

**INTERCAPITAL**  
**TRANSPORT CONSULTANCY & PARA- LEGAL**  
*Division of intercapital holdings p/l*

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**Submission**

**The importance of a viable, safe, sustainable and efficient road transport industry, with particular reference to the following:**

1/ A safe and viable Road transport system is vital for Australia going forward with both major and small business and subcontractors, but it will need federal government to ensure it continues by ensuring that governments, supply chain participants, and big business share the responsibility.

B / Road safety in this industry is not only about independent contractors and prime contractors being paid cost recovery but also the main component of a truck is the driver. Trucks don't have accidents drivers do, and every wage contract in the industry at this time, tempts & compels the long-distance driver to drive in an unsafe manner and put his or hers and other road users lives at risk.

Held by lord chief justice Willmot CJ. .Collins v Blantern 1767 2 wils KB quote.

*A contract that **Tempts** a man to transgress the laws ,to do that which ,is injurious to the community is void at common law And the reason why the common law say such contracts are void ,is for the common good Unquote,*

2/With over 2000 transport companies facing liquidation in the last 3 yrs,since the repeal of the RSRT mainly through being unable to operate on the margins they receive from supply chain for their services ,

3/It is important for this enquiry to understand important issues that came out of the repealed RSRT that I am qualified to attest to by my representation for 3 plus yrs that apply to your enquiry. The cost and the work of the tribunal cannot be just ignored ,the evidence is still available.

4/That the major transport companies who were represented were in full support of the work the tribunal and President Jennifer Acton did, and supported the final costing that was agreed to by most transport parties in November 2014 , however because of lack of support for it by supply chain at a hearing before the president, the tribunal decided it would do its own costing which forced all parties to support the tribunal's version of it in the final order, but knowing, as independent contractors did, it would need to be improved as time went on , but the

opportunity wasn't given to us to make the adjustments .

5/That it was evident from submission and discussions that the supply chain did not believe that freight after it left their premises was their responsibility, however in fairness, in conversations with Coles representatives they stated they would support & work with any order .

6/That the repeal of the Act and the final order made by the tribunal was led by supply chain lobbyist representatives and the transport associations representing minor and some of the larger transport companies.

7/The evidence of the last statement is there and can be supplied for anyone interested in knowing the truth.

8/Nothing has changed the problems of this industry start with the supply chain and this found in the opinion of liquidators managing the affairs of many of the companies that have been to compelled to cease business since that time.

9/As a 60 year veteran of this industry as an employee driver, fleet owner, owner driver and independent contractor, the time has never been more appropriate to review and make changes to NHVL fatigue management and many other transport issues for the industry remain viable.

10 /I submit In this review grass roots drivers and individual contractors must have a say on the law that effects their lives and puts their lives at risk .

11/ Relying on any trucking associations or the Transport Workers Union as the only people to have input into these laws, denies the grass root employee drivers and independent contractors their rights under the constitution and puts the general public at inherent risk .

*12/ It is the role of governments to make laws for the good of the people, and I would add within the rule of law, at this time governments state and federal have failed to do so under fatigue management*

13/ As we have found out over the last 70 yrs ,university degrees and people who sit in glass houses who have never experienced this job have failed to understand how this job effects different people and have framed laws that do not show the individuality of the transport drivers.

14/ I personally have been campaigning for driver safety and reform since 2000 an I have appeared and given evidence in all hearings on truck safety since that time including 3 years having direct input on the Road Safety Remuneration Tribunal .

15/ There are approximately 21000 independent contractors, some often called owner drivers, who have no representation in dealing with government issues and rely on receiving benefits that the flow from the gains that major companies receive from the above representations to governments.

### **The regulatory impact, including the appropriateness, relevance and legislative framework, on all stakeholders in the road transport industry**

#### **NHVL**

16/The NHVL must apply across all states if that means some states have to make compromises so be it, or remove the word national from the entity and stay with state laws,

we can't have it both ways ,the NHVA is an entity of the federal government so it should mandatory enforce the power to cover Australia as a industry 9

17/ We have improvement by the NHVL on permits system in the eastern states although we can still not get access to Victoria for type 1 road trains coming from the northern states which is a major issue for operators needing that access because of objection from Victorian road authorities.

18/ For the NHVL to be effectual it must have must national control over Fatigue Management across all Australia. But it must change from its current prescriptive law

19/ The W.A transport industry argue it needs 17 hour day for its long distance drivers as grounds for not accepting to be part of the NHVA that argument has flaws that impose risk .

20/ I find no difference between a Victorian driver driving from Melbourne to Cairns to a WA driver driving from Perth to Broome the prescriptive hours whatever they may be should be the same.

21/ If the NTC /NHVA accept the driving hour changes that will be recommended in submissions to their inquiry this should affect the W.A position

a/ There must be a national consistent law on heavy vehicle roadworthy across Australia the current national roadworthy law has no total effect unless it is a national law

b /We must have a national and consistent agreeable driving training and entry level into long distance transport across Australia for the safety of all road users .

c/We must have a national interpretation of all driving law and penalties across Australia based on public risk

(d) The most effective law to be enacted effecting this industry and policed by NHVA is the C.O.R in particular ,

s 28 (d) Primary duties of all persons in the chain, the full effects have not been felt yet by this industry on how, who, and when this provision can and will be applied ,in my opinion it has far more tentacles' than people think and is good law .

### **Safety Issues On Roadworthy Vehicles**

22/ The industry must have national laws on fatigue and enforceable heavy vehicle roadworthiness law and vehicles operating in breach current ADR law .

23/ As a accredited Victorian heavy vehicle roadworthy inspection station our company observes just how unsafe some heavy vehicles are that are maintained and repaired by unqualified persons in all states, that put lives of drivers and the general public at foreseeable risk .

24/ It is our position that only qualified people should be involved the general maintenance and repairs of heavy vehicle where and when practicable, to reduce the inherent risk to the general public and drivers.

25/ This point should be carefully debated by the government & NHVA as many people who repair or maintain heavy vehicles do not understand their responsibilities under s26D of the NHVL COR law

a/ A risk based approach to regulating heavy vehicles is absolutely the only way laws and regulation ought to be set out however that said, there is some prescriptive law needed and whether the NHVA will be the regulatory body to oversee the reforms is another question .

b/In my submission to the NTC enquiry we suggested there has to be prescriptive law into the roadworthiness of heavy vehicles across Australia which should be lowered to apply to all heavy vehicles over 3 tonnes because that goes to safety of drivers and the general public ,and across Australia after heavy rigid vehicles are being involved in many accidents ,this goes to risk to the public good

### **Fatigue Management under NHVL**

This is an industry issue that must be fixed, yesterday

26/ It is an offence to drive while fatigued, however the majority of drivers are fatigued by simply complying with the prescriptive hours under the current Fatigue law and putting themselves and others at risk .

27 /It is never the intent of any driver to put his life at risk or the general public while simply doing his job ,drivers accept that we need to have laws on fatigue to ensure safety for all road users, but all they have ever asked is to have input into common sense law .

28/ Since the first driver logbooks of the fifties and the sixties prescriptive hours of driving and rest have been forced on all long-distance drivers as if they were the same person.

29/ Drivers have rebelled against these laws and I can attest the reason I have survived the 13million klms I have driven is by resting when I needed it, not when the log book told me to, as many surviving long distance drivers as have done over the many decades of current prescriptive provisions of the Act .

30/ The cost and the need of enforcement on fatigue safety for transport drivers and the general public could be minimised if this review accepts the fact that if we, the drivers, agree with the law then we can, and will self-comply, this will reduce the risks to themselves and the general public, and that those are the grounds for grass root drivers to be actively involved in this review of the laws that affect them.

31/ Amendments to fatigue management law since 1968 when National Fatigue Management laws were 1st introduced have always been the same, where the people to whom the laws apply, have been denied input on hours of rest needed by individual drivers, this is an issue that various experts with their university degrees with no practical knowledge of long distance driving have made the laws and failed.

32/ Provisions of the Fatigue law have always crossed the line into other statutes and have discriminated against transport drivers, denied them their rights of the rule of law, and provisions of human rights.

33/ The right not to give evidence against oneself is a fundament right of law, which denied under the fatigue management act, and is discrimination and fails the equality tests when this human right of law is denied to a minority of Australian workers, and is denied wholly for revenue by the states .

34/ Offences under the current NHVL fatigue management are draconian for a summary offence and far exceed the fines for indictable criminal offences of similar risk to the public, but that is where the state governments have come from, the early drivers log books it was about safety, the fines now are factored into the yearly budgets and revenue.

35/ Bearing mind the NHVL is written by Qld parliament passed with that states intent, the basis for the law is for revenue from offences.

36/ The big stick of the NHVL on fines does not change on when an individual driver is fatigued, furthermore, it belies common sense for a book drafted by lawmakers to say to any driver at any time of the day or night, to state a fact, **you now fatigued and you will stop for a prescribed time**, when the driver knows he is not fatigued or it is unsafe to stop..

37/ At this time every road authority except possibly WA is in breach of its primary duty under s28D of the NHVL Chain of Responsibility Act 2018.

38/ At no time can every heavy vehicle travelling on any road of any jurisdiction in Australia stop for a prescribed time as set out on the fatigue act, simply because, the provisions needed to comply are not available, WHICH ARE, proper heavy vehicle parking areas or pull offs, at the appropriate distances needed to allow for **all** trucks on that highway, at that time to stop when, and if needed. .

39/To allow for complete compliance for the current prescriptive law and safety for all road users we would need heavy vehicle parking areas every 25 klm which roads authorities would say is not practicable or possible, it should be .

40/I believe this enquiry should involve its self on this point as an issue for road safety .

41/ All heavy vehicles drivers agree we have to have laws, and we need to obey laws, but if a law puts our lives and the general public at risk, we cannot obey it, and this supported by the rule of law .

***Blacks law ,legal maxims*** *The law does not seek to compel a man to do that which he cannot possibly perform.*

42/One of the biggest issues facing drivers and business owners is finding competent lawyers to represent them in all states on transport matters that deal with the rule of law .

#### . **12 Hour Driving Work Day ,Standard hours s249 NHVL**

43/ We must have sensible reform, it has been long established by the drivers, both employee drivers and independent contractors, that a 12 hour work day every 24 hours is all they need to work but retain an option to work 14 hour days if required for that day only.

44/ Where the problem arises out the fatigue laws over the years where it was a compulsory prescriptive 10 hour break per 24 hours, drivers rebelled against this, as there were no sleeper cabins in those days ,drivers were forced to sleep laying across seats or in a sleeping bag ,a pillow over the steering wheel or other means, and it was impossible to conform to the laws ,even then some drivers need this rest time, others don't.

45/This was changed in later years to one prescriptive minimum 6 hour break in 24 hours which was more accepted by drivers, but again some drivers need this, others don't .

46/Then in the last amendment of the national driving hours that was changed to a prescriptive minimum 7 hour break, the extra hour was added because the fatigue experts said after waking up drivers needed extra time to have a wash and eat before starting work, which again ignores the difference between individuals, and where and when the rest stop is taken.

47/ When resting between town's away from roadhouses or proper truck rest areas where there are no facilities to eat and toiletries available when the temperature can be minus 1 degree or plus 50 degrees, when is not practicable or impossible to rest for the minimum hours as prescribed, there has to be drivers discretion allowed on if he is fatigued and safe to drive .

**Blacks law ,legal maxims** *The law does not seek to compel a man to do that which he cannot possibly perform.*

48/ What these law makers will not except is that when the individual drivers body clock says you body has had enough rest, it's time to go to work, or it may need more than the prescriptive time. Compelling a driver stay for the extra time to satisfy words in a book, will make him more bored and fatigued and put the driver and the general public more at risk.

49/ Industry has been advised that the NTC has, through a survey by CRC of 300 drivers and other means, obtained new evidence of when fatigue is known by various means but basically by eye movement, but I don't see evidence of how they forecast body fatigue that will occur first, and my professional opinion by experience, the main cause of all fatigue related accidents in heavy vehicle and cars.

50/ This has never been an issue, everyone accepts we can all suffer from fatigue, everyone accepts we all need sleep when that occurs, but the Fatigue Management Acts is framed to penalise fatigue because fatigue experts refuse to acknowledge, and show evidence of when an individual body is **unfatigued** which is the absolute bottom line reason of needing fatigue law.

**Blacks law, legal maxim**, *when the reason, which is the soul of a law, ceases to exist, the law itself should lose its operative effect.*

51/ This has always been the point that no expert can predict or will comment on but instead say, just use a prescriptive time for all drivers that will be near enough.

52/ What has concerns to me, is that fatigue experts are confusing the times of rest that heavy vehicle drivers need, against the worlds experts opinions of rest and sleep times that ordinary people require for the general health of the world population in their own home .

53/ Personally what my professional experience has taught me and many other drivers, is that some days my body clock has woken me after 2 hrs, 3 hrs, sometimes 12 hrs or any times in between ,**but every day is different** ,and the same applies to every driver, **as every individual body clock is different** , and this applies when I am either at my place of abode or in a heavy vehicle .

54/ What minimum rest time an individual driver needs today, will change tomorrow and I will put my professional opinion on this point against any other fatigue expert.

55/ Forcing prescriptive rest times to be the same for every driver is wrong in law and morally wrong and puts drivers and the general public at risk every day and is in breach of s26D of the NHVL and COR Act .

56/ The fatigue law states that driving between midnight and 6 am is the dangerous period, for some drivers it is, for other drivers it's not, and every individual driver knows or should know his weakness and base his fatigue management on that.

57/ The law framers must start treating drivers as adults not children

58/ When a statute puts the public or driver's lives at risk then the law must be changed

The legal maxim applies in law ,

**Blacks law ,legal maxims**, *The law shall not, through the medium of its executive capacity, work a wrong.*

59/ It is my opinion Government entities and people who frame law are legally bound to liable for risks under s 26D COR if laws they make put lives at risk .

50/ It has been accepted by the industry more heavy driver lives have been lost trying to conform to NHVL Fatigue Management laws than those who don't conform because of the inherent danger they face being compelled into driving while fatigued in order to adhere to the prescribed rest times.

51 /It is my opinion, the time a body needs to reboot itself from fatigue has been settled by police and safety experts from all states, with the fatigue program that is advocated every holiday period by the safety messages put out to motorist, *when you are tired stop for a power nap until you feel fit enough proceed* ,a power nap is considered ¼ to ½ hour . It is my opinion these messages put an estoppel on prescriptive hours of rest provisions of fatigue management law. .

**Blacks law of legal Maxims**, *An argument drawn from a similar case, or analogy, avails in law*

52/Until prescriptive hours of rest are removed from the fatigue management act their will not be an improvement in road safety of heavy vehicles .

While this is currently under debate with NTC/ NHVA enquiry, the senate enquiry can also form an opinion ..

### **Basic Fatigue Management S253 NHVL**

14 hour driving work days

53/ This is a contradiction of safety on fatigue as it eats into the fatigue rest patterns as set out standard hours .

54/ If the proposal that we set out later in submission was accepted many drivers would use BFM hours only if they want for that day .

54/ Many drivers have trouble adapting the rest patterns that are necessary using the current Basic fatigue law on permanent basis .

55/ The proposal amendment times removing prescriptive 7 hours continuous rest would able to adapted easily by BFM drivers and makes their fatigue more manageable and easy to adhere to .

56/ This was a lobbying plan from employer organisations and some independent contractors to have their vehicles work longer hours so that they could earn more money to compensate them from poor freight rates that they operate under, and it cost companies nothing as drivers are not compensated for this time.

57/ It is now a provision of the Act used by major transport and small companies as leverage on who they hire as an employee driver or as a subcontractor .

58/ If you do not have BFM accreditation you will not be hired and there is no requirement to prove or show at or after 14 hours work or driving you will be able to drive while not fatigued .

59/The government and the NHVA need to explain, to the ordinary person and industry how, if you are fatigued after driving 12 hours AND A DANGER TO THE PUBLIC and yourself, and guilty of an indictable offence, what magic occurred to the driver, that to the ordinary person is a tangible thing, that makes a driver a less risk or the same risk, driving/working for 14 hours daily than he is working a 12 hour standard day.

60/ In reality the acceptance of BFM time provisions raises and argument of estoppel against the penalties that apply to ordinary hours provisions of the NHVL S98, s99, s100 .

### **Advanced Fatigue Management s 257 NHVL**

61/When trying to explain this provision of the Fatigue law to the ordinary person, they are astounded, as is any person with common sense in the industry, trying to understand, how, if you are fatigued after driving 12 hours, AND A DANGER TO THE PUBLIC and yourself, and guilty of an indictable offence, what magic occurred to the driver, the vehicle, the employer, what is the tangible thing to the ordinary person, that a driver can now drive/work safely at 16 hours per day and not pose a risk to other road users. NHVL s98, s99, s100 of the Act

62/This was /is the most inane provision of the Fatigue Management Act ever made law in our history.

63/This provision Lobbied for by major transport companies to ensure their vehicles are used to the maximum time available daily and despite their arguments to the contrary they have no ability to know, prove they are not putting drivers or the general public at risk for their own financial greed .

64/ How does the draconian penalties for breaches under the ordinary time for risk disappear without tangible evidence that this provision does not contravene s26d of COR?

65/ THIS PROVISION OF THE NHVL Fatigue law SHOULD BE REPEALED immediately, this provision is an absolute and identifiable inherent risk to every road user under NHVL s26D of the Chain of Responsibility Act .

66 / Major transport companies are relying on this provision are trying to hood wink the NHVA to keep this provision for their own financial gain at the risk of the general public.

67/The NHVA and governments should understand that the system major transport companies are adapting to justify this provision to put various types cameras in cabins to prevent accident that is based watching drivers' eyes for droop or other reactions will not solve the problems or the risk of this provision.

68/ What the NHVA and all the alleged fatigue experts these major transport companies are using, and don't know, or want to acknowledge, is a fact that only experienced long distance drivers can attest to, because they have survived it usually over many years, body fatigue .

69/ By the time the eyelids are drooping or the drivers head is nodding, the driver has been fatigued for some hours, fatigue does not only apply to eyes closing as these in truck camera evidences is supposedly showing, but also applies to the body in fatigue, which is a more dangerous fatigue that in most case caused the inevitable fatal accident or the risk of both heavy vehicle and car drivers .

70/This is a point that can only be evidenced or explained by a personal attendance by a driver who has the actual experience.

71/ I have failed to find any evidence that any person medical or other has the knowledge or ability to make a prescriptive statement that any particular driver, has the physical or mental capability who at some time in the future will be a competent driver and not put himself or the general public at risk after driving/working 16 hours.

72/ Any medical expert who can assess a driver as physical or and mentally fit to drive 16-hour days at some time the future leaves themselves liable for an offence under s26D of the NHVL COR law in the event of that driver is involved in an accident that causes death or injury.

73/ As a professional driver who has worked up to 20-plus hour days and who knows how fatigue overtakes the body I can attest seeing drivers working with 16-hour work diary, at the end of the 16 hours driving in a manner dangerous to the general public and themselves.

74/ It should be part of any accident involving a heavy vehicle that the work diary plan used by the driver be it paper or EWD be used to find out if the driver was fatigued in mind or body and should be investigated, but until transport drivers deaths are included in as a work related death that won't happen and it should be part of this enquiry

75/ It is my opinion that while acceptance by the government of the AFM remains in the Act; it forms an estoppel against any driving hour breach in both Standard or BFM provisions and at some time should be challenged in a court of law.

76/ It could be argued, the acceptance by authorities of the driving hours allowed in AFM is sufficient to estopp the class of definitions of breaches of s98, s99, s100 in both standard and BFM provisions.

***Blacks law of legal Maxims***, An argument drawn from a similar case, or analogy, avails in law

### **New Proposal of The NHVA Fatigue Management Law**

77/ I personally have long worked on the drivers opinion of safety, which is , Working on a 12 hour driving in 24 hrs of time starting work ,that leaves 12 hours of rest , grass root drivers have held that the mandatory minimum rest time should be no more than 4hours with a further 2 hours minimum at the drivers discretion after any 4 hrs of driving time , and the remaining 6 hrs of rest be at the drivers discretion for that 24 hour period . Drivers are consistent that all work time should not exceed 6 days per week

Many drivers have different views on this point. And Employers want their vehicles on the road 24/7 so ,middle ground needs to be found that protects the drivers position .

### **Electric Work Diary**

78/ While at this time not Mandatory, but the NHVA is pushing for more companies to voluntary embrace the technology of EWD but until we remove prescriptive time from the Act then it cannot be made mandatory

79/ Major companies are agreeing to use Electric Work Diary to assist in their application to use AFM ,it doesn't matter what hours the driver has driven at any given time or if he is physically capable and safe to drive 16 hours a day , using EWD gives them protection from the massive fines possible under COR law for offences under danger to public risk .

80/ While some major companies will only use EWD on their linehaul vehicles for their attempted compliance with COR law, but the job of a driver does not only mean, steer the vehicle, other responsibilities arise and there is no record of that .

81/ Other transport companies will use them in all their operations, and the risk is that the EWD will not record any time spent outside the cabin or when the key is turned off, or what the driver was doing ie; loading unloading, repairing vehicles, washing vehicles or other work-related time.

82/ What was found by us in our participation in the RSRT, that major supply chain associations like ALC, AI GROUP and others, will promote the use of EWD by their major transport customers if it will assist in their members enjoying a reduction in freight costs as it was evident that they want to divert and abrogate any responsibilities to the transport company for transport risk while moving their goods as they don't believe that are liable for any risk of the transport task.

83/ It is our opinion that until an EWD can record all time driving **and working time by the driver** it can never be mandatory across the industry.

84/ If this does ever happen the technology would be embraced by the whole industry as we could have the evidence to make every major prime contractor, hirer and or supply chain participant pay drivers and subcontractors for their total time worked while doing that freight task, this will save lives .

### **The training and career pathways to support, develop and sustain the road transport industry;**

#### **Driver Training**

85/ The NHVA must take over control of heavy vehicle driver training across Australia.

86/ This to me is an absolute primary duty that the NHVA owe to the general public under 26D of the COR Act, NHVL

87/ The Industry is attempting to design and use computerised programs to cover the lack of knowledge and ability of drivers, with ESC, EWD, automatic gearboxes. ABS braking and other devices .

88/ Proper heavy driver training over the years would have saved the need all of this

89/ Current new drivers don't have luxury of learning on the job as the older drivers did, they must learn and know before they are let onto highways

90/ Currently the knowledge, ability of drivers being passed by these driving schools is pathetic and dangerous to the general public and a majority should never have been passed.

91/ There has to be reform into what is being taught both physically and orally to these applicants to properly prepare them for driving on highways of Australia.

They are not taught what do, how to react properly if an unforeseeable event happens, mainly because some or maybe the majority heavy vehicle driver trainers don't know. Basically any one drive a truck forward that is the least of the ability needed to be safe on a public road .

92/ To do this any person who applies for a license to teach should have to tested for their knowledge and ability and I make this comment after dangerous advice was given to a group of learner drivers at DECA in Shepparton when I was in attendance

93/ A panel of hands on experienced long distance drivers both employee and independent contractors should set the criteria on what is needed to know and teach for the protection of the general public and new drivers, not a panel of people with university degrees .

94/ It is not only the Australian road rules, road law, load restraint, they need to know, but knowledge that is intrinsic to this industry for their own survival and the public and can only be advised by experienced long distance drivers ..

95/ The drivers are not told the heavy vehicles engines must not exceed particular revolutions on downhill runs, when to give way to other heavy vehicles to avoid an accident, practices that are not are part of workplace law. how many people know its what you know to do in the 1<sup>st</sup> hundredth of second after blowing a steer tyre that will decide your fate or the fate of others .

96/ When a new driver leaves a depot for the first time with his or her HC or MC license on a road he/she has never travelled, they need to know what is coming after driving over the top of particular hills.

97/ A list by experienced drivers and explanation on every dangerous hill in Australia could be done for them to learn where they are, and how to descend them especially after the latest deadly crashes on Mt Ously in NSW and the lofty ranges into Adelaide, Green mount range into Perth, the constant crashes on the Cunningham's gap in QLD to name just a few, and new drivers should be tested on that knowledge.

98/ Sometimes we get a second chance after accidents, but a majority of times in heavy vehicles there is no second chance, one accident and you are dead and or the general public is a statistic.

99/ Ideally, consideration should be given by the NHVA and major corporations to show some real leadership to design a heavy vehicle simulator that could show some these mountain ranges and, similar to airplane simulators, when unforeseen events could be made happen to get reaction from the learner driver to prevent an absolute risk to the general public.

100/ Every driver before being granted a heavy vehicle license, which is a privilege, it should be mandatory to have to pass a simulator test for reactions to unforeseeable events.

101/ These are used in Canada by firms before drivers get jobs especially before a job driving on the ice highways and should be mandated in every state in Australia for new drivers .

102/ Every major transport company should invest in a simulator to test their new drivers ability before hiring, and or to teach them as a primary duty of care .

103 /Every heavy vehicle learner driver must learn and be able to reverse any combination that the license is applicable to, and this was heightened by the Sydney airport tunnel debacle that made news across the world via the media when a driver could not reverse his vehicle out of the tunnel.

104/Every heavy driver license instructor should be liable under COR for the ability of person they pass as competent to drive a heavy vehicle.

105/Heavy vehicle driving licenses that allow drivers to only drive heavy vehicles with automatic transmissions should be never considered, this is basically impossible to police,

either you can drive a heavy vehicle or you can't. After obtaining the appropriate licence drivers can always drive automatic vehicles if they wish .

106/As set out in my previous submission to NTC accident prevention will only work if we replace the outgoing experienced driver's with proper driver training. Unfortunately, we are 30 years behind in proper long-distance driver training.

107/The government must give thought to transport industry apprenticeship over minimum of 2 yr period for any person wanting to be involved in transport that will teach every component of becoming a safe heavy vehicle driver.

108/Further to that we need to recognise that long distance transport driving is a specialised knowledge and ability and should be recognised as a professional vocation .

109/from when a driver steps into a heavy vehicle he is subject to inherent risk of unforeseeable events that could happen at any time .and prescriptive laws may increase risks to drivers and the general public good.

110/The inherent risk multiplies as the exposure to risk of mechanical, tyre, fatigue and other road users' mistakes and prescriptive law further puts drivers lives at risk.

111/This is one vocation where experience and knowledge cannot be replaced with university degrees  
This is a core to driver safety

### **New licence category**

112/We suggest that driver testing and licensing for all heavy vehicles be controlled by the NHVA after consultation of the industry setting out the level of driver's ability and knowledge on a national level before being granted the privilege of driving on Australia roads, this again goes to risk to the public good.

113/Following onto this, the knowledge and ability to drive/ operate a road train multi trailer combinations other than a B Double combination (M /C licence B double only ) Should be another class of licence ie; (M/T/C) the accreditation would need to be granted to drivers who can supply checkable records of driving history in support, in states where there are no testing facilities, and actual testing in states where there are facilities, this is a must after the accidents in Victoria with MC drivers driving pocket road trains without the knowledge and ability to do so . this goes to risk and safety for the public good. Primary duty s26 ,a,b,c,d, COR

### **Compliance interpretation of laws**

114/ A right for all people to be treated equally and not discriminated against is a human right. And the government should be able to advise the NHVA if anything needs to be corrected in their procedures .

115/ When a heavy vehicle driver can be pulled over stopped unlimited times in any journey it is harassment, when no other person in their work place is treated like this it is discrimination that can cost driver hours of their time over a long distance journey

116 /A right to be innocent until proven guilty is a human right  
When enforcement authorities pull over a heavy vehicle there is a presumption of, this driver

will be guilty of something, they just have to find out by nitpicking what they can use for a breach, this is discrimination that can cost a driver his depravity of liberty and major costs.

117/ It is the responsibly of the NVHL to make provisions in the law that prevent harassment of drivers in the course of their work and ensure their liberty is not taken from them.

118/ The NHVA are taking over enforcement of NHVL law in the states slowly and are putting teams in place in some states with the intent to take over enforcement of NHVL in all states.

119/ The biggest problem we have now across enforcement is interpretations of the law by these on road authorities and some of these individuals will be seconded into the NHVA enforcement teams.

120/ Personal interpretations that rely on changing words of a NHVL or statute law , fatigue law and load restraint law is common especially in NSW on breaches of the load restraint provisions to suit the occasion.

121/ Road enforcement authorities know that drivers cannot afford the time or money to travel interstate to fight corrupt infringements and many infringements are given to drivers on this knowledge by enforcement officers.

122/ One common act by road authorities, if nothing can found wrong on inspection of the vehicle and driver ,and without cause, is to demand a driver prove his speed limiter is working ,this simple demand has a \$460 plus time cost to the vehicle owner to obtain that proof that the speed limiter is compliant ,and is known as a claytons infringement ,in other words, harassment .

123/ The government must make it an offence under NHVL for road authorities to knowingly infringe drivers for offenses that are not in statute or trivial to road safety and for harassment of drivers

124/ False interpretations of roadworthy LAWS result in infringements of trivial matters, just to record a breach should not be allowed

***Blacks law of legal Maxims, the law does not notice or care for trifling matters***

125/ Running a single wheel on or over the fog line is the latest craze of the NSW RMS ,it is discriminatory ,I have never read of a case where an ordinary motorist has been breached for this offence, period .

### **Blacks law ,legal maxims**

*That is the construction of the law which the words indicate what is enforceable.*

*And In default of the law, the maxim rules.*

### **Drivers and public risk**

126/ This industry is losing its experienced long-distance drivers in droves because the current prescriptive laws, harassment, penalties and fatal accidents and unfair wages ..

127/We need as an industry and government to agree on a way to stop the exodus from the industry of our best drivers and bring back experienced drivers ,and to do that we must amend fatigue management laws, pay drivers what they are entitled for their experience knowledge and ability and stop harassment of drivers as distinct from, normal enforcement of the law & drivers

128/ This poses a massive risk on all Australian road uses and only proper review of these laws, as submitted, can prevent this drain on this industry in the interest of safety to the public.

129/Since 1990 the professional long distance transport driver has been denied natural justice and this shows in the framing of the long distance modern award which is flawed, and discriminates ,to the benefit of prime contractors and the supply chain, and which denies us fair, and just remuneration ,that should reflect our knowledge ,our ability , the responsibility , the liability , the culpability ,mental and physical duress ,the daily costs ,the risk that increases with every extra tonne of weight we are in control of, the risk with every extra trailer in that combination . plus loss of family time , and personal sacrifices .

130/There is an increase in vehicle gross weight from a grade 3 driver to a grade 8 driver of 580% (22.4 tonnes to 118 tonnes ) and yet, under the klm rate of the modern long distance award , the remuneration is a 10% increase in total ,which is unjust enrichment by transport entities and the supply chain with consent of the Fair Work .

131/ Bought upon mainly , because the Transport Workers Union have failed a duty of care for long distance drivers since 1989 when they became the representative of all long distance drivers in the Arbitration Commission and Fair Work Commission ,and with the Australian Road Transport Industry Organisation, combined to deny long distance drivers their full entitlements, this can and must be rectified by fairness by the government

132/Also it shows the same injustice as the trucks get bigger and weights get heavier the rates reduce even more, although the prime contractors and owners get more remuneration ..

133/The current long distance award should be torn up and we start again using custom as a basis for a formula on the right rates of pay, for the same rate of pay for all long distance drivers, an amendment to the current long distance award can do this, plus an increase for all drivers who are in control of any dangerous goods and the costings should reflect this increase

134 / All transport law including drivers pay should be based risk to drivers and the public ,it must be based on common sense, not deny drivers and owners common law rights of discrimination, or harassment and have input from every party to the law, remembering, that the less costly and simple enforcement of law is self-compliance which can be obtained by drivers have input into laws that affect them.

135 a / I recently decided to give the industry some of my knowledge after 60yrs and be an heavy vehicle instructor ,however i was told by the driving school my 60yrs of driving and business acumen did not qualify me for RPL off the Australian government accreditation and did not meet their own 25 years of teaching heavy vehicle drivers standard..

b/ Unfortunately, In my opinion we are 30 years behind in proper long-distance driver training by these heavy vehicles driving schools causing many of deaths of these unprepared and/or properly trained truck drivers.

### **For the best productivity**

136/for this industry there has to be one set of rules and laws across 136/Australia for all participants in the industry, and states cannot have the right to opt out of those rules and laws.

137/We would suggest the reformed non prescriptive NHVL should be incorporated into the dormant and un enacted Part 5 of the Interstate Transport Act 1986 so that it can be applied

across Australia, and if part 5 has been repealed re-enact it .

138/The NHVA as a Commonwealth entity should be the missing authority of Part 5 to enforce that part of the Act the government, the NTC should give this consideration as a way to makes state and territories to be bound to the law..

139/Part 5 of the Interstate Transport Act only needs a transport minister to sign off on it for it to become law

140/The NHVA could then also stand alone as the body to enforce all other issues of the states that it currently covers that cannot be legally enacted as part of Commonwealth law.

150/Part 5 of the Interstate Transport Act sets out the licensing of the industry as an enforcement tool and to control the entry into the industry by new players without business experience and it should be used in that way in the future.

### **Contracts of hire**

151/ The Chain Of Responsibility Act as part of the NHVL must also apply across Australia and in particular the primary duty that applies under s26, A,B,C,D of the Act has a wide range of protection that can apply to all participants in the industry and also protection to the public good across Australia as part of contracts and agreements between subcontractor rates .

152/The RSRT orders held that 30 day payments were mandatory across Australia, and while the newly formed federal small business office has attempted to address this point it has to be enforced through ACCC which is a bureaucratic night mare, as is unfair contracts.

153/A point only known to a few, after the RSRT orders 2014 ( the 1st order) and the order of the 2015( the 2<sup>nd</sup> order) and after the repeal, an independent contractor successfully took legal action against one of Australia's largest transport companies for 8 breaches of those orders.

154/This was a right of law under the RSRA for an independent contractor to take direct action for breach of an act and the first time this type of action was legislated by a government.

155/This right should be included in other statutes relating to transport.

156/Unfair contracts that effect any transport company from the smallest to the biggest in relation to supply chain has to be scrutinised to ensure all parties to contract do not inadvertently breach their Primary duty which include all parties to accepting it cost the same money to operate a heavy vehicle in any direction it travels and remove back loading rates from transport , including the supply chain parties who openly set business to exploit this fact

.157/Held by lord chief justice Willmot CJ.Collins v Blantern 1767 2 wils KB quote.

*A contract that Tempts a man to transgress the laws ,to do that which ,is injurious to the community is void at common law And the reason why the common law say such contracts are void ,is for the common good Unquote,*

158/The principle of law of this judgment should be the reason behind every decision of the government when reforming practices that are currently in place

### **Efficient cost-recovery measures for industry stakeholders, including subcontractors**

Viability and safety for all heavy vehicles and an equal playing field

159/This is an issue that every effects the costs of every company large or small and the government have a duty to rectify and ensure that any imposts on road transport are fair

across the industry and across Australia and it is capable to recover those costs , this has to be a priority for this enquiry

### **The development and maintenance of road transport infrastructure to ensure a safe and efficient road transport industry;**

160/The government should be actively involved in installing a fairer transparent system of payment of registration fees by heavy vehicles across Australia by going to a user pays model for road building and road maintenance.

161/Registration fees for all heavy vehicles should be added to fuel imposts so no matter how many kilometres per week the vehicle does, road maintenance charges are paid as you go, and it matters not how many trailers are being towed by that combination, it is reflected in the fuel economy of the vehicle, an example would be;

161/A quad trailer road train combination vehicle may return from 0.8 klm to the litre ,a 2 trailer vehicle combination will return from 1.5 to1.9 litres to the litre, a single trailer combination may return from 1.9 to 2.2 klm to the litre ,but for all the time that vehicle is being driven on a highway the fuel burn of the particular vehicle will collect the imposts required to pay for the replacement of registration costs that currently apply as a user pays policy. .

162/ Currently the registrations costs for an independent contractor registering 1 prime mover and 2 trailers travelling 120000 kilometres per year are the same as the major fleet vehicles of the major companies, who same vehicles work 24/7and amassing 350000 plus klm per year, and in multi trailer road train jurisdictions this unfairness multiplies, this is an unfair system.

163/Clearly single vehicle and multi combination truck owners are being discriminated against in registration costs and klm travelled and major transport companies are getting a free ride at the small independent contractor's expense as are those using Performance Based Vehicles or permit vehicles gaining extra-legal gross combination weight at no extra cost ,and again, the more weight on the vehicle the more fuel burn, the more they will contribute to the costs of road maintenance .

164/With the current NHVA permits for many different performance-based vehicles a user pays system on fuel is the only way every person will pay his fair share of the costs for the combination weight of the vehicle under this system.

165/All major highways and freeways must have more full amenities truck stops and pull offs for short rests periods to alleviate fatigue risks and should be spaced at 25klm intervals.

166/This should be a commitment from local councils and shires to assist implementing these as a priority, as duty of care under NHVL COR, for the public good

167/Failing a user pays on fuel then the only other way is for a new road tax for heavy vehicles which no one in transport would support

### **Toll roads imposts**

168/The government and the NTC should be involved in toll charges for heavy vehicles which are currently a major burden on industry in particular independent contractors who are price takers in the rates they are paid and toll fee recovery is not part of the rates they obtain from prime contractors for work done .

169/It appears at this time that road toll operators have no intention of setting fair tolls but are content to just set a figure that suits them to maximise profits

170/State governments should have more involvement in the rates toll companies charge transport vehicles, and should involve themselves into making the supply chain and or prime contractors reimburse prime contractor and subcontractors these imposts .

### **Competitive Pressures and duress**

171/ is still one of the main causes of road deaths of heavy vehicle long distance drivers every truck accident resulting in death or injury be investigated by ABS or National Truck Action Research Centre (NTARC) or similia, with particular attention to,” was the driver or the owner of the vehicle subject to financial duress that could have contributed to the accident. “was the pay rate of the load a contributory factor.

172/The federal government should under COR s26 A,B,C,D, NHVL, make transport driver deaths and injuries’ subject to OH&S ,work safe laws of the cwth and all states ,using the interstate transport Act 1986 as the vehicle to do this if it is still possible .

173/Until proper laws are enforced with penalties that are proved to be based on risk to drivers and the public good and not revenue for the states, safety cannot improve.

### **The importance of an enforceable minimum award rate and sustainable standards and conditions for all stakeholders in the road transport industry;**

174/Every and any business anywhere in the world can only survive if it obtains full cost recovery and an margin of profit, no matter if it is a corner shop or 1 truck business or a 100 truck business and particularly in the transport industry .

175/ RSRA and the RSRT enacted by the Labor federal government was the most feared law to all associations and their corporate members to be enacted by a federal government in our history.””

176/The reason being, it had the power to make a difference to the culpability to major transport companies and supply chain companies for unfair practices leading to road deaths.

177/These associations who refused, and still do to accept the findings of numerous enquiries where independent contractors and drivers gave evidence pre RSRA into road safety and who found rates of pay and road safety go hand in hand.

178/These associations with corporate investment are relying post RSRT opinions where independent contractors and drivers had no input into them and have no relevance to the truth

179/The road safety remuneration tribunal was the first time that a government body had a proper interest into road safety

(a) That allowed direct place at the table representation by owner drivers/independent contractors into laws that directly affect the way they operate their business and their safety

(b) The right to take direct action into a legal jurisdiction for breach of any provisions of an order

( C)The right to a no cost tribunal in all states to appeal any alleged infringements before fines could be enforced

(d) Transparent consultations into the real costs incurred to operate vehicle at this time and the agreed costing formula that followed

(e) transparent consultations involving independent/ contractors who were involved from day 1 , supply chain and the major transport players ,they took place over 3 years between all parties to bring about provisions of the orders to protect small business and promote driver safety .

( f) that the tribunal was the first government body to request prime contractors to produce their individual operating costs as comparable evidence to owner drivers payments , which they refused to provide .

180/ Transparent consultations into the real costs incurred to operate vehicle at that time and the agreed costing formula that followed, however much time was spent on a major sticking point, the costing value of a prime mover vehicle and how many kilometers per annum to base annual costs on .

181/Those representing transport associations held the inane view, that for those independent contractors who owned their vehicles then they could not claim prime mover payment costs in the rate they received, which would mean they could not replace the vehicle they had because they would have no money to purchase them

182/Prime contractors and supply chain representatives said the rate should apply to the cheapest trucks that could maybe do the job, then after 3yrs of consultations it was agreed to insert a cost that allowed independent contractors to purchase and claim a vehicle approximately 50% between the cheapest and the most expensive .

183/ The RSRA was repealed by the federal government on the 18<sup>th</sup> April 2016 after the government was told and presented with misleading and deceptive facts and material by all major transport and supply chain associations, lobbyists and companies these people who for 3 years sat in front of the tribunal saying they were in full of support of the Act and the work the tribunal.

184/We note the opinions of associations saying the proposed RSRT rates order would not have reduced drivers' deaths is a flawed opinion with no facts to back them up.

185/The PricewaterhouseCoopers (PwC) opinion for the RSRT that 20% or 20 drivers in a hundred were caused by driver's mistakes is also a flawed opinion and failed to take in to account contributory evidence.

### **Learn from mistakes**

186/All this said ,we have to learn by our mistakes ,the RSRT was charged with bringing down a safe freight rate for owner drivers ,what it should have been concerned with was ensuring that all transport operators receive full cost recovery and a margin of profit .And that should be the intent of this enquiry.

187/Independent contractors are price takers and even major fleets in some contracts are price takers from the large supply chains .

188/When we started in the RSRT people were trying to get to a rate using 9 different costings to arrive at that rate, when we finished it was agreed there were 19 costings required to get to a rate needed for full cost recovery of a heavy vehicle .

189/I viable transport industry across Australia when it can be agreed protects large and small country towns, provides jobs in large and small country towns as well as the cities'.

190/Major companies or I truck operations need to full cost recovery to ensure the most important cost is available, ensuring the vehicle is always in roadworthy condition, this protects the driver and the general public

191/ A provision that came form the 2014 order was a maximum 30 days payments of invoices and this provision should apply to all transport operators large and small, this also goes to road safety.

### **Policing by the NHVA**

192/The NHVA should be the main body to enforce NHVL with properly trained personal enforcing NHVL as they are now doing in SA ,Tasmania and ACT, and soon Victoria and with only properly trained enforcement officers to infringe drivers to prevent unqualified people infringing drivers with false interpretations of law ,changing the words of acts to suit themselves as currently happening .

193/The big stick approach to penalties NHVA for doesn't work, and massive fines won't stop operators from making simple mistakes and the draconian fines imposed that they don't have way of paying due to financial duress, in transport we have a vernacular that states, you can't get crap from a rocking horse.

194/The penalties under HVNL must be changed to penalties based on risk instead of penalties to suit revenue, to do this, the penalties for all fatigue breaches and other breaches of NHVL must be taken out the hands of the Queensland legislation, and be framed and drafted with a penalties board of government and industry representatives to take into account administration mistakes, errors and genuine risk across the board for all heavy vehicle breaches, for the public good and for proper transparency into penalties.

195/With reformed non prescriptive NHVL and revised penalties based on risk, the most powerful tool to enforce breaches of law is still, "a licence to operate", and a licence to drive, the then transport minister, Peter Morris supported this when the Interstate Transport Act 1986 Act was written and the reason for Part 5 of that act

196/All major transport companies opposed Part 5 of the Act, as originally proposed with a licence for every vehicle and a licence before more trucks could be purchased , but a single licence for one truck or one thousand trucks should not be opposed as a way to penalise rogue companies if their practices put drivers or the lives of the public at risk.

197/The only decision is, how much for the licence, many good opinions were raised on this point but never expanded on.

198/The Act could have also been used to make supply chain participants liable for contributory risk.

### **Enforcement and for Justice to be seen to done**

198/ in a perfect world the NHVA should have the power to set up a tribunal in all states where drivers can adjudicate or appeal alleged infringements, without costs, before penalties can be enforced.

199/ This will stop the current situation where most drivers are unable to get to court to advocate their guilt or innocence because distance, cost, and time off the road.

200/Where a driver or an owner in Victoria or other states has to engage out of state lawyers and travel out of state to defend an action brought against them .

201/And as I have stated, anyone in transport knows, finding a competent lawyer to represent you on transport issues is like finding a needle in a haystack in any state, let alone out of state.

The enquiry should consider this possibility

### **The impact of new technologies and advancements in freight distribution, vehicle design, road safety and alternative fuels;**

202/Based on current heavy vehicle accidents and driver deaths in 2019 it would appear that the magic bullets that were proposed to make roads and driver's lives safer, with ESC, RSC, ABS, Automatic gearboxes according to all the alleged experts, have not worked and they won't work and mandating these safety feature should not be done, and should remain at the purchaser operators discretion.

203/Further on this point the current heavy-duty truck manufacturing and sales that a particular heavy vehicle drives like a car defeats the purpose that drivers need to have responsibility of what the heavy vehicle is doing at all time.

204/Truck driving is a job, a dangerous job, if you want to drive a car for a living, drive a cab, to make a point ,truck driving should not be easy ,it needs to be uppermost in a drivers mind of what he is doing, not relying on inbuilt features of a vehicle doing his job.

205/In my opinion taking a drivers responsibility out of driving a heavy vehicle will only add to truck driver fatalities as I believe it is doing now and will be a bigger issue in the future .

### **Other issues that need action**

206/Industry need the government to step into the tolerances for vehicles with over width loads when carrying emergency related loads or vehicles built under ADR that don't comply with current law. The current enforcement on this by NSW RMS has got to the point where industry needs to be prepared to seek help when the NHVA takes over enforcement from RMS,

The tolerance law needs to be based on risk to the general public not just because it doesn't comply by a centimetre .

### **Older vehicles**

207/There are many parties trying to suggest that older vehicles should be replaced and newer vehicles be compulsory because fuel burn and other grounds, but omit to make reference to the other costs to operate euro engines that make them more costlier in the long run and also adds to finding drivers who want to drive euro built or designed trucks .

208/This argument was raised in many meetings of the RSRT between independent contractors and those representing major players, but no company could advise the tribunal how independent contractors could pay for these new vehicles, other than to say independent contractor will have to buy cheaper inferior European vehicle on the freight rates that they receive ,instead of the up market American vehicles they prefer.

209/Most major transport companies themselves are downgrading to cheaper euro trucks because of the freight rates they are compelled to accept by supply chain participants.

210/Consideration must give to the majority of older vehicles being used that are better maintained and in better roadworthy condition than many later model trucks running up and down the highways. We are in the position to attest to this through our accredited heavy vehicle roadworthy business.

211/The most important advance into both drivers safety and fuel economy in trucks was the design and implantation of cruise control which increased economy by as much as 15% on some trucks and others by more, and our own tests have shown by the limiting vehicles to 100 kph with cruise control, older vehicles are as, or more, efficient than current euro 5 controlled engines.

212/There are some opinions that automatic gear boxes are more efficient on fuel, however this is argumentative and depends on the driver training and more important experience and knowledge of the driver.

213/The final order on safe rates of the 18/4/16 addressed this argument and made allowances for independent contractors to purchase the vehicle of preference although none of the parties to RSRT will admit to this fact and will pivot to other self-interest issues.

### **Alternative fuel**

214/ Consideration should be given to update the law on alternative fuel in particular that LPG/diesel blending should be revisited.

215/ The design of the diesel engine by Rudolf Diesel only allowed the efficiency of a diesel engine to use 78% of the fuel and rest was wasted and added to pollution.

216/ At this time Australian law only lets this blending system available to vehicles built prior to 2003,

217/ We have proven and can attest the LPG/diesel blending reduces the 22% of diesel that normally is emitted out the exhaust to 1% of wastage saving 25% of diesel costs

### **Sleeper cabs for road safety .**

218/ Australia through this enquiry must revisit the length laws of heavy vehicles, we have been asking for the measurement from front of bull to centre of turntable (fifth wheel) to be excluded from total length law and consideration should be given in line with reforms to fatigue management .

219/Fatigue management and road safety requires the size of sleeper bunks be open to the type of vehicle, conditions, and the jurisdictions the vehicle works ,

220/We need to change the law to include that all long distance vehicles must be fitted with main engine off, stand alone cab air conditioning for sleeper berths to assist in fatigue management.

### **Industry participant in this enquiry**

As I have stated prior, we must learn from history

We know from the RSRT that when it comes to cost recovery 5 sectors in the industry are self-regulated and have no wish to have government intervene and

should be excluded from most of the discussions on those points and other that don't concern them.

1/Heavy haulage companies in Australia self-regulate and do not want any government input on costs and the only issues out of this enquiry would road user charges and work diary amendments and incidentals like drivers & risks.

2/Car carrier companies argued for themselves and their subcontractors and made a complex submission at the RSRT are also self-regulated do not want any input into costs and again the only benefit from this enquiry would be road user charges and work diary amendments and other incidentals like drivers & risks

3/Forestry contractors in Victoria and Tasmania also stated they are regulated by themselves and the **Victorian Owner drivers and Forestry Workers Act** and do not want input into their costs by governments .Work diary legislation's applies to them so they would be involved as would anything to do with drivers risk ,however road user charges don't apply to most of them any more

4/The Australian livestock transport association and their bulk carriage affiliate, who, in post RSRT in industry meetings, stated they owned the repeal of the RSRT argued at the tribunal they wanted no part of cost recovery by government, they do their own costings and government assistance applications for their members . This is supported by their volume loading agreements for stock carter's and fatigue exemptions which no other sector gets .

5/Their Bulk haulage members also sided with the livestock associations that they could look after themselves and their subcontractors. Likewise, as others, drivers log books concern them and drivers risks but road user charges would no longer concern them and road user charges for a major majority of bulk haulage contractors .

Evidence produced to the tribunal disputer whether any subcontractors of the latter 4 sectors was correct and tribunal disagreed with the assertions.

### **Unfair practices**

221/As I have stated the industry must all be on a level playing field . Primary producers have a cost protection we don't get in general transport, example, low registrations cost, fuel excise rebates.

222/ A recent court decision in Victoria in an action brought on by Vic Roads the magistrate ruled on the interpretation of the primary producers registration rights, it was selective and conditional resulting in any person registered as a primary producer of farm animals, timber, grains, general farm products exclusively can register as a primary producer and save money on the operating costs .

223/To follow on that precedent those same primary producer carriers can also claim farm fuel excise rebates further reducing their operational costs .

224 / I don't have figures on the total number vehicles across Australia that will take advantage of this decision but general transport operators are the losers.

225/That puts these transport companies at conflict with the remainder of the industry and this is further argument that road user charges must go to fuel costs so everyone contributes fairly

226/It also raises a conflict of interests with these associations who represent these operators and who have input in this enquiry, and history shows that in a debate on road user charges these associations will vigorously oppose those charges on behalf of their members who primary producers

### **NHVA issues**

227/ In conversations with operators wanting to seek permits for PBV it has been shown that the NHVA procedures to authorise permits can cost applicants up to \$22000 in costs because of their incompetence and inability to fast track similia application's already in place . It can take 4 mths to obtain a permit and in the meantime a \$500000 piece of new equipment sits idle.

Every time a applicant checks by phone or mail on his permit application it will cost him \$75.00 in penalties for daring to annoy the department.

228/This enquiry should enquire of NHVA why are transport operator being fined because of short comings in NHVA procedures

### **Supply chain**

RSRT orders made the supply chain culpable in drivers fatigue and since the repeal it has gotten worse, drivers waiting to unload, load, products from supply chain are waiting for hours, with no reimbursement of or consideration of how it effects their fatigue management ,and if you complain you will get a new time slot .This practice puts drivers and the public lives risk .

These practices must be stopped as part of any cost recovery plan and all time unloading and loading reimbursed to subcontractors as cost recovery .

### **The social and economic impact of road-related injury, trauma and death;**

229/Truck driver deaths cannot continue as they, it's the responsibility of government to work with the industry with the intent have the yearly Australia wide truck death rate to reach zero.

230/There is no total number of annual truck driver deaths when governments and industry can say, well we have done the best we can, it is and always will be an ongoing problem.

### **The importance of establishing a formal consultative relationship between the road transport industry and all levels of government in Australia;**

231/ It is absolute important for the industry to keep open dialogue with government, so as long they are all prepared to listen to each other with the road safety for drivers and the public at the foremost of discussions and a viable transport industry for the future .

I remain available at any time to explain any contents of this submission.

Thank you for the opportunity to make this submission.

*Jerry Brown-Sarre*