6% of this was in-house transport activity, with for-hire transport activity contributing 39.4%.

⁵⁰ <https://www.infrastructure.gov.au/transport/freight/national-strategy.aspx>

⁵¹ All Cttee documents including the Report are available at this website
<https://infrastructure.gov.au/transport/freight/freight-supply-chain-priorities/index.aspx>

⁵² Report [https://infrastructure.gov.au/transport/freight/freight-supply-chain-priorities/files/Inquiry Report.pdf](https://infrastructure.gov.au/transport/freight/freight-supply-chain-priorities/files/Inquiry%20Report.pdf) at p7

⁵³ <https://www.abs.gov.au/ausstats/abs@.nsf/latestProducts/5270.0Media%20Release1502010-11%20to%202015-16>

70. The Satellite account figures also show the importance of the so-called “in house” or ancillary transport activity. Total transport activity, as defined in this account, includes activity conducted undertaken by businesses classified to the transport, postal and warehousing industry in the National Accounts, but also provides a new, explicit measure of in-house transport activity undertaken outside this sector. As noted by the ABS at the time of the release of this data, it will help policy makers to better understand the direct and indirect effects of transport-related policy changes. The new figures will also support decisions on investment in transport infrastructure.
71. NatRoad submits that the Satellite account must be funded by the Australian Government on an ongoing basis as a means of better assessing the contribution of the sector to the Australian economy and in accurately measuring the contribution of the various sub-sectors. It is a vital tool in decision making on transport infrastructure.

Is the national regulator effective? What implementation issues remain?

72. The National Heavy Vehicle Regulator (NHVR) is hamstrung by a sub-optimal statute. Multiple regulatory bodies operate in the NHVR’s space including all local governments that make access decisions as road managers. A great deal of the NHVR’s resources are devoted to assessing and issuing permits.⁵⁴ The NHVR Annual Report for 2017-2018⁵⁵ shows that the NHVR received over 55,000 access permit applications in that year.⁵⁶ The system is flawed when so much of a regulatory body’s resources are devoted to the issue of these permits which can also involve State and local government resources. A re-designed HVNL and access permit system where pre-approvals predominate is required. We submit that the PC should establish and publish the cost per permit issued.
73. As is evident from the NatRoad submission to the NTC on the initial paper for the HVNL review,⁵⁷ NatRoad members are very concerned that enforcement of the HVNL is not consistent and is in the hands of too many agencies. The NHVR at present has a limited role in enforcement (Tasmania, South Australia and the ACT have vested their enforcement responsibilities in the NHVR) with State agencies and the Police having a greater role. NatRoad would like to see fundamental enforcement reform, as outlined in the submission to the NTC. That reform would vest more responsibility in the NHVR and enable greater levels of justice in the application of the law through a tribunal system and greater and more consistent levels of education amongst operatives. This is an area where role clarity is poor and the trust and confidence that is required in the enforcement of the HVNL and related laws is low. The transfer of State-based enforcement to the NHVR must be accelerated.

⁵⁴ Summarised in this table <https://www.nhvr.gov.au/road-access/access-management/applications>

⁵⁵ <https://www.nhvr.gov.au/files/201811-0926-nhvr-annual-report-2017-18.pdf>

⁵⁶ Id at p 63

⁵⁷ Above note 10

74. As to accountability, the NHVR's consultative mechanisms suffer because the industry has too many representative bodies which often do not promote consistent policies. That is not generally the fault of the NHVR, but it means that representation on its consultative bodies and the processes it uses for consultation often do not cut through to industry members. The forums that it organised for explaining to industry the new COR laws was, however, a very useful and successful means of communication and NatRoad supports this method of direct engagement with the industry.

Local Government

75. Sections 643 and 644 of the HVNL enable an applicant to seek an internal review of a road manager's access decision. The decision by the reviewing officer is not subject to external appeal.⁵⁸ The law needs to change so that road access decisions by local councils should be subject to external, merits based review rather than confined to the unsatisfactory internal review process. There should be far more stringent time limits and criteria for advancing the freight task applied to local government decision making. This change combined with a far greater level of pre-approved routes being gazetted would alleviate the bureaucratic burden and costs associated with the current permit process.
76. The Issues Paper rightly identifies last mile issues as productivity reducing. Access to ports should be the subject of freight routes which do not require the transfer of products from one configuration to another. In other words, far more needs to be done to secure freight routes that allow access to ports and other final destinations of importance by larger more efficient higher productivity vehicles. This includes ensuring that urban encroachment on ports does not prevent appropriate levels of port access e.g. by the application of curfews. This example signals the need for better integration of the transport task with land use planning.

Other Agencies

77. The Issues Paper notes that the Australian Transport Safety Bureau (ATSB) is Australia's national transport safety investigation agency in aviation, rail and maritime. An independent statutory agency of the Australian Government, the ATSB takes a no-blame approach to investigation. Its sole focus is the prevention of future accidents and the improvement of safety. As is evident from the content of paragraph 37 of this submission, NatRoad answers the question **Is there a case for no-fault accident investigation in heavy vehicles?**⁵⁹ with a "Yes."
78. The Issues Paper also asks **Multiple bodies are involved in enforcement, including police and the regulators. Are there opportunities to make this work better?** NatRoad members have indicated to us that poor enforcement practices are the number one problematic issue with the current on-road laws. The problems and proposed solutions have been set out in some detail in the NatRoad submission to the NTC mentioned in a number of places in this submission and accessible from the NTC web site.

⁵⁸ HVNL, s 647(1)

⁵⁹ Above note 1 at p24

79. The Issues Paper also raises the question of regulation of ports. In this context, we reiterate our prior comments about the setting of land side port charges. These must be consistently regulated by the independent price regulator and recognised as a cost to the heavy vehicle sector in any HVRR proposals.

Further Integration

80. The subject of better and efficient access to ports is an example of where consistent and better government regulation is needed. The entire controversy about land side port charges shows that the way in which port privatisation and the development of infrastructure at ports has not been adequately dealt with to ensure that the freight task is prioritised. This was dealt with earlier in this submission at paragraphs 25-27.
81. According to the NTC web site Infrastructure Australia and the NTC developed Australia's first National Ports Strategy after extensive industry and government engagement. The strategy was endorsed by the Council of Australian Governments in July 2012.⁶⁰ It is full of good ideas, but little appears to have been achieved.
82. NatRoad would suggest that greater consistency in planning in respect of freight routes to and from ports should be made more palpable as part of this strategy and greater levels of government commitment to that aim demonstrated. Key target dates for concrete outcomes should be set and industry more fully consulted.

Digitisation and Transport

83. NatRoad has a range of policies in place relating to the digitisation of the freight task. These were set out in a detailed submission to the Inquiry into the Victorian On-demand Workforce.⁶¹

Automation

84. A range of questions are asked about technological change.
85. While automated heavy vehicles have the potential to deliver improvements in safety, we have doubts about the ability of Australia's current infrastructure to support high levels of automation. For example, Lane Keeping Assist systems have the greatest potential for preventing deaths and serious injury but are unlikely to function on roads without highly visible lane markings (compare this with the number of poorly maintained or unsealed roads in Australia).⁶² It is this issue of appropriate infrastructure that is likely to slow the development of the introduction of autonomous vehicles in this country, especially autonomous heavy vehicles.

⁶⁰ <https://www.ntc.gov.au/intermodal/productivity/national-ports-strategy/>

⁶¹ <https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/7915/5669/1361/NatRoad.pdf>

⁶² Safety Benefits of Cooperative ITS and Automated Driving in Australia and New Zealand, Austroads Research Report, 2017

86. There are also still many unanswered questions about how automated systems will cope with various road freight tasks and who will be held liable in the event of an accident.
87. Guiding NatRoad policy in this area is the proposition that until vehicles become fully automated and no longer require any human input, even in the event of a system failure, the driver must be prepared to reclaim manual control of the vehicle. A range of factors including loss of skill, loss of situation awareness and overreliance may cause difficulties with drivers taking over the dynamic driving task. That is why the transition to the automated driving task must be carefully studied and planned.
88. That planning is currently occurring. The NTC is working on many reforms to prepare Australia for automated vehicles. NatRoad is providing input into this process through our submissions to the NTC discussion papers and industry consultation forums.
89. In all those communications NatRoad stresses that there is a significant amount of anxiety amongst smaller operators that the introduction of automated heavy vehicles will put members out of work. The impact on jobs in the transport industry must be integral to any policy relating to the introduction of automated heavy vehicles. Governments must work with the industry on the issue of how jobs are expected to transition in an automated environment. This work should commence as soon as possible and be integrated into work on technological and regulatory change.
90. As the Productivity Commission has noted:
- With rapid advances in computing power, connectivity, mobility, and data storage capacity over the last few decades, digital technologies offer opportunities for higher productivity growth and improvements in living standards. But they also pose risks of higher inequality and dislocation of labour and capital.*⁶³
91. There is also the issue of trust in the new technology; social acceptance will affect the roll out of autonomous vehicles. The Productivity Commission has said:
- (T)he uptake of technology takes time and is strongly dependent on changes in consumer preferences and their attitudes to technology. The wider community is more likely to ‘trust’ and adopt technology when the consequence of something going wrong is relatively small. For example, it is one thing for a credit assessment to go awry, but quite another for a self-driving vehicle to make an error (MHFI 2014). Even when machines are able to perform risky tasks more reliably than humans, trust needs to be earned and new ways of thinking about accountability and liability need to be developed — both of which take time.*⁶⁴
92. NatRoad submits that sensible interventions in the market and Government action to correct any identified market failures should be the policy perspective brought to bear in the context of the introduction of more autonomous vehicles. Those interventions should exhibit the following characteristics:
- be consistently adopted by all states and territories;
 - be principles-based and technology-neutral;
 - support road safety outcomes;
 - support innovation;

⁶³ Productivity Commission *Digital Disruption: What Governments Need to Do* June 2016
<http://www.pc.gov.au/research/completed/digital-disruption/digital-disruption-research-paper.pdf> at p1 ⁶⁴ Id at p73

- be updated and kept relevant as the capability of automated vehicles develops;
- have regard to all levels of driving automation;
- assist road transport agencies when considering the consequences of granting exemptions from traffic laws; and
- not affect current rules for drivers of non-automated vehicles.

Conclusion

93. NatRoad looks forward to commenting on the PC's draft report.

94. We would be happy to expand on any of the matters dealt with in this submission in discussions with the PC.



Submission to the Transport and Public Works Committee

Inquiry into Transport Technology

28 August 2018

Introduction

1. The National Road Transport Association (NatRoad) is pleased to make a submission to the Transport and Public Works Committee (the Committee) inquiry on transport technology.
2. NatRoad is Australia's largest national representative road freight transport operators' association. NatRoad represents road freight operators, from owner-drivers to large fleet operators, general freight, road trains, livestock, tippers, express car carriers, as well as tankers and refrigerated freight operators.
3. This submission focuses on the terms of reference as they relate to heavy vehicles.

Other Relevant Inquiries

4. NatRoad notes that there has been a recent inquiry into this subject undertaken in New South Wales (NSW) as it relates to heavy vehicles.¹ The Joint Standing Committee on Road Safety of the Parliament of New South Wales issued a report on heavy vehicle safety and the use of technology to improve road safety in May this year (the NSW Report).² NatRoad made a submission to that inquiry.³ We commend that submission to the Committee as well as the findings in the NSW Report. The submission and the relevant findings impinge on the Committee's consideration of challenges to road safety that can be addressed via technology.
5. In addition, the March 2018 Report *Inquiry into National Freight and Supply Chain Priorities*⁴ (Priorities Report) is relevant to the Committee's inquiry.
6. One of the findings of the Priorities Report is that over the next 20 years, the advances in technology and data availability will be a major driver of productivity growth in the freight sector in areas such as automation, data processes and product delivery. These include the use of automated vehicles, telemetry, drones and big data, supported by international data standards.⁵
7. We note that on 18 May 2018, the Council of Australian Governments' Transport and Infrastructure Council agreed a framework for developing a 20-year national Freight and Supply Chain Strategy (the Strategy). The aim is for the Strategy to be implemented from 2019.⁶ The Queensland Government is involved with the development of the Strategy which will encompass a consideration of the impacts of technology.
8. The Priorities Report underpins the work on the Strategy. We commend to the current inquiry the work undertaken by the Centre for Supply Chain and Logistics (CSCL) at Deakin University, as part of the work done for the Priorities Report. CSCL prepared four scenarios that identify potential drivers of change in freight and supply chains in Australia, based on a time horizon of 20 years. A full report of CSCL's scenario planning exercise is useful for the Committee's current considerations.⁷

¹ <http://www.pc.gov.au/research/completed/digital-disruption/digital-disruption-research-paper.pdf>

² *Ibid*

³ <https://www.parliament.nsw.gov.au/ladocs/submissions/59783/Submission%203.PDF>

⁴ [https://infrastructure.gov.au/transport/freight/freight-supply-chain-priorities/files/Inquiry Report.pdf](https://infrastructure.gov.au/transport/freight/freight-supply-chain-priorities/files/Inquiry%20Report.pdf)

⁵ *Id* at p 28

⁶ <https://infrastructure.gov.au/transport/freight/national-strategy-faq.aspx>

⁷ [https://infrastructure.gov.au/transport/freight/freight-supply-chain-priorities/research-papers/files/Scenario planning report.pdf](https://infrastructure.gov.au/transport/freight/freight-supply-chain-priorities/research-papers/files/Scenario%20planning%20report.pdf)

9. In the context that the current inquiry is examining how technology is affecting employment arrangements in the transport industry, a current federal Senate Committee inquiry is relevant. On 19 October 2017 the Senate established the Select Committee on the Future of Work and Workers to inquire and report on the impact of technological and other change on the future of work and workers in Australia. The committee was originally to report on or before 21 June 2018, but that date has been extended to 12 September 2018.⁸ NatRoad made a submission to that inquiry⁹ and we commend it to the Committee as useful in the current inquiry.
10. Given the extent of other inquiries in relation to the subject matter of the Committee's terms of reference, this submission next addresses each of the specific terms of reference.

Identifying trends and changes in fuel type usage in the sectors of personal transport, freight transport and public transport, such as the increasing uptake of hybrid and electric vehicles

11. The freight sector is currently heavily reliant on diesel fuel. The Australian Alliance for Energy Productivity (AAEP) estimates that diesel currently fuels 99% of trucks and around 50% of light commercial vehicles.¹⁰
12. Other fuel types may substitute for diesel, including electric-powered heavy vehicles.¹¹
13. Elgas, one of NatRoad's members, has been trialling dual-fuel technology in Rivet trucks that substitute diesel with LPG. The current operation has allowed further validation of the technology installed in Volvo 540 trucks and Kenworth vehicles. The system has the advantage of maintaining engine power and torque, while remaining within the engine's designed operating performance. Elgas reports that initial analysis of the telemetry data shows positive operational and environmental results with an 18-23% energy saving and a 60% reduction in particulate matter. Elgas has been working with NHVR to establish a certification process for this technology which is expected to be released soon.
14. There are, however, several barriers to adoption of alternatively fuelled vehicles, not the least of which for electric vehicles is the lack of infrastructure especially for long haul vehicles and the current and projected length of "down time" for re-charging. The barriers to moving to alternative fuels have been summarised thus:

It is not without good reason that diesel enjoys a virtual monopoly in fuelling heavy freight vehicles. Most alternative fuels involve one or more economic or operational compromises – such as lower energy density, higher price, reduced driving range (or payload penalty), lower thermal efficiency, or limited availability (of trucks, fuel, or refuelling facilities).¹²
15. To accommodate any shift to alternative fuelled vehicles, infrastructure planning will be vital. The first step is to get the Strategy right. NatRoad supports a move to cost-reflective road pricing which, if properly designed, would support greater network efficiency through

⁸ [https://www.aph.gov.au/Parliamentary Business/Committees/Senate/Future of Work and Workers/Future of Work](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Future_of_Work_and_Workers/Future_of_Work)
⁹ [https://www.aph.gov.au/Parliamentary Business/Committees/Senate/Future of Work and Workers/Future of Work/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Future_of_Work_and_Workers/Future_of_Work/Submissions)

submission 85

¹⁰ The Australian Alliance for Energy Productivity *A Roadmap to double energy productivity in Freight Transport by 2030* [https://a2se.org.au/files/2xEP Freight transport roadmap v3 0 170212.pdf](https://a2se.org.au/files/2xEP_Freight_transport_roadmap_v3_0_170212.pdf)

¹¹ See article by Heid et al *What's sparking electric vehicle adoption in the truck industry* (2017) <https://www.mckinsey.com/industries/automotive-and-assembly/our-insights/whats-sparking-electric-vehicle-adoption-in-the-truck-industry>

¹² Above note 10 at p17

reduced congestion, greater access and better funding of road maintenance. Optimally, expansion of road network capacity linked to market demand and pre-determined routes for heavy vehicles rather than reliance on an outmoded permit system will be part and parcel of the Strategy's application.

16. Infrastructure that better reflects the needs of the road freight industry would also be a desirable outcome from current heavy vehicle reform proposals. The extent to which those infrastructure plans accommodate a move by light vehicle manufacturers to electric or hybrid vehicles is a separate question to the adoption of electric or other alternative fuelled vehicles by the freight industry. The freight industry is likely to be a late adopter of alternatively fuelled vehicles.
17. Many of the advanced technologies and systems being adopted in overseas markets are yet to become available in this country. This applies in many areas of technology because of adaptation costs for Australia's relatively small market and higher prices for on-road vehicles. Many products or innovative models developed overseas are not marketed in Australia because of the cost of adaptation for local conditions (heat, dust, larger mass requirements, and road conditions in particular). On this basis, NatRoad presages that Australia will be a late adopter of alternatively fuelled heavy vehicles and only once overseas prototypes are sufficiently tested for Australian conditions.

Examining the readiness of the transport network for increasing electrification of vehicles in coming years

18. In the submission NatRoad provided to the Senate Select Committee on the Future of Work and Workers, we were sceptical about the imminent increased use of technology (which would include utilisation of electric heavy vehicles) because of the poor state of Australian roads. For example, as noted in the Priorities Report "The Local Government Association of the Northern Territory advised that 85% of the NT roads are unsealed, with many impassable in the wet season."¹³
19. It is for this reason that NatRoad supports the preparation of the Strategy and the objectives set out in paragraphs 14 and 15 of this submission.

Identifying other emerging technological factors which will impact on transport networks into the future, such as driver aid technology and 'driverless car' technologies

20. The National Transport Commission (NTC) has several projects currently underway that examine the challenges facing governments, policymakers, regulators and the road freight industry in planning ahead for semi-autonomous and fully autonomous vehicles.¹⁴ NatRoad is providing input into this process through our submissions to the NTC discussion papers and industry consultation forums.
21. The NTC's task is particularly challenging when the pace of technology has far outstripped the concomitant investment in infrastructure to accommodate adoption of emerging technology.
22. For example, while automated heavy vehicles have the potential to deliver improvements in safety, we have doubts about the ability of Australia's current infrastructure to support high levels of automation. For example, Lane Keeping Assist systems¹⁵ have the greatest

¹³ Above note 6 at p57

¹⁴ See by way of example <https://www.ntc.gov.au/current-projects/safety-assurance-system-for-automated-vehicles/>

¹⁵ See item 15 of the following publication for a simple explanation of a lane departure warning system <http://roadsafety.transport.nsw.gov.au/downloads/safety-technologies-heavy-vehicles.pdf>

potential for preventing deaths and serious injury but are unlikely to function on roads without highly visible lane markings (poorly maintained or unsealed roads).¹⁶

23. In all our communications NatRoad stresses that there is a significant amount of anxiety amongst smaller operators that the introduction of automated heavy vehicles will put members out of work. The impact on jobs in the transport industry must be integral to any policy relating to the introduction of automated heavy vehicles. Governments must work with the industry on the issue of how jobs are expected to transition in an automated environment. Yet, ironically, one of the immediate constraints on growth that members have reported to NatRoad is the declining number of skilled workers in the industry particularly truck drivers.
24. One in five working drivers are at retirement age and Australia Bureau of Statistics Survey data suggests nearly half of the current workforce in the industry will be aged over 65 by 2026.¹⁷
25. NatRoad submits that sensible interventions in the market and Government action to correct any identified market failures are warranted when examining the introduction of autonomous vehicles. Those interventions should exhibit the following characteristics:
 - be consistently adopted by all states and territories;
 - operate less prescriptively than current HVNL rules;
 - be principles-based and technology-neutral;
 - support road safety outcomes;
 - support innovation;
 - be updated and kept relevant as the capability of automated vehicles develops;
 - have regard to all levels of driving automation;
 - assist road transport agencies when considering the consequences of granting exemptions from traffic laws; and
 - not affect current rules for drivers of non-automated vehicles.

Examining how technology is affecting employment arrangements in the transport industry, particularly in the food delivery area

26. The discussion at paragraphs 23 and 24 of this submission informs this term of reference.
27. This term of reference requires NatRoad to communicate that we oppose so-called safe rates.
28. The Transport Workers Union (TWU) has an ongoing campaign to reintroduce the flawed concept known as safe rates.¹⁸ The TWU has a view that, inter alia, the intermediaries, platforms and employers at the top of the transport supply chain must be made more accountable. Yet the TWU has not supported the very positive steps that governments have taken to increase responsibility for heavy vehicle safety along the supply chain and which will facilitate the accountability that the TWU advocates.

¹⁶ *Safety Benefits of Cooperative ITS and Automated Driving in Australia and New Zealand*, Austroads Research Report, 2017

¹⁷ Discussed with examples in <https://www.countrynews.com.au/@news/2018/04/11/103700/truck-driver-shortage-is-looming-1>

¹⁸ <http://www.twu.com.au/home/campaigns/safe-rates/>

29. Amendments to the Heavy Vehicle National Law (HVNL) imposing new obligations along the chain were passed in the Queensland Parliament in December 2016 and are to commence from 1 October 2018 in all jurisdictions that have adopted the HVNL.
30. The changes involve a new chapter of regulation directed at chain of responsibility parties and the principle of shared responsibility. They include a proactive primary duty on chain of responsibility parties to ensure the safety of transport activities.¹⁹
31. This primary duty supplements the current provisions where parties are only liable once breaches are detected. The new provisions also include a 'due diligence' obligation on executive officers of entities with a primary duty and prohibit requests and contracts that would cause a driver or chain of responsibility party to breach fatigue requirements or speed limits.
32. Although we fully support the changes that are being introduced, NatRoad is advocating for further amendments to the HVNL to ensure *all* parties in the chain of responsibility who have influence or control over the transport task are captured by the safety duties, including online platforms facilitating the engagement of contractors. This measure would also reinforce that so-called safe rates are a defunct and inappropriate response to increasing the protection of owner drivers and other industry participants.

¹⁹ A detailed explanation of the laws appears here: <https://www.nhvr.gov.au/safety-accreditation-compliance/chain-of-responsibility/about-the-chain-of-responsibility>