



Submission to the Productivity Commission

Draft Report: *National Transport Regulatory Reform*

15 January 2020

NatRoad's Response to Draft Recommendations in Summary

<i>Draft Recommendation</i>	<i>NatRoad Position</i>	<i>Comments</i>
4.1	Qualified support	Any final recommendation should acknowledge that the HVNL review is likely to affect the issue of regulatory inconsistency. In addition, the recommendation should include procedures associated with how best practice regulation should be achieved.
4.2	Supported with one modification	We submit that a "drop dead" date should be included for phasing out SLAs and that it should be no later than end of calendar year 2021.
5.1	Supported but should be expanded	How governments should improve understanding of driving around heavy vehicles should form part of the recommendation e.g. have a question or questions on this issue as part of obtaining a light vehicle drivers licence.
5.2	Supported	More immediate reform of fatigue laws than called for is required.
6.2	Qualified support	More fundamental reform than that proposed is required. Better access arrangements were foreshadowed as underpinning the industry's productivity. This increase in productivity is only likely to occur where more radical reform of the current system is introduced.
6.3	Qualified support	The recommendation should be expanded to encompass how the improvements in NHVR's data management are to be identified and measured.
6.4	Qualified support	All measures are supported but more fundamental reform is required.
6.5	Supported	
7.1	Supported	
7.2	Supported	
7.3	Supported with a small amendment	The recommendation should acknowledge the role of the Office of Road Safety and should propose information sharing between that Office and NHVR.
8.1	Supported	
8.2	Qualified support	Supported only on the basis that the data collected must be de-identified and not collected so as to increase operator costs.
8.3	Supported	
9.1	Supported with amendment	Rather than speak of "acceptable" uses of data there should be clearly articulated restrictions on the use of the data, particularly for enforcement purposes.
9.2	Supported	
9.4	Supported	

10.1	Qualified support	The recommendation should recognise that broader reforms may be devised from the HVNL review currently underway.
10.2	Not supported	NHVR currently receives the bulk of its funding from a cost recovery mechanism that should be explored in more detail by the Commission.

Introduction

1. The National Road Transport Association (NatRoad) is pleased to make a submission on the Draft Report entitled National Transport Regulatory Reform¹ (Draft Report) released by the Productivity Commission (PC) in November 2019.
2. This submission follows on from the NatRoad submission² made on the Issues Paper released as part of the inquiry (First Submission). The inquiry is into the impacts of the transport regulatory reforms agreed by the Council of Australian Governments (COAG) in 2008-09. These reforms include the establishment of national laws for heavy vehicles and their administration by the National Heavy Vehicle Regulator (NHVR).
3. As expressed in the First Submission, 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.
4. This submission responds to a number of the issues raised in the Draft Report, focusing on the heavy vehicle sector.

Draft Recommendations and Requests for Information

5. This submission is structured so that each of the findings and related recommendations of the Draft Report relevant to the heavy vehicle sector are set out and responded to. We also respond to the PC's call for further information.

National Regulator

6. The PC finds that progress with establishing a fully national system for transport regulation has been slow. The PC has made the following draft finding:

DRAFT Finding 4.1

Implementing national transport regulation and establishing national regulators has been slower than anticipated. Both the regulation and the regulators are works in progress. Creating a national regulatory system is complex and time consuming, with early expectations proving to be optimistic.

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

² https://www.pc.gov.au/_data/assets/pdf_file/0014/243041/sub007-transport.pdf

7. NatRoad agrees with this assessment, and with the labelling of the implementation of the NHVR and the Heavy Vehicle National Law (HVNL) as “convoluted.”³ NatRoad supports acceleration of the process of the States giving authority to the national regulator for administration and enforcement of the HVNL with a final date to be set. As discussed below that date should be no later than the beginning of 2022. This will ensure that the NHVR is able to put in place the changes introduced into the HVNL as a result of the current review which we hope will be in place in 2021 at the latest.

8. The second draft finding is:

DRAFT Finding 4.2

There are many derogations by jurisdictions to the national laws. There are over 70 derogations from the Heavy Vehicle National Law and over 80 derogations from the Rail Safety National Law. Some derogations create unnecessary costs and complexity for industry and regulators. These derogations are contrary to the objectives of the Council of Australian Government’s harmonisation reforms.

9. We note the PC indicates that “In determining whether to remove or retain a particular derogation, governments must consider whether the derogation in question reflects evidence-based best practice, and whether the value of the derogation is greater than any costs imposed upon industry.”⁴

10. The PC has, accordingly, made a draft recommendation as follows:

DRAFT RECOMMENDATION 4.1

The Transport Infrastructure Council should request that the National Transport Commission undertake a review of significant derogations from the Heavy Vehicle National Law and the Rail Safety National Law, with the aim of reducing regulatory inconsistency.

The Council of Australian Governments should commit to altering or removing derogations, or altering the national laws, to achieve best practice regulation.

Current HVNL Review Should Modify Derogation Study

11. As the PC is aware, the National Transport Commission (NTC) is undertaking a comprehensive review of the HVNL⁵ which we referred to in paragraph 7 of this submission.

12. We submit that draft recommendation 4.1 should be qualified by reference to the outcome of the current HVNL review. NatRoad is optimistic that consideration of a completely different structure for the HVNL and a greater emphasis on risk based regulation will result in the jurisdictions covered by the HVNL seeing a reduced need to apply derogations.

13. The Transport and Infrastructure Council should prioritise achieving greater consistency and removal of derogations within the current HVNL review process and the PC recommendation should be modified to reflect that approach.

14. In addition, any recommendations in this context should encompass the PC’s own indication that the process of assessing derogations is important:

³ Above note 1 at p98

⁴ Above note 1 p 117

⁵ <https://hvnireview.ntc.gov.au/>

Where State and Territory Governments insist on derogations to the national laws, they should be able to point to evidence supporting that derogation. This process is key, not only to ensure national consistency; it is also important for governments to ensure that the regulations operating in their jurisdictions remain relevant and effective. This evidence base may include the effectiveness of particular policies in achieving their intended outcomes, for example, increased safety.⁶

15. NatRoad submits that any final recommendation should reflect that the process in the prior paragraph should be a formal component of the agreement between States and Territories concerning the application of the HVNL. In other words, there would be an ongoing obligation to assess the appropriateness of a derogation, ideally on an annual basis, in order for it to remain in operation. This specific procedure should be identified as part of the “best practice” regulation referred to in the current draft recommendation. Hence, derogations should be permitted only where they are subject to objective and regular scrutiny against the aims they were designed to achieve which should be regularly reviewed.

Service Level Agreements

16. The PC notes that the national transport regulators, including NHVR, have used Service Level Agreements (SLAs) to share functions with State and Territory agencies.⁷ Initially, this reliance was sensible, giving the national regulators time to develop their capabilities and smoothing the transition to national regulation. However, the PC indicates that it is now open to question whether this approach is still valid. We would go further and say that the approach is outdated and should be ended. The Draft Report notes that New South Wales is expected to terminate its agreement with the NHVR in 2020 and Queensland is to begin the process in 2020-21.⁸ **NatRoad would like to see a cut-off date of no later than 1 January 2022 for these SLAs** (along the lines expressed in Draft recommendation 7.2 discussed below and as expressed earlier in paragraph 7 of this submission).

17. The PC has proposed the following recommendation:

DRAFT RECOMMENDATION 4.2

The national regulators should phase out Service Level Agreements (SLAs) with State and Territory agencies by absorbing these functions at the earliest opportunity.

Where there is a business case to use SLAs with third parties, those parties should act under the direction of the national regulators to ensure consistent decisions across jurisdictions.

18. We submit that the words “and by no later than the end of calendar year 2021” should appear after the words “at the earliest opportunity.” NatRoad notes that this is an important recommendation that should be brought into effect within a fixed timeline. This is especially the case in the light of inconsistent enforcement of the HVNL that is recognised in the Draft Report. NatRoad remains concerned by unacceptable inconsistency that different enforcement approaches currently engender.

Reform of Enforcement a Priority

19. One of the questions that draft recommendation 4.2 begs is the manner in which consistency in enforcement between NHVR officers (once they are solely concerned with enforcement from a road agency perspective) and police officers might be attained.

⁶ Above note 1 p 117

⁷ Above note 1 at p 126

⁸ Above note 1 at p 102

NatRoad in the submission⁹ made to the NTC on enforcement in the current HVNL process, addresses this issue.

20. In that submission we indicate two proposed reforms that would assist consistency of enforcement in a restructured HVNL:

- there should be a mechanism in the HVNL that binds the police to the NHVR’s published Enforcement Policy or other similar document; and
- there should be consistent Australia wide education courses required to be undertaken by those who enforce the law, inclusive of Police. Any education course should cover vehicle standards issues.

21. The NHVR in its submission¹⁰ to the NTC HVNL review on the subject of enforcement indicated that it operates under a collaborative model. This model “includes working with police and road authorities to ensure consistency of approach and reduce duplication.”¹¹ NatRoad’s submission and the experience of members shows that the consistency of approach and duplication referred to is frequently absent in practice. The NHVR statement is more a goal than a current reality. The confusion that operators experience with inconsistent laws that lead to unfair practices is illustrated in Box 4.6 of the Draft Report. Table 4.2 also illustrates that derogations relating to enforcement are the most common derogations.

22. The PC clearly states the following: “The Commission considers that the most efficient and effective approach to enforcing heavy vehicle regulations will be for the NHVR to have primary responsibility.”¹² It then notes that other regulatory authorities, including the Police, will retain enforcement responsibilities.

23. NatRoad notes that the PC has indicated the following: “The NHVR should work with such agencies to ensure that the regulatory burden on heavy vehicle operators is commensurate with the risks of their operations.”¹³ But how this is to be achieved is not set out. Accordingly, **we submit that mechanisms of the kind mentioned in paragraph 20 of this submission should form part of the PC’s recommendations so that a means to achieve this recommendation is addressed.**

Improved Safety

24. The analysis of the PC in Chapter 5 of the Draft Report is that to date the national transport reforms do not appear to have had a significant impact on safety. Appendix B to the Draft Report that was published on 16 December 2019¹⁴ shows “there is insufficient evidence to link the substantial improvements in heavy vehicle crash rates in the post-reform period to the HVNL.”¹⁵

25. The PC has examined the data relating to safety and has made the following draft finding:

⁹ https://www.ntc.gov.au/submission_data/704

¹⁰ https://www.ntc.gov.au/submission_data/741

¹¹ Id at p 2

¹² Above note 1 at p 227

¹³ Ibid

¹⁴ <https://www.pc.gov.au/inquiries/current/transport/draft/transport-draft-appendixb.pdf>

¹⁵ Id at p 13

DRAFT FINDING 5.1

There have been significant improvements in heavy vehicle safety over the past decade, with the number of heavy vehicle crashes involving injury or death per kilometre travelled decreasing by about 40 per cent between 2008 and 2018. The fall in crash rates is consistent with longer term trends and is likely to be due to factors affecting all vehicle types such as improvements in road infrastructure and safer vehicle design.

26. NatRoad agrees with this finding. However, we are concerned that the PC has indicated the following but has not taken further the notion that heavy rigid fatalities are decreasing at a much lower rate than for articulated vehicles:

Despite similarities in the rate of crashes involving injury or death, larger articulated trucks have been more commonly involved in a fatal crash than smaller (rigid) trucks or road vehicles. Data indicate this continues to be the case, although the rate of articulated truck-related fatalities has declined substantially and consistently over at least the last 25 years (figure 5.3). Heavy rigid trucks are responsible for fewer crashes per kilometre driven, but this rate has increased slightly over the past five years.¹⁶

27. NatRoad notes that the Bureau of Infrastructure, Transport and Regional Economics (BITRE) found that fatalities in crashes involving articulated trucks are trending down at approximately 5 per cent per year but there is no declining trend for fatalities in heavy rigid truck-involved crashes.¹⁷

28. The need for action to go deeper into causes of heavy vehicle crashes is clear. **The disparity in these trends has not been adequately explored and we ask the PC to reinforce the need for research into this issue to be conducted as a matter of urgency.**

29. The PC has also taken into account the issue underlined by NatRoad in the First Submission that where heavy vehicles are involved in fatal road incidents, evidence suggests that other road users are legally at fault. The PC has made the following draft finding:

DRAFT FINDING 5.2

Most multi vehicle fatal crashes involving a heavy vehicle are not the fault of the heavy vehicle driver — in 2017, the driver of the other vehicle was at fault 83 per cent of the time. For serious, non-fatal, multi vehicle crashes involving a heavy vehicle, the heavy vehicle driver was at fault 65 per cent of the time (2017).

30. A related statistic derived from BITRE is that approximately 80 per cent of fatal crashes involving heavy trucks are multi-vehicle crashes.¹⁸

31. A related recommendation, with which we agree, is as follows:

DRAFT RECOMMENDATION 5.1

State and Territory governments should seek to improve general road users' understanding of driving safely in the vicinity of heavy vehicles through education and enforcement measures.

¹⁶ Above note 1 p 136

¹⁷ BITRE *Heavy truck safety: crash analysis and trends 2016*

https://www.bitre.gov.au/sites/default/files/is_078.pdf

¹⁸ Ibid

32. Again, **how this might be achieved should be a component of the recommendation, such as requiring an accurate answer to a question or questions about behaviour around heavy vehicles to be a mandated part of obtaining a light vehicle drivers' licence.**

33. We note that other aspects of improving road safety are addressed in Chapter 9 of the Draft Report and are discussed below.

Chain of Responsibility

34. Chapter 5 contains a short discussion of chain of responsibility (COR) obligations.¹⁹

35. In essence, the PC has indicated the potential importance of COR laws in achieving better safety outcomes. However, the PC finds that due to its recent inclusion in the HVNL, there is little evidence yet of the effectiveness of COR laws.

36. NatRoad records that recent member experience with COR laws is negative. Members have alerted us to concerns about customers up the supply chain using COR as a means of getting information and applying excessive audit requirements. This issue was given coverage in the media²⁰ in April 2019 where the NHVR said that it had received "several reports of unnecessary pressure to disclose additional information from larger customers beyond that required under the current provisions."²¹

37. Obviously, the COR law does not mean that a customer is able to require an operator to provide details of drivers, safety systems and work diaries. But, some contracts that NatRoad has assessed and advised members not to sign give customers that right, often proffered on the basis that these details are required in order to comply with COR. Those contracts should not be signed. Having said that, we are not naïve about the realities of the market and the power of some customers. Hence, members do regularly bind themselves to these contracts.

38. In the face of increasing customer and principal audits despite membership of one or even more certification schemes²², members are indicating that they are suffering under an administrative tidal wave. Customers/principals do not appear to have sufficient confidence in current assurance schemes so as rely on them to satisfy their COR obligations.

39. Members are reporting that not only are they subject to frequent and intrusive audits but that they are required to adhere to sometimes unreasonable operational directives (see box below) linked to compliance with the private assurance regimes being imposed. There is an absurd level of duplication where the NatRoad member has its own audit system, is then audited by its major customer and then, for example, in seeking to meet a tender, must meet other intrusive requirements. The major customer or principal (where the member is a subcontractor) then places other contractual obligations on the member (see box below) in the name of assurance.

¹⁹ Above note 1 at pps 140-141

²⁰ https://www.fullyloaded.com.au/industry-news/1904/nhvr-moves-against-customer-cor-overreaction?utm_source=Sailthru&utm_medium=email&utm_campaign=ATN%20eDM%2001%2004%202018&utm_term=list_fullyloaded_newsletter

²¹ Ibid

²² Discussed in this NTC HVNL Issues Paper https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.ntc-hvlawreview.files/7515/6695/0291/Assurance_models_issues_paper.pdf

Large clients are imposing their systems on contractors regardless of the contractors already having their own systems satisfying their legal obligations, for example:

- A large road transport business (the principal) has advised its contractors that it is introducing a new app based system that will not only allocate delivery jobs but be used to monitor the location of the contractor's trucks even when they are not performing work for the principal.
- The app must be loaded onto a smartphone used by the drivers of the trucks performing the work.
- The contractors do not provide smart phones to their employees. Where a phone is not provided, drivers use their own phone – sometimes a smart phone, sometimes not.
- The contractors already have systems to ensure they comply with their safety obligations, including GPS monitoring devices in their trucks to keep track of their location and cross check that their drivers comply with the fatigue management requirements. This GPS data is not automatically available to the principal.
- The concerns include the requirement for a driver to have a smart phone, to use that smart phone for purposes prescribed by their employer's client (the principal) without the principal seeking consent or offering to cover purchase or operating costs, and the smart phone will be trackable not just when they are performing deliveries for their employer's client but when they are undertaking other driving work and possibly not even during work time.

40. In light of these developments, **NatRoad proposes that any future certification system devised under a revised HVNL should properly assure customers that COR obligations are being met.**

41. Currently, the purpose of operator certification is to provide an alternative path for compliance with some of the HVNL's requirements. The alternative pathway may be utilised by operators who have in place management systems to achieve the objectives of those requirements as currently expressed in s 456 HVNL. Under a revised HVNL, NatRoad is concerned that any accreditation arrangements should be structured so that COR compliance is formally recognised, and customers are able to trust in that outcome from the accreditation system.

42. This matter is touched on in Chapter 6, as discussed below, but we believe needs more attention in the final report.

Accreditation

43. Chapter 5 also contains an assessment of heavy vehicle accreditation schemes.

44. The PC finds that there appears to be significant overlap between the current accreditation schemes. However, no mutual recognition is in place between the schemes. The PC says "This has led to a situation where operators are accredited to multiple schemes, with multiple compliance costs. Fellows Medlock and Associates reported that 82 per cent of TruckSafe members were also accredited to the NHVAS"²³ with substantial costs being incurred by operators who are in all three of the schemes: NHVAS, TruckSafe and the Western Australian accreditation scheme.

45. The PC analysis led to the following draft finding:

²³ Above note 1 at p 143

DRAFT FINDING 5.3

The lack of effective mutual recognition of heavy vehicle accreditation between Western Australia and the jurisdictions that have adopted the Heavy Vehicle National Law is counter to the objectives of the harmonisation agenda and does not promote safety. Operators bear the costs of meeting the requirements of different jurisdictions.

46. NatRoad submits that it would assist reform in this area for the PC to make a recommendation arising from this finding, a recommendation that incorporates the proposal set out at paragraph 40 of this submission. NatRoad's primary concern is that a new HVNL should prevent customers from requiring their contractors to participate in specific assurance arrangements.

Reform of Fatigue Laws

47. Chapter 5 also contains a discussion about driver fatigue management. This is an important topic for NatRoad members. It is an area demanding immediate rather than long term reform. The PC has acknowledged that NatRoad and others have concerns about the prescriptive nature of fatigue management and the negative consequences associated with the application of the current law: it is possible to be compliant with the current law but fatigued and vice versa. This is unsatisfactory.

48. The substance of NatRoad's concerns is mentioned in the following PC summary of the evidence:

Anecdotal evidence from heavy vehicle operators suggests that prescriptive fatigue management can have perverse effects, potentially exposing drivers to greater risks when complying with the rules (for example, a scheduled rest stop may force drivers to travel at night on rural and remote routes where there is an increased likelihood of collision with wildlife). There is also some frustration around requirements to maintain work diaries.²⁴

49. **The statement about work diaries should be modified so that the objectivity of the criticism of work diaries is reflected in the PC's final report. The notion of "frustration" is subjective and is an inappropriate label in the context of being fined for objectively petty requirements such not drawing a straight line in a record²⁵ or failing to sign a page in the diary.**

50. The criticisms are not just "anecdotal evidence" from heavy vehicle operators. The NTC found in its Issues Paper on fatigue management²⁶ the following:

A whole division of the HVNL is dedicated to work diary requirements. It outlines detailed requirements for obtaining, filling in and carrying a work diary. There are even more work diary requirements in the regulations. And drivers also have to follow the very specific instructions for filling in the diary that are in the diary itself (s 301 of the HVNL). The law provides for sanctions for administrative errors that have no inherent link to safety. These can include poor writing, crossing the page in a different direction or not connecting lines as

²⁴ Above note 1 at p 147

²⁵ <https://www.nhvr.gov.au/files/nhvr-national-driver-work-diary-08-2013.pdf> see page 14 for this requirement

²⁶ https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.ntc-hvlawreview.files/3315/5807/6049/Final_fatigue_issues_paper_for_release_17_May_2019.pdf

*prescribed. In other contexts, administrative matters like these are treated using correction and education, not penalties that could equal a week's wages in fines.*²⁷

51. We reiterate the finding in the NTC extract that the law provides for sanctions for administrative errors that have no link to safety. **The PC should strengthen its findings based on this evidence and other inputs from NatRoad made in the First Submission.** The current content is too qualified. Having said that, NatRoad supports the draft recommendation made by the PC about recognising technology solutions to fatigue management.

52. The following draft recommendation is supported, albeit that it does not go far enough:

DRAFT RECOMMENDATION 5.2

The Council of Australian Governments should amend the Heavy Vehicle National Law to give the National Heavy Vehicle Regulator (NHVR) greater scope to provide concessions from prescribed aspects of fatigue management regulation, where the NHVR is satisfied that more effective systems of fatigue management are in place, such as technology enabled management systems, and/or accredited management systems.

Driver fatigue laws should continue to set outer limits on driving hours.

Technical Maintenance

53. Chapter 5 also discusses the issue of technical maintenance enforcement. We agree with the PC that in the longer term, there are likely to be benefits in reducing the reliance on direct enforcement. In particular that “There are potential efficiency gains from allowing operators to take more responsibility for safety management, albeit still with sufficient oversight, as is the case with accreditation.”²⁸

54. There is, however, a PC observation that is puzzling. The PC says:

*If improvements to the enforcement of technical maintenance were to result in uniform approaches to scheduled inspections, this would have the added advantage of allowing for national registrations to be implemented as per chapter 2 of the HVNL.*²⁹

55. **NatRoad notes that until the passage of the Heavy Vehicle National Law and Other Legislation Amendment Bill 2018, Chapter 2 of the HVNL covered registration. It did not come into force before being repealed. Hence, registration is regulated by the States and Territories.** There appears to be no intention to revive Chapter 2 or to permit national registration under its terms. We therefore do not understand the comment extracted at paragraph 54 of this submission.

56. Currently, there is a “national plate” that is now affixed to heavy vehicles when establishing or renewing registration. That “national plate” is only affixed to vehicles in jurisdictions that have agreed to be bound to the HVNL i.e. it is not affixed to vehicles registered in WA and from 1 August 2019 was an optional matter for vehicles registered in the NT.

57. **The issue of heavy vehicle registration and its devolution from a national system should be more adequately explored by the PC.** This issue appears to be one where revenue

²⁷ Id at p 42

²⁸ Above note 1 at p 150

²⁹ Ibid

interests have subsumed interests of national harmony and the extract set out at paragraph 54 above should better reflect that reality. The Draft Report should be corrected.

Overlap with WHS Laws

58. Chapter 5 also considers the overlap between the work, health and safety (WHS) laws and the specific transport regulatory schemes. The PC notes:

*Having clear dividing lines between one safety regime and another is important to avoid confusing overlaps in regulation or enforcement, or to avoid gaps in regulatory coverage.*³⁰

59. The HVNL focusses on the safety of a heavy vehicle on a road while the harmonised WHS laws cover all work-related hazards and risks. This means there is a significant overlap. Multiple duty holders with concurrent and overlapping duties are a common feature of many work activities, particularly in the transport industry dominated by supply chains.
60. Yet there is little problem experienced by members associated with this overlap. We attribute this to the fact that the primary duty established by s26C HVNL is to ensure, so far as is reasonably practicable, the safety of the party's transport activities relating to a heavy vehicle. This means that an enterprise must consider its broad responsibilities in regard to safety duties, a matter that is appropriately guided by WHS laws in any event. But currently, compliance with prescriptive HVNL requirements does not necessarily equate with meeting the broad safety duty and is not even equated with being safe. Therefore, the two regimes currently appear to be complementary but with a major systemic defect being apparent in the HVNL: i.e. prescriptive requirements sitting alongside the broad, general safety duty.
61. Accordingly, whilst we note the following information request, we do not have information on operational clashes that would assist:

Information Request 5.3

The Commission is seeking additional information about the situations where greater clarity is required between the operational jurisdiction of national transport regulators and workplace health and safety regulators and overlaps in their responsibilities. What options for rectification would be desirable?

62. In fact, **NatRoad seeks greater consistency in the regulatory regimes relating to WHS and the heavy vehicle industry more generally.** Under the harmonised WHS laws, prescriptive solutions are available through regulations or regulator developed Codes of Practice where an enterprise does not wish to introduce a far-reaching performance based solution but seeks specific guidance on how to comply with the WHS law. This model should be emulated in a revised HVNL.

Productivity Improvement

63. Chapter 6 of the Draft Report asks the question as to whether the COAG reforms have raised productivity. The answer is a resounding "No." A number of areas that reinforce this conclusion are explored in Chapter 6, next discussed.

³⁰ Above note 1 at p 172

Access

64. The PC records that the most substantial productivity gain across the three transport sectors under study was predicted to come from improved access for larger heavy vehicles.³¹

65. In discussing the use of larger vehicles, the PC goes too far, we believe, in saying:

*Urban road infrastructure may not be appropriate for long, large vehicles — many of the larger vehicles will always be restricted to key freight routes outside densely populated areas.*³²

66. This statement goes too far. For example, in Darwin road trains are used regularly: there are two focal points for road train traffic within the greater Darwin area, the Darwin Port and the Frances Bay/Winnellie/Berrimah industrial areas.³³ Larger vehicles we contend will not necessarily be restricted to only key freight routes outside of densely populated areas. In fact, adequate and timely port access is critical as a means of improving efficiency of heavy vehicle operations and transport linkages between ports and final destinations.

67. As noted by the PC, technological improvements have made these larger vehicles safer, more efficient and less damaging for road infrastructure.³⁴

68. We note the PC's observation that the COAG reforms established more structured, accountable and rigorous processes for deciding access. The PC states that road managers are required to make decisions according to guidelines from the NHVR.

69. The problem in practice is that road managers are not so required. The NatRoad policy is that the Guidelines should be a code that contains the criteria all road managers must observe rather than being an instrument that must be considered but not necessarily followed as currently is the case.³⁵ So, the use of the word required by the PC is not accurate.

70. The NTC in the Issues Paper on access arrangements had this to say about the relevant Guidelines:

*The approved guidelines help road managers understand how to make access decisions. They outline a best-practice decision-making process. But the approved guidelines aren't used consistently. This was suggested by observation and analysis undertaken during the Review of OSOM Access Arrangements. The approved guidelines aren't promoted or mandated either. This is contributing to delays and poor operator experiences.*³⁶

71. There is an analysis of the role of local governments in access decision making in the Draft Report and the following finding is made:

³¹ Above note 1 at p 175

³² Above note 1 p 179

³³ Cf the PC's comments made about NT at above note 1 p 187

³⁴ Above note 1 p 178

³⁵ https://www.ntc.gov.au/sites/default/files/assets/files/Easy_Access_to_Suitable_Routes_Issues_Paper.pdf at p49 contains a list of the sections where the Guidelines are required to be considered.

³⁶ Ibid

DRAFT FINDING 6.1

Constraints around local government investment capacity and engineering expertise are limiting the effectiveness of the heavy vehicle reforms by preventing adequate assessment and upgrading of bridge and road infrastructure.

72. In turn the following recommendation is made:

DRAFT RECOMMENDATION 6.2

The Australian Government should seek simpler heavy vehicle classifications through the National Transport Commission's review of the Heavy Vehicle National Law for the purposes of access decisions. Additionally, the National Heavy Vehicle Regulator should provide more detailed and effective guidelines to road managers.

73. **NatRoad would support more systemic reform of access which is central to advancing productivity. At the least, the recommendation should seek for the mandating of the relevant guidelines to ensure consistency in decision making amongst local governments.** The NatRoad vision for access was set out in the NatRoad submission to the HVNL review³⁷ and is commended to the PC.

74. In summary, that submission involves the following which represents more fundamental reform than proposed by the PC:

- Access is one of the most pressing areas for reform of the HVNL.
- Nationally consistent service level standards for roads, to categorise roads by their functions and set customer-focussed service levels is the foundation of the Heavy Vehicle Road Reform (HVRR) programme and should be accelerated in order to frame other reform measures.
- NatRoad supports the system of road access that is currently applied in the NT which should be the model on which national reform proceeds.
- Section 156 of the HVNL should be restructured as recommended in the OSOM report.³⁸
- NatRoad supports moving to as-of-right system of access once a heavy vehicle complies with relevant mass and dimension limits.
- A highly responsive permit system is required. NatRoad does not support a period of greater than 7 days for access consent.
- A transitional arrangement could be that a permit is deemed to be issued where a road manager fails to act within 7 days.
- Extensive pre-approved road networks should be mapped out for all classes of heavy vehicle.
- Where pre-approval is not available, guidelines which are binding and consistently applied by the national regulator should be in place and taken up in the HVNL.
- Timely and connected access to PBS routes should be prioritised. Where road managers do not have the resources to properly assess their networks for PBS access, assistance should be provided by the NHVR and funding allocated appropriately.
- Road funding should be linked to proper asset management with the ultimate outcome of assessing all roads as appropriate for particular vehicle classes/combinations.
- Greater resources and education should be available to road managers.
- Recommendation 34b and 34c of the OSOM report should be implemented.

³⁷ <https://www.natroad.com.au/resources/natroad-submission-ntc-issues-paper-easy-access-suitable-routes>

³⁸

https://www.infrastructure.gov.au/vehicles/vehicle_regulation/files/Oversize_Overmass_review_September_2018_FINAL_REPORT_sans_appendices.pdf

- Harmonisation of inconsistencies around accreditation for pilot and escort arrangements should be resolved by 2020.

75. The PC has focused on the issue of the complexity of the heavy vehicle classification system as a barrier to more efficient access arrangements. The PC finds:

DRAFT FINDING 6.2

The complexity of the vehicle classifications has limited the progress of faster access approvals, through permits, pre approvals and notices.

76. As indicated at paragraph 72, the related recommendation is as follows:

DRAFT RECOMMENDATION 6.2

The Australian Government should seek simpler heavy vehicle classifications through the National Transport Commission's review of the Heavy Vehicle National Law for the purposes of access decisions. Additionally, the National Heavy Vehicle Regulator should provide more detailed and effective guidelines to road managers.

77. We agree with the first part of the draft recommendation. We reiterate, however, the point made about the preference for guidelines to be mandated, as discussed above, and would seek the PC final report to reflect that proposition.

Better Data Management

78. In Chapter 6 the PC indicates that data limitations prevent a fully comprehensive assessment of the reforms. In this context the PC makes a draft finding as follows:

DRAFT FINDING 6.3

The National Heavy Vehicle Regulator (NHVR) has a well-developed information system that allows for effective management of its operational commitments. The NHVR is taking a strategic approach to the collection and use of data and this will allow it to target its activities better. It will also be able to drive broader policy change to improve productivity and safety.

79. The related draft recommendation is as follows:

DRAFT RECOMMENDATION 6.3

The National Heavy Vehicle Regulator should continue improving its data management processes, including how data are stored, integrated, analysed and reported.

80. NatRoad agrees but would ask the way in which these improvements are to be formally identified and improvement measured.

81. The PC makes it clear that access for heavy vehicles still depends significantly on permit applications, with tens of thousands processed annually by the NHVR and road managers. The PC says: "Access is lagging technical improvements in heavy vehicles, with some road managers reluctant to approve access for larger PBS vehicles that have performance characteristics that are on par with heavy vehicles operating under the prescribed HVNL limits."³⁹

³⁹ Above note 1 at p 207

82. It is factors of this kind that prompts NatRoad to conclude that greater and more immediate reforms to access arrangements should be made as outlined above.
83. Two draft findings reinforce the NatRoad stance:

DRAFT FINDING 6.4

The productivity gains from the reforms so far are much less than expected, although there is scope in the future for greater improvements as Performance Based Standards vehicles become a larger proportion of the heavy vehicle fleet.

DRAFT FINDING 6.5

There is scope to rapidly increase the number of gazetted routes, reducing the need for permit applications. In many cases, permit approvals are given as a matter of course for certain vehicle types; these approvals should be replaced with as of right access by gazette.

84. The related recommendation is as follows:

DRAFT RECOMMENDATION 6.4

The Council of Australian Governments should direct road managers (including the state road authorities) to work with the National Heavy Vehicle Regulator to rapidly expand key freight routes covered by notices and allowing as of right access for larger vehicle types. The focus of this work should include:

- expanding the networks available for heavy vehicles with performance characteristics equivalent to B doubles (including Performance Based Standards (PBS) level 2A and 2B B doubles) and type 1 and 2 road trains (including PBS equivalents)*
- where there are classes of vehicles for which permit applications are almost universally approved, developing notices covering these vehicles*
- meeting infrastructure requirements such as truck stops and logistics centres near major urban centres, allowing larger vehicles to be broken down into smaller units where required by urban road network constraints.*

85. Whilst the action points are supported, the NatRoad vision would require additional reforms, especially the granting of as-of-right access wherever possible.

Compliance Costs

86. In Chapter 6 the PC also assesses the available evidence on compliance costs. The PC makes the following draft finding:

DRAFT FINDING 6.6

Data on the compliance costs for businesses for the three national regulators are not routinely collected, monitored and published.

87. The related recommendation is:

DRAFT RECOMMENDATION 6.5

The National Heavy Vehicle Regulator, the Office of the National Rail Safety Regulator and the Australian Maritime Safety Authority should monitor the compliance and administrative costs created by the national regimes and report on the level and change in these costs in periodic (say 3 yearly) reporting. The first report should be published in 2020 to establish benchmark costs.

88. We support this recommendation. **We also believe that the benchmarking process for the NHVR could involve an assessment of the data management processes, their costs and required improvements over time so that Draft recommendation 6.3 above could be better implemented.**

89. In addition, NatRoad supports the following finding:

DRAFT FINDING 6.7

There is little evidence at this stage that compliance costs for businesses have fallen. Each regulator is pursuing changes that should help reduce costs in the future.

90. The discussion in Chapter 6 also leads the PC to the following finding:

DRAFT FINDING 6.8

The Chain of Responsibility reforms appear to be resulting in greater focus at all parts of the supply chain on compliance systems. However, the proliferation of in house systems may raise the compliance burden for transport contractors. Industry could play a stronger role in determining common standards for the heavy vehicle industry. In the rail industry this role is undertaken by the Rail Industry Safety and Standards Board.

91. We refer to the discussion at paragraph 34-42 of this submission where the issue of COR is addressed. We are unsure about how the industry could get further involved. **The development of an industry standard through the current HVNL process is costly and convoluted and, in the context of COR, may have anti-competitive elements. We do not agree with this idea as an appropriate solution to the problems being manifested by COR laws currently.**

Assessing the national regulators

92. Chapter 7 deals with the PC's assessment of the three national transport regulators.
93. NatRoad agrees that "A regulator's fundamental task is to contribute to the achievement of intended regulatory outcomes as efficiently and effectively as possible. Effective management of risks is integral to this task."⁴⁰
94. As against that criterion, the HVNL is so structured that it is an impediment to the NHVR taking a more outcomes-based approach to its functions and constrains its engagement with stakeholders. We note that the PC finds "the excessive prescription in the HVNL has frustrated achieving the IGA objectives of seamless national regulation and consistent and

⁴⁰ Above note 1 at p 222

streamlined administration and service provision.”⁴¹ The PC has urged Australian governments to reform the HVNL in the context of the review currently underway.

95. The PC finding in this context is as follows:

DRAFT FINDING 7.1

The prescriptive approach of the Heavy Vehicle National Law impedes the National Heavy Vehicle Regulator from administering the law consistently with the Council of Australian Governments’ objectives. A more outcomes based approach to legislation and regulation would improve road safety, reduce the burden of compliance and administration, and increase the efficiency of road transport.

The National Transport Commission, which is reviewing the Heavy Vehicle National Law, is well placed to recommend improvements.

96. The related draft recommendation accords with NatRoad’s approach to the HVNL review underway:

DRAFT RECOMMENDATION 7.1

The Australian Government should lead efforts through the Transport and Infrastructure Council to reform the Heavy Vehicle National Law. It should encourage State and Territory governments to remove prescriptive material from the legislation and to include an explicit mandate for the National Heavy Vehicle Regulator to take a risk based approach to its functions.

97. As mentioned in paragraph 16 of this submission, we agree with draft recommendation 7.2 which is as follows:

DRAFT RECOMMENDATION 7.2

The Transport and Infrastructure Council should agree to have all regulatory functions still held by participating jurisdictions transferred to the National Heavy Vehicle Regulator no later than 1 January 2022.

98. The PC has also analysed the capability of the NHVR. Effective management of risks, as mentioned in the extract at paragraph 93 of this submission, can only be advanced by better data collection, analysis and publication about safety risks and outcomes, as proposed by the PC. **There should, however, be greater role clarity between the NHVR and the Office of Road Safety which commenced on 1 July 2019 within the Surface Transport Policy Division of the Department of Infrastructure, Transport, Cities and Regional Development.** The Department’s web site says that the Office “will initially be focused on establishing the functions needed to perform its lead agency role while delivering priority government commitments to new and continuing road safety programs.”⁴²

99. There should be regular liaison between the NHVR and the Office of Road Safety so that the material proposed to be collected is not duplicated. Role clarity between the two organisations’ functions should be established as soon as possible. The relevant PC recommendation is as follows:

⁴¹ Above note 1 at p 224

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

DRAFT RECOMMENDATION 7.3

The Transport and Infrastructure Council should direct the National Heavy Vehicle Regulator to undertake the comprehensive collection and reporting of key safety risks and outcomes, similar to the Office of the National Rail Safety Regulator's annual Rail Safety Report.

Transport Technology and Data

100. Chapter 8 of the Draft Report considers future opportunities for reform in the transport sector relating to transport technology and data.

101. NatRoad supports technology neutral outcomes⁴³ with governments' role being best applied in setting outcomes-based standards and removing any barriers to effective new technologies being introduced.⁴⁴

102. One of the issues raised by the PC but not explored in depth is a "deemed to comply" approach to technology. The PC says:

There may also be benefits in developing 'deemed to comply' guidelines for particular technologies. This approach enables a compromise between prescriptive and principles-based regulation by providing industry with guidance without precluding alternative options.

103. NatRoad policy is that technology-neutral laws that permit operators to use technology to meet performance-based targets are preferred. **Deemed to comply provisions would assist by providing "fall back" prescriptive requirements that showed how to meet more generalised performance criteria. How this would work in relation to transport technology may not be as easily ascertained as it is with compliance with the Building Code of Australia or some WHS laws.**⁴⁵ A great deal more work needs to be done in this area. Hence, we agree with the PC that this subject needs further investigation. We propose that the PC recommend this should be pursued by the NTC in the context of the current HVNL review.

104. We support the following draft recommendation:

DRAFT RECOMMENDATION 8.1

The Australian Government should amend the Australian Design Rules and in service vehicle standards to allow for new transport technologies, including automated technologies, with proven productivity or safety benefits. The Australian Government should aim for national and international consistency of laws and standards where practicable and accept safety devices adopted in other leading economies. The Council of Australian Governments should investigate whether a 'deemed to comply' approach would be practical for some technologies.

105. The PC also explores the better use of transport data. The PC indicates that appropriate telematics data could be used by "regulators, for monitoring compliance and enforcement of operators (but not for directly punishing drivers through automatic penalties)."⁴⁶

⁴³ Explored in this article <https://www.fullyloaded.com.au/industry-news/1910/opinion-tackling-technological-change>

⁴⁴ As indicated at above note 1 p 266

⁴⁵ <https://www.worksafe.qld.gov.au/laws-and-compliance/electrical-safety-laws/deemed-to-comply>

⁴⁶ Above note 1 at p 274

106. It should be noted that there is active distrust of such an approach by members. There is a lack of confidence about giving enforcement agencies access to electronic records. While recognising that the HVNL has legislated tolerances for small breaches when using an electronic work diary, operators are concerned about governments focusing on small breaches and not systemic breaches or patterns of behaviour. Given NatRoad's current concerns about poor enforcement practices, touched on earlier, we do not believe that priority should be given to utilising telematics data for monitoring compliance and enforcement.

107. Accordingly, we have qualified support only for the following PC draft recommendation:

DRAFT RECOMMENDATION 8.2

The Australian Government should cooperate with stakeholders including Transport Certification Australia when developing the National Freight Data Hub. The Hub should include a regulatory framework for the collection, storage, analysis and access of transport data, including telematics data. This framework should specify the data access powers of regulators, enforcement agencies and accident investigation bodies, and should enable these bodies sufficient access to undertake their respective tasks, while protecting privacy and confidentiality.

108. We support the draft recommendation only on the basis that the data collected must be de-identified and not collected in a manner that would generate further costs for operators. It should not be mandated i.e. operators should be able to opt-in to the collection and use of de-identified data. Compliance and enforcement applications should not be adopted.

109. In Chapter 8 the PC also covers the issue of automation. NatRoad supports the PC's observation that "Governments need to ensure regulatory frameworks are designed to ensure safety without imposing unnecessary regulatory burden or stifling productivity and safety-enhancing innovation."⁴⁷

110. NatRoad policy is that automated heavy vehicles require a different set of safety criteria and, potentially, also a different safety assurance system due to their different risk profiles. We support an overarching and positive duty on Autonomous Driving System Entities (ADSEs) to ensure the safety of autonomous vehicles so far as reasonably practicable.

111. We therefore support the following PC draft recommendation:

DRAFT RECOMMENDATION 8.3

The Australian Government should impose a general safety duty on all parties with a significant influence over the safe operation of autonomous transport technologies. The creation of a general safety duty should not preclude the use of prescriptive rules where the assessed risks are high.

Reform Agenda for Safer Transport

112. Chapter 9 of the Draft Report identifies opportunities for safety reforms in the three transport modes.

113. As is evident from prior comments and from the terms of the First Submission, NatRoad is in favour of reduced prescription in the HVNL. We agree with the PC where it identifies that "there is value in offering a two-tiered approach to regulation, with minimum effective

⁴⁷ Above note 1 at p 278

standards prescribed in legislation (offering certainty to operators) complemented by the option of seeking accreditation from the regulator for in-house safety management systems which may better suit the circumstances of the business.”⁴⁸ However, the approach of having performance based standards underpinned by deemed to comply provisions that are prescriptively framed may be a better approach.

114. The PC deals with the topic of a link between heavy vehicle remuneration and safety, a matter canvassed by NatRoad in the First Submission. The Draft Report is tentative in its analysis with the PC calling for further information on inter alia the safety implications of commercial contracts in the industries covered by the HVNL. The full information request is as follows:

INFORMATION REQUEST 9.1

The Commission is interested in further information regarding the safety implications of commercial contracts in the industries covered by the Heavy Vehicle National Law (HVNL), Rail Safety National Law (RSNL), and the Marine Safety (Domestic Commercial Vessels) National Law (MSNL). In this regard, the Commission would be interested in understanding the effectiveness of safety duties applying to various businesses through the supply chain (for example, Chain of Responsibility, Workplace Health and Safety).

115. First, we reiterate the points made earlier in this submission about COR and the need to address the problems caused by the way that some parties in the chain are interpreting the provisions of the law. Secondly, we underline that the NatRoad policy position is for the federal Government to introduce a mandatory code for the industry under Part IVB of the *Competition and Consumer Act 2010 (Cth)* which would address harsh payment terms in transport industry contracts.
116. During the course of responding to one of the NTC’s Issues Paper on proposed changes to the HVNL dealing with Safe People and Practices⁴⁹, members made us aware that a predominant concern with the industry’s safety is ensuring that contract conditions do not create unsafe operating environments. The relevant submission sets out how unfair contracts appear to be proliferating in the industry and how many of the cases taken by the Australian Competition and Consumer Commission (ACCC) have derived from the transport industry. Unfair contracts do not permit appropriate safety cultures to develop: that occurs only when customers view the freight task as integrally involving the operator rather than simply getting the lowest possible cost outcome.
117. NatRoad has asked the federal Government to introduce reforms to prohibit unfair contract terms and introduce penalties for breaches of such a prohibition. It is not sufficient that such terms are merely voidable by court order for the reasons set out in the referenced submission.
118. In chapter 9 the PC deals with contestability between road freight and rail freight. We agree with the following policy position:
- Regulatory measures which seek to shift more freight from road to rail are likely to be counterproductive by imposing large efficiency costs on freight transport and the community. A focus on safety and innovation across all modes of transport will be more effective, less costly, and lead to improved safety.*⁵⁰

⁴⁸ Above note 1 at p 297

⁴⁹ https://www.ntc.gov.au/submission_data/561

⁵⁰ Above note 1 at p 303

119. In Chapter 9 the PC also looks at how data sharing may assist with safety. Reinforcing the concerns of NatRoad expressed above, the PC states:

The Commission has heard relatively consistent anecdotal evidence of recent experiences with data systems, showing that industry may have concerns that:

- *generating and sharing data would require imposition of further compliance costs for businesses*
- *the use of data in safety regulation could lead to heavier-handed, more interventionist enforcement*
- *sharing sensitive data may benefit competing firms or may have other commercial implications, such as benefiting competing firms*
- *the costs of contributing data may be shared more equally than the benefits of the system.*⁵¹

120. In the context of industry's concerns about the use of data for regulatory enforcement referred to above, the PC suggest that "Data-sharing arrangements could be designed to allay industry concerns about heavier-handed enforcement. This could involve legal assurances restricting the allowable uses of data."⁵² NatRoad submits that these propositions should form a PC recommendation in the final report: we note that draft recommendation 9.1 below does not contain a reference to restricting the uses of data but instead speaks of "acceptable" uses of data. There should be clear restrictions on the use of data.

121. With the last proposition taken up as an amendment, NatRoad is able to support the draft finding and related recommendation as follows:

DRAFT FINDING 9.1

While some of the potential benefits of logistics data are specific to the individual operator, there are larger, broader benefits from the collection and integration of data across many operators. These broader benefits risk being underprovided if data generation and sharing are not facilitated.

DRAFT RECOMMENDATION 9.1

Governments (and their agencies) and industry should consider how best to harness logistics and telematics data to improve incentive based safety regulation, with the aim of influencing behaviours that increase safety and productivity.

Governments and regulators should aim to facilitate the adoption of technologies by operators to generate and share data by:

- *providing legal assurances about the acceptable use of such data*
- *clarifying the value proposition to individual operators of their participation in data sharing regimes.*

122. In Chapter 9 the PC also examines heavy vehicle driver skills. The PC notes that there is considerable concern in the industry about the skills and capabilities of some drivers, a

⁵¹ Above note 1 at p 304

⁵² Ibid

concern shared by NatRoad as reflected in the relevant quotation extracted in the Draft Report.⁵³

123. The PC's consideration of this topic does not appear to recognise that Austroads has recently entered the second phase of its work in pursuit of improvements to heavy vehicle licensing and safety.⁵⁴ We note that the PC has sought further information on this topic as follows:

INFORMATION REQUEST 9.3

To what extent are heavy vehicle drivers receiving adequate on the job training, and informal guidance from more experienced to less experienced drivers?

If a more formal training system were to be devised, what would this look like, and should training requirements target the newly licensed or should it also include incumbent, experienced drivers?

124. NatRoad supports improved driver training comprising a nationally recognised qualification combined with supervised on-the-job experience. Currently, licensing regulators place value on practical experience in requirements for young drivers wishing to obtain a car licence. However, the same value is not applied to heavy vehicle licensing. Although there is a time-based requirement for the gaining or upgrading of a heavy vehicle licence, there is no prerequisite to have driven a heavy vehicle prior to that assessment.
125. The additional impact of this time-based requirement for heavy vehicle licensing is that it delays the natural progression of a young but otherwise highly competent driver in certain license categories. This is frustrating for those who would like to work in road transport, and potential drivers are more likely to change to a profession that offers faster job progression and earlier access. The issue of licensing is therefore linked to the need for proper career progression in the road transport industry.

126. A Career Pathway for the road transport industry should include:

- Alignment of secondary and postsecondary education with workforce development systems;
- Rigorous, sequential, connected, and efficient curricula, that "bridge" courses to connect basic education and skills training and integrate education and training;
- Multiple entry and exit points;
- Financial supports or flexibility to accommodate the demands of the labour market in order to allow individuals to meet their ongoing financial needs and obligations;
- Specific focus on local workforce needs, aligned with the skill needs of the industry sectors important to local, regional or state economies, and reflective of the active engagement of employers;
- Curriculum and instructional strategies appropriate for adults, that make work a central context for learning and work readiness skills;
- Credit for prior learning and other strategies that accelerate the educational and career advancement of the participant;

⁵³ NatRoad quotation at above note 1 p 317

⁵⁴ <https://austroads.com.au/latest-news/review-of-the-national-framework-for-heavy-vehicle-driver-competency-phase-2>

- Services that have among their goals a focus on secondary and postsecondary industry recognised credentials, industry specific employment, and advancement over time in education and employment within the industry; and
- Being founded upon and managed through a collaborative partnership between government, industry representatives, employers, education providers, and other industry stakeholders.

127. Austroads has the following to say about potential changes to the licensing and training regime for heavy vehicle drivers that are worthy of consideration by the PC and this material is proffered by NatRoad as a response to the information request:

- *Strengthening the Licence to Drive units of competency and assessment particularly in areas of:*
 - *Safe vehicle operating practice with a focus on the development of cognitive skills such as hazard awareness and response; driving under and responding to a broad range of road conditions*
 - *Vehicle systems*
 - *Loading.*
- *Development of standardised training and assessment material to support the delivery of Licence to Drive units, including potential development of computer based training modules to support skill development and assessment in safe vehicle operating practice.*
- *Consideration of minimum supervised hours of experience as part of heavy vehicle licensing. This is based on research findings which point to the positive increases in technical driving skill which flow from experience. Best practice overseas training programs also point to the importance of experience as part of learning.*
- *Further investigation, with potential trials, of alternatives to the current progressive heavy vehicle licensing arrangements, noting the importance of maintaining a focus on road safety and supporting evidence based decision making in any change to licensing arrangements.*
- *Examination of currently existing programs and processes. A review of these programs and the safety record of participants would be expected to inform discussion on any potential alternatives to the current heavy vehicle licensing progression.*

128. Chapter 9 also covers the topic of improving incident investigation. NatRoad raised this issue at paragraph 77 of the First Submission. We there reinforced that a no-blame form of investigation of heavy vehicle incidents would advance safety.⁵⁵

129. NatRoad fully supports the following draft recommendation:

DRAFT RECOMMENDATION 9.2

The Australian Government should direct the Australian Transport Safety Bureau (ATSB) to undertake a defined, targeted trial of incident investigation for heavy vehicles, with adequate additional resourcing for the task. Subject to the successful outcome of the trial, the Government should amend the Transport Safety Investigation Act 2003 to confirm investigation of incidents involving heavy vehicles as a function of the ATSB.

⁵⁵ The NatRoad position is mentioned at above note 1 p 321

130. NatRoad also agrees that the ATSB should have a role in investigating incidents where autonomous vehicles are involved and there we support the following draft recommendation. It recognises the need for an appropriate mechanism for incident investigation at the trial and adoption stages of automated heavy vehicles:

DRAFT RECOMMENDATION 9.4

The remit of the Australian Transport Safety Bureau should be extended to include any incident where autonomous technologies at or above SAE level 3 autonomy may have been involved.

Reform Agenda for National Transport Productivity

131. Chapter 10 discusses further opportunities for productivity reform.
132. The PC notes the importance of local councils and shires to efficient access for heavy vehicles. It is clear that under the current system the efficiency of road access management relies in part on local governments, of varying sizes, possessing sufficient technical skills and resources to perform their role. That is why NatRoad's vision for access, earlier discussed, seeks a number of changes that affect the way local government deals with this subject.
133. The PC finds that many local governments lack sufficient resources to undertake heavy vehicle access work efficiently with the draft finding saying:

DRAFT FINDING 10.1

Some local governments are struggling to deliver timely heavy vehicle access assessments. While resourcing is important, more resources alone will not guarantee greater efficiency. Other factors including access to data and appropriate technical skills, and economies of scale in permit applications also contribute to greater efficiency.

134. The draft recommendation that reflects this finding is made subject to the pursuit of the changes being made in the context of the broader Heavy Vehicle Road Reform review. NatRoad suggests that recognition of the HVNL review should also form part of the draft recommendation. With that change to its terms, the draft recommendation would not therefore preclude the introduction of the fundamental reforms proposed by NatRoad in the HVNL review and we therefore would support the draft recommendation as so re-worded (subject to the comments below):

DRAFT RECOMMENDATION 10.1

The Council of Australian Governments should provide support to ensure local government has the financial and technical capacity to deliver its role as asset manager for local roads. Transparency and accountability of performance should accompany any additional support, particularly with respect to processing times for access permits and the use of notices to gazette heavy vehicle routes.

This should be pursued in the context of broader changes under the Heavy Vehicle Road Reform agenda.

135. The PC notes that “a better understanding of road assets and traffic flows could help local governments to increase their use of as-of-right, gazetted or pre-approved heavy vehicle access, thus improving the productivity of the industry as well as asset managers.”⁵⁶

136. In this context we note the finding of the Australian Local Government Association National State of the Assets Report 2018⁵⁷ as follows:

*Asset and risk management plans are an essential and mandatory planning document for each council to report infrastructure funding needed for the next 10 years to achieve productivity and risk targets. Unlike New Zealand, Australia currently has no consistent requirement for asset management plans. In addition, there is no link between asset management plans and funding, which makes a coordinated and effective approach to national infrastructure planning and funding reactive where people live locally.*⁵⁸

137. The same report found that fewer than 80% of local governments have a long-term financial plan in place suggesting 1 in 5 councils are struggling to demonstrate how they can effectively generate sufficient revenue to deliver assets and services now and into the future.⁵⁹ NatRoad would suggest that any funding provided in accordance with the above recommendation should be contingent on the local government entity having in place an appropriate asset register and a financial plan that encompasses planning to meet their heavy vehicle access responsibilities.

Road Reform and Cost recovery

138. Chapter 10 touches on aspects of Heavy Vehicle Road Reform (HVRR). It also contains a limited discussion of cost recovery from operators for the functions of the NHVR.

139. These are both topics of great moment. This is said because of controversy that has recently erupted over heavy vehicle charges.

140. Heavy vehicle charges include a fuel-based road user charge, paid to the Australian Government, and state-based vehicle registration costs. TIC has announced a preference for heavy vehicle charges to rise by 2.5 per cent in 2020-21 and 2.5 per cent in 2021-22 after an initial much higher rate of increase was considered by TIC.⁶⁰

141. The proposed increased charges are currently subject to consideration by governments. The Deputy Prime Minister has directed the NTC to undertake a public consultation process, which is currently underway.⁶¹

142. The NTC inquiry and the subject of Government imposed charges on the heavy vehicle industry are relevant to the discussion of cost recovery set out in the Draft Report. This is

⁵⁶ Above note 1 at p 338

⁵⁷ <https://cdn.alga.asn.au/wp-content/uploads/2018-National-State-of-the-Assests-1.pdf>

⁵⁸ Id at p 1

⁵⁹ Id at p 56

⁶⁰ <https://www.natroad.com.au/news/ntc-consultation-heavy-vehicle-charges>

⁶¹ <https://www.ntc.gov.au/transport-reform/ntc-projects/heavy-vehicle-charges-2020>

because, as shown in the NHVR accounts⁶², the majority of that agency's funding comes from what is labelled as "regulatory income." As expressed by the NHVR: "Regulatory income is provided to the Regulator from participating state and territory government agencies, representing the regulatory component of heavy vehicle registration charges."⁶³

143. Accordingly, the call by the PC for consistent cost recovery arrangements in line with the Australian Government Cost Recovery Guidelines⁶⁴ (CRGs) intersects with the NTC inquiry and the way heavy vehicle charges are framed to fund the regulator under the current model. That discussion does not appear in the Draft Report. **A call for a move to a cost recovery model, as made by the PC, should take into account the current model, its strengths and deficiencies and reveal a path to any transition.** The PC should specifically recognise the current industry contribution to the running of NHVR. The Draft Report does not deal with any of these issues and the discussion should therefore be expanded to deal with this matter in the final report.

144. As expressed in the First Submission, heavy vehicle charges for toll roads and landside access to port charges are not reflective of cost recovery. The PC should examine this issue more broadly: cost recovery is not just about the regulator's costs but measuring the range of government charges or government vindicated costs imposed on industry and establishing whether they are properly founded and based on appropriate cost recovery mechanisms, for example as expressed in the CRGs. **We therefore do not support draft finding 10.2 or draft recommendation 10.2.** We recommend that the discussion in this part of the final report be substantially modified. This is an urgent issue given that State governments, through lack of price regulation of privatised infrastructure assets, are in effect financing infrastructure programmes through heavy vehicle charges, particularly for toll roads.

145. Governments should advance plans for independent price regulation as part of the HVRR process and ongoing analysis of heavy vehicle charges. That reform should include toll road and landside port charge regulation and also be informed by a PC analysis of the current method of funding the NHVR through regulatory income as discussed above.

Conclusion

146. NatRoad would commend greater study by the PC of heavy vehicle registration processes and charges, as well as the manner in which the current road user charges are assessed and levied. That latter study could inform the NTC inquiry currently underway.

147. NatRoad looks forward to expanding these comments during oral evidence to the PC in February 2020.

⁶² <https://www.nhvr.gov.au/files/201811-0926-nhvr-annual-report-2017-18.pdf> from page 47

⁶³ Id at p 50

⁶⁴ Note 1 above at p 348