



NATIONAL ROAD TRANSPORT ASSOCIATION

**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 Reform<sup>1</sup> (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.<sup>2</sup> 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.<sup>3</sup>
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 reference<sup>4</sup>, 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,<sup>5</sup> 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

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

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

<sup>3</sup> Above note 1 at p 11

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

<sup>5</sup> <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) programme<sup>6</sup>. 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.”<sup>7</sup> 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).<sup>8</sup>
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*<sup>9</sup> with the conclusions of the NTC paper being reinforced in the NatRoad submission on that paper.<sup>10</sup>
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

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<sup>6</sup> [https://www.transportinfrastructurecouncil.gov.au/publications/heavy\\_vehicle\\_road\\_reform.aspx](https://www.transportinfrastructurecouncil.gov.au/publications/heavy_vehicle_road_reform.aspx)

<sup>7</sup> Ibid

<sup>8</sup> <https://hvnireview.ntc.gov.au/>

<sup>9</sup> [https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.ntc-hvlawreview.files/5715/5382/1099/Risk-based\\_approach\\_to\\_regulating\\_heavy\\_vehicles\\_Issues\\_Paper1.pdf](https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.ntc-hvlawreview.files/5715/5382/1099/Risk-based_approach_to_regulating_heavy_vehicles_Issues_Paper1.pdf)

<sup>10</sup> <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.<sup>11</sup>

#### **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?”**<sup>12</sup> 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.

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<sup>11</sup> Above note 2 at v

<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup>
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

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

<sup>14</sup> [https://www.accc.gov.au/system/files/1465\\_Container%20stevedoring%20monitoring%20report%202017-18\\_D08.pdf](https://www.accc.gov.au/system/files/1465_Container%20stevedoring%20monitoring%20report%202017-18_D08.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.<sup>15</sup> 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 Centre<sup>16</sup> 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.<sup>17</sup> 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 report<sup>18</sup> (Safety Report) into the National Road Safety Strategy 2011-2020<sup>19</sup> (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

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<sup>15</sup> Above note 1 at p13

<sup>16</sup> NTARC *Major Accident Investigation Report* 2019

<https://ntilimited.imagerelay.com/share/f509b79ae5124f34a8cc509e94057f9b>

<sup>17</sup> Id at page 17

<sup>18</sup> 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_Inquiry_Final_Report_September_2018_v2.pdf)

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

achieved 6 years into the 2011 Strategy timeframe.<sup>20</sup> The Safety Report found that there was a failure to implement the 2011 Strategy in a meaningful way. Contemporaneously, the Transport and Infrastructure Council<sup>21</sup> has issued a National Road Safety Action Plan 2018-2020 (National Plan)<sup>22</sup> 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.”<sup>23</sup>

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.<sup>24</sup>
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.*<sup>25</sup>

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.<sup>26</sup>

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<sup>20</sup> 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](http://roadsafety.gov.au/performance/files/NRSS_Implementation_report_Nov2017.pdf)

<sup>21</sup> 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.

<sup>22</sup> [http://roadsafety.gov.au/action-plan/files/National\\_Road\\_Safety\\_Action\\_Plan\\_2018\\_2020.pdf](http://roadsafety.gov.au/action-plan/files/National_Road_Safety_Action_Plan_2018_2020.pdf)

<sup>23</sup> Id at iii

<sup>24</sup> Above note 17 at p 6

<sup>25</sup> Id at p46

<sup>26</sup> 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 2018-2023<sup>27</sup> 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.*<sup>28</sup>
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 2015<sup>29</sup> 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.<sup>30</sup> In the report published in 2019 about 2017 fatalities, this figure fell to 83%<sup>31</sup> with NTARC stating “that for a decade this figure had never been outside of the band between 80-100%.”<sup>32</sup>
41. A similar statistic was isolated by PricewaterhouseCoopers (PwC) in its final report on the Road Safety Remuneration System<sup>33</sup>, 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.”<sup>34</sup>
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.

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<sup>27</sup> <https://www.transport.nsw.gov.au/projects/strategy/nsw-freight-and-ports-plan>

<sup>28</sup> Id at p71

<sup>29</sup> 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_NTARC_Report/C666_NTI_2017_Accident_Investigation_Report_LR_2.pdf)

<sup>30</sup> Id at p12

<sup>31</sup> Above note 16 at p 8

<sup>32</sup> Ibid

<sup>33</sup> [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_review_of_the_rsrs.pdf)

<sup>34</sup> 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 report<sup>35</sup> 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.*<sup>36</sup>

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.*<sup>37</sup>

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*

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<sup>35</sup> 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

<sup>36</sup> Id at p19 our emphasis

<sup>37</sup> 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.*<sup>38</sup>

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.<sup>39</sup>

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.<sup>40</sup> 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.<sup>41</sup>

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.<sup>42</sup> 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.

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<sup>38</sup> Ibid

<sup>39</sup> Above note 37 at p380

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

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

<sup>42</sup> 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.<sup>43</sup> 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.<sup>44</sup>
53. Improvements to heavy vehicle design and the addition of safety features make a proven contribution to the nature and severity of crashes.<sup>45</sup> 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.<sup>46</sup>
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

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<sup>43</sup> Above note 17 at p 52

<sup>44</sup> The average age of the Australian Truck Fleet in 2018 was 14.8 years.

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

<sup>46</sup> <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?**<sup>47</sup>
60. These questions are all explored in the NatRoad submission<sup>48</sup> 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 states<sup>49</sup> 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.

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<sup>47</sup> Above note 1 at p13

<sup>48</sup> <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>

<sup>49</sup> 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.<sup>50</sup> 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:<sup>51</sup>

*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.*<sup>52</sup>

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.<sup>53</sup>

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

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

<sup>51</sup> All Cttee documents including the Report are available at this website

<https://infrastructure.gov.au/transport/freight/freight-supply-chain-priorities/index.aspx>

<sup>52</sup> 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_Report.pdf) at p7

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

- 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%.
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.<sup>54</sup> The NHVR Annual Report for 2017-2018<sup>55</sup> shows that the NHVR received over 55,000 access permit applications in that year.<sup>56</sup> 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,<sup>57</sup> 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.

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

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

<sup>56</sup> Id at p 63

<sup>57</sup> 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.<sup>58</sup>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?**<sup>59</sup> 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

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<sup>58</sup> HVNL, s 647(1)

<sup>59</sup> Above note 1 at p24

detail in the NatRoad submission to the NTC mentioned in a number of places in this submission and accessible from the NTC web site.

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.<sup>60</sup> 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.<sup>61</sup>

### **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).<sup>62</sup> It is this issue of appropriate infrastructure that is likely to slow the

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

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

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



development of the introduction of autonomous vehicles in this country, especially autonomous heavy vehicles.

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.*<sup>63</sup>

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.*<sup>64</sup>

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;

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<sup>63</sup> 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

<sup>64</sup> Id at p73

- 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.

## **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.