



Australian Government
Productivity Commission

PRODUCTIVITY COMMISSION

**PUBLIC HEARING INTO NATIONAL TRANSPORT REGULATORY
REFORM**

MR P LINDWALL Presiding Commissioner
MR K BAXTER, Commissioner
MR M ROBERTS, Commissioner

TRANSCRIPT OF PROCEEDINGS

**AT SMC CONFERENCE AND FUNCTION CENTRE,
66 GOULBURN STREET, SYDNEY
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INDEX

	<u>Page</u>
OFFICE OF THE NATIONAL RAIL SAFETY REGULATOR	4-25
MS SUSAN J. MCCARREY	
MS JULIE G. BULLAS	
MARITIME UNION OF AUSTRALIA	26-46
MR GARRY KEANE	
MS FIONA LLOYD	
LOCAL GOVERNMENT NEW SOUTH WALES	46-57
MR STEPHEN LAWRENCE	
MS KELLY KWAN	
MS JANE PARTRIDGE	
MR SANJIV SATHIAH	
DR RICHARD TOOTH	57-71

MR LINDWALL: Good morning to everyone. Well, welcome to the public hearings for the Productivity Commission's inquiry into the national transport regulatory reform. My name is Paul Lindwall, the
5 presiding Commissioner. I'm joined on my left here by Ken Baxter and Malcolm Roberts on my right. I acknowledge that we're on the land of the Cadigal peoples.

10 The inquiry started with a reference from the Australian Government in April 2019. The purpose of the inquiry is to investigate the economic impacts of the 2008/09 COAG transport reforms, examine the implementation of the national transport regulation reforms, including the development of the three national regulators, the capacity of local
15 governments in supporting the implementation, and the delivery against agreed COAG and intergovernmental agreements objectives, and to assess the scope of future reforms of national transport regulation, including areas for further harmonisation and integration of the transport sector and the remit of the regulators.

20 We have spoken to representatives from the Australian State and Territory government service providers and their peak bodies, unions, academics, researchers and individuals with an interest in the issues. So far we have received 44 submissions prior to the release of the draft report and 31
25 since the draft report was released on 12 November, and eight brief online comments. We are grateful to all of the organisations and individuals that have taken the time to prepare submissions, to speak with us and to appear at these hearings.

30 The purpose of the hearings is to provide an opportunity for interested parties to provide comments and feedback on the draft report. This is the first public hearing for this inquiry. Following this hearing hearings will also be held in Brisbane, Canberra and Melbourne. We will then be working towards completing a final report having considered all of the evidence presented at the hearings and in submissions as well as other
35 informal discussions.

40 The final report will be submitted to the Australian Government in April. Participants and those who have registered an interest in the inquiry will be advised of the final report's release by the government which may be up to 25 parliamentary sitting days after completion. We like to conduct all hearings in a reasonably informal manner, but I remind participants that a full transcript is being taken. For this reason comments from the floor cannot be taken, but at the end of the day's proceedings participants will have an opportunity to make a brief presentation and they may take
45 that opportunity to address comments made by other participants.

5 You are not required to take an oath, but you are required under the Productivity Commission Act to be truthful in your remarks. Participants are also welcome to comment on issues raised in other submissions. The transcript will be made available to participants via the Commission's website within about a week of this hearing. Yes, within about a week.

10 For any media representatives attending today some general rules apply. Please see one of our staff for a handout which explains some rules. Participants should be aware that any media representatives who may be present may be using Twitter and other internet mechanisms to convey information online in real time, including participants' remarks.

15 To comply with the requirements of the Commonwealth Occupational Health and Safety legislation you are advised that in the unlikely event of an emergency requiring the evacuation of the building please evacuate by the nearest exit which is basically straight out that way. There's no stairs to worry about in this location fortunately. And the toilets if you wish are out to the right, my right over here.

20 Participants are also invited to make some opening remarks of no more - well, five to ten minutes, I'm fairly flexible of that, and then we will have a question and answer session. I think that's about all I would like to say except again thank you to everyone here. I would also like to mention that 25 Ken Baxter on my left here was given an Order of Australia in the Australia Day honours, so congratulations, Ken, and here we are.

30 So perfect timing here, welcome to Sue McCarrey and Julie Bullas, if you would come forward, please, and welcome. We just had a short introduction so you didn't have much time to listen to that, Julie, but there's no hurry, take your time and when you get there and you're ready if you just mention your names for the recording so it's easier to work out the transcript and then make a presentation. Thank you very much. Did you have a good flight.

35 **MS BULLAS:** Yes, it was actually on time.

40 **MS McCARREY:** Look, thank you very much. My name is Susan J McCarrey and I'm the chief executive of the Office of the National Rail Safety Regulator, also appointed as the National Rail Safety Regulator.

45 **MS BULLAS:** So Julie Gaye Bullas, I'm the executive director of Policy Reform and Stakeholder Engagement for the Office of the National Rail Safety Regulator.

MR LINDWALL: Thank you, Susan.

MS McCARREY: Thank you very much first of all to the Commissioners for giving us the opportunity to talk to you this morning.
5 I really do appreciate it. Before I go into - I've just provided a bit of summary of information from our submission in the slides this morning. I guess before I go into talking about things like objectives and outcomes of a reform about budgets, where the finances are at and a whole range of issues like that as the rail safety regulator I would first like to point out
10 that what we're about is the safety of people first and foremost, particularly those people who travel on trains every single day, and in particular those people who work for the railways. We can often get buried in statistics and actually forget about the people concerned, and although we do have some statistics to show you, and I think if you look
15 back in history railways are getting safer every single year, I still want to acknowledge the fact that we get the occasional fatality, particularly in our workforce out there and we would prefer that to be zero, and I think we need to make sure we never forget that as part of these discussions.

20 Having said that the first slide I'd really just, sort of as a reminder I guess for the Commission is what the reform was about. Obviously it's always about improving rail safety for the Australian community, and because of that we often say as a regulator we work on behalf of governments, but for the community in order to make our railways as safe as possible. But it
25 was also about trying to achieve that seamless national rail safety regulations, because we had a situation - the history was that regulators had come out of the state systems and we were becoming much more of a national country where we had companies running across state borders. So it was becoming such a complex system for industry, and therefore the
30 more you focus on complexities around administration often the less you're focusing on the real safety issues.

So the outcomes were the promotion of safety and safety improvement in the delivery of rail, transport improved productivity and efficiencies from
35 consistent national requirements, and where we can decrease the regulatory burden on rail operators so that they can focus on what they need to. So, look, just a quick update. Probably since even the draft report was released we actually became a truly national regulator on 2 December 2019. We have no service level agreements in place and we
40 now have regulatory responsibility for heavy rail, light rail and the tourist and heritage industry from the west coast to the east coast and north to south. So that's probably been a bit of a change even since your draft report happened.

45 **MR LINDWALL:** It has been, yes.

MS McCARREY: So, look, just a very quick reminder of the budget. The cost of regulation just prior to transition, which is as of December 2012, was around \$35.22m a year. So that was based on what it was costing to regulate in each state at the time. There was an addition made just prior to transition by ministers of 1.5, because as a regulator we needed to actually then fund our own insurance which had previously been covered by obviously state governments, and other policy changes around the regulator conducting a certain amount of random drug and alcohol testing and post incident drug and alcohol testing across the country, which is what ministers required. So that was the reason for the 1.5 million.

So therefore the cost of regulation at commencement was 36.72. The cost of regulation 19/20, and I note some of your information goes back to previous financial years, but I thought I'd pick up this year, is 39.7. That's not - 38.4 if we do not include the major project fee which is actually there to cover the cost of regulation in the major construction projects that are happening around the country, new technology, et cetera. We actually did decrease our budget by \$1m in 18/19 and always said we would also revisit it now that we are fully national and we're going through that process in readiness for the transport and infrastructure council meeting this year.

So the budget increases have only ever been at CPI, which has ranged over the last few years from between 1.2 per cent and 1.6. We have at this stage kept salary increases to 2 per cent. We have actually, even though the budget has only gone up by CPI we've absorbed that 2 per cent salary increase and rental increases of between 3 per cent and 3.5, and I think even in Sydney that goes up again shortly, because obviously in cities like Sydney we have a higher rental. That 1.2 million is now covered by major project fees, so that funding is actually coming direct from those projects as opposed from your routine accreditation fees covering that amount. So it actually caused a reduction in what they were actually paying.

During that period we have also absorbed \$4.68m in IT systems improvements, which we have not gone back to ministerial council to request extra funding, and we've absorbed prolonged transition expenses which of course we never thought would sort of take another seven years post 2013.

So, look, one of the things I think that often gets confused in what people look at that the government did make a policy decision to increase the amount industry contributed to the cost of regulation by 5 per cent each

year. We apply that, but that's not a decision that we take, it's a government policy decision. So we actually had a bit of a look. If we look at operator A who's a national freight operator, largely the above ground operations, based on today's track and train kilometres if they were
5 paying under the old state-based accreditation systems applying their kilometres of 19/20 their accreditation fees would have been 1.85 million.

If you take ONRSR's without efficiencies that we've achieved, and if we actually take the formula on which we use to calculate fees that same
10 operator today would be paying 1.52 if the government had not made that decision, which they're entitled to take, but I'm just trying to separate the two issues. As a result of that 5 per cent decision from government policy to increase the amount industry contributes that operator for 19/20 their fees are 2.36 million.

15

MR LINDWALL: So 2.36 is 1.05 times 1.52. Is that right?

MS McCARREY: No.

20 **MR LINDWALL:** No?

MS McCARREY: The 5 per cent is actually - when we actually look at it's looking across at the moment the state as a whole. So for each state, so in the state of New South Wales the amount we then recoup from
25 industry increases by 5 per cent. It then depends on the amount of track and train kilometres they're actually doing. So some might actually go up by 7 per cent or 10 per cent, some will only be 2 per cent. So again that can be a confusion which Julie spends every year explaining to industry because they wonder why it's not by 5 per cent.

30

MR LINDWALL: I guess my point on that slide was that - - -

MS McCARREY: It wouldn't calculate.

35 **MR LINDWALL:** - - - the increase whatever it be, whether it be 6 or 7 or 2 or 3 is on the lower figure, not the higher figure because you achieve some savings. Is that - - -

MS McCARREY: Correct. Yes, correct. Okay, so just very quickly
40 operator B just to be fair, the above ground freight operator probably benefits the most. So operator B is actually a large rail infrastructure manager working across a number of jurisdictions. So again based on today's track and train kilometres using the old state-based system they would today be paying 679,000. Based on ONRSR because of our
45 savings and our change in formula they'd be paying around 714,000. So

we're having to estimate a bit there because some of the state's information is a bit - we believe we're within about 50,000.

5 So again because the formula changed in the amount of track and train versus the track kilometres and the train kilometres that's why there would have been a little bit of an increase, but it was seen as a fairer split between above and below ground at the time. But again with the 5 per cent increase that operator is now paying 1.7 million. So it shows there is quite an impact from that.

10

MR LINDWALL: Yes, it does.

MS McCARREY: Those efficiencies and reduction in the budget we've achieved while we're going through one of the biggest growth. I'm sure you've seen this graph and I think if you look above that yellow arrow it's pretty much talking rail projects. There you go, that's the increase in construction projects across the country. That graph is available online. Basically it's road as well as rail, but you can see the above - the arrow there is actually the rail projects. So we are still regulating. So in a sense we see that as an efficiency and a saving that we haven't had to increase in order to manage those projects as they're coming online.

20

25 So just some outstanding reform issues I wanted to touch on. First of all the 85 derogations which I know was mentioned in your draft report, and we've obviously had a look at some of the other submissions in response to that draft report, and again I think there's been such a change in personnel things get lost a little bit along the way.

30 In 2016 at the request of ministerial council we actually did a complete review of those 85 derogations in consultation with the Australasian Railway Association, and they put that out to rail industry through an industry reference group. That work which ARA agreed to at the time was that out of those 85 five of them actually had a substantive impact. The reason you have those 85 is because in every state the law interacts with work health and safety. Some states even have a human rights responsibility, so you have to actually build that in. These are quite - they're not the sorts of things that have big day to day impacts, but they need to be there in order for the law to integrate with the state-based law.

35

40 So the only ones then that the industry said were the ones that actually had an impact were those five. So train communication systems; there was a different requirement in, I think it was New South Wales, but operationally because the rail industry has moved on it's kind of outgrown itself, so the issue isn't there anymore because they're all using the modern day comms system, so the issues (indistinct).

45

5 Data loggers; we resolved that with New South Wales, so there isn't a difference in New South Wales. The three remaining are the ones in bold; the drug and alcohol management which you're aware of. Again we're tracking really closely with international research on drug and alcohol testing, particularly drug testing, and it is changing on a fairly rapid basis the accuracy of that saliva drug testing. So we believe we might be able to get some better consistency over the next sort of 12 months two years.

10 Fatigue management; we know there are some particular views. Fatigue management is a really important issue, although we don't have a huge number of incidents where fatigue is seen as an absolutely contributing factor, but sometimes it's hard to determine that, so we keep focusing on it. The hours that people work is a really important issue. How much
 15 time they have off in between, and we've got documents that we actually work with industry on and we actually work with industry on their fatigue management plans to ensure they're actually managing fatigue well.

20 What we have only ever disagreed with is we don't need necessarily to prescribe the hours for train drivers in law, because managing it through a fatigue management plan you get the right outcome through that process. So it's more about process. And of course Western Australia still has mirror law, which means they are behind on a lot of the changes, and Julie and her team are working really closely with the WA government and
 25 we're hopeful that we might see a (indistinct) of that.

30 A big part of our role is safety improvement and education. That happens a lot day to day, so often it will be a one on one education role where we're actually sharing expertise with a single operator, or it's whole of industry education programs, say in track worker safety, tourist and heritage, investigations, just to name a few. We also produce a huge amount of education through our policies, guidelines and fact sheets online, and education through information and data, which has been a huge benefit of being a national safety regulator is having that data.
 35

40 The next one is actually a graph which does show you fatalities excluding suspected suicide. When people look at fatalities on the rail system unfortunately the great majority of those are those who choose to harm themselves on the rail system, which is a very tragic thing for everybody involved, including train drivers, and we work closely with state government's health organisations to try and help provide what information we can in trying to reduce those. But if you look at fatalities outside that you can see there is sort of a slow decrease. Because we have so few, which is great, prefer zero, but because we have so few it only
 45 takes one that obviously then can - it's very hard to look at trends in that

particular area, and then obviously we can look at trends, because it's (indistinct) fatalities per million train kilometres which gives you an idea of an overall trend. As I said I would prefer to see that as zero, as would everybody across the rail industry.

5

Look, reduction in regulatory burden, we tried to give you a few examples in our submission which explains how that benefits, because it's not about the law, and one of the points I was trying to make was, yes, you've got law and that can be pretty much consistent apart from those three areas. It's more how seven different regulators would interpret that law, and they would have their own rules with that. It would be this regulator's - we looked at particular examples where an operator wanted to introduce a new technology right across the country; approached all seven regulators and every single one had different requirements. It almost made it impossible for them to implement at that moment in time. As soon as the single regulator ONRSR was developed that application came forward to actually start moving on that. So it was actually stifling better technology which gives safer railways. So it wasn't so much the law was hugely different, but it was the way in which they interpreted it, and they all had their own legal responsibilities so therefore they felt their way was the right way. So it was a very difficult situation for those operators and it did actually stifle innovation.

That single accreditation process and notice sounds simple, but it actually gives huge benefits. Again as we've transitioned each state in we've actually had companies come to us and say now you've got that state I would like to change my accreditation to operate in that state. That has allowed companies to bid for more work across the country. We have some companies that would only do rail construction in the eastern seaboard. They're not bidding for work across the country. So there would have to be benefits in relation to that.

That single set of rail safety data and definitions, even though a certain amount of the data could be drawn together nationally it was only a very small amount in that when you had seven regulators, and they did have different definitions. There were different definitions of a serious injury in the different states. So making comparisons was very difficult. That's actually made our data much more useful; not just to us, but to governments. Level crossing committees across the country use it for example. Even back to the operator where they can benchmark themselves against other similar operators. The rail industry themselves, we provide that information to the Rail Industry Safety Standards Board, et cetera. So that's been a huge benefit. And as I said we now at least have consistent interpretation of the law.

45

Just quickly some other benefits. So that single set of policies and guidance material I talked about. That guidance material is actually being used a lot now where in contracting and tender documents they will actually say you need to meet requirements of the regulator, please refer
5 these documents. Again that is very hard to quantify, but one of the things that is being talked about across the states is that each of these projects need to develop standards for those projects, which is a cost. Being able to reference our documents means they don't need to each have to develop those sort of documents again and again.

10 I mentioned the large national data set for both industry and governments, and we use it to benchmark industry on a regular basis. But like anything there's still some opportunities, some of which we're starting to realise. I think the Commission has very rightly sort of outlined in your report
15 about what we have not seen change greatly are what are the network rules and access requirements of the different rail infrastructure managers. We have been talking to industry about this and we've recommended that rather than waiting for the whole major project to be finished identify those small number which is having a significant - and let's get in a room
20 and sort it. We can actually be there to listen. We're not the decision-maker, but it means that when it comes time for any changes or approvals we can streamline that process because we have actually been involved.

There is a national data strategy where we are relooking at a lot of the data
25 that we collect, because a lot of it is not data that's particularly useful, and yet there's other data now in a modern rail system we would like to be collecting. So there's a major project on the way. We are actually now building a level crossing portal which will start to make information much more easily accessible by a whole range of people in government and
30 industry.

Obviously continual requirement of the rail safety national law, we would like to have shared that consistency in those final three areas, and we as an operator will always look for further efficiencies as we're heading down
35 that path. So that's probably gone well over my time, so I apologise for that.

MR LINDWALL: No, that's all right.

40 **MS McCARREY:** They were just sort of some of the key points, but I'm happy to answer any questions.

MR LINDWALL: Thank you very much, Sue. I might just ask a couple of questions and then turn it over. When you reflect on any national
45 scheme it's complex because of the different state regulations, as you

alluded to, and the interpretation, which was a very good way of putting it too, because the laws can be similar but interpreted differently. If you were to start afresh knowing what you know now what would you say are some of the lessons that you've learnt and how they should be - how
5 government should reflect on future efforts, the national system, in some area other than rail say?

MS McCARREY: Look, if it were achievable one of the things that I've talked about before would be at the time this was a fairly new approach, in
10 fact it was completely new in the sense that we are not a Commonwealth entity. We are actually set up by legislation in every state and territory of Australia. So therefore you go through that kind of negotiation process with each state with each transition to ensure that you get a national outcome, and there was some terrific work done by the project office
15 which Julie led which led into ONRSR being developed.

In hindsight if we could have got more detail agreed by the states in the intergovernmental agreement upfront it would have made it a little bit easier. Could that have been achieved? I think next time round possibly it
20 could, because we have been through these now a couple of times, not just with us, with other regulators, but getting as much detail agreed - but I also agree with the approach we took around fatigue and D and A. If you are waiting for it to be utopia from day one it won't happen. So quite rightly the ministerial council at the time said, look we're not going to get
25 agreement on these particular issues. If we keep trying it's going to take another five years, we won't get the national regulator (indistinct). So let's park them, keep a state-based system as a part of the national regulator and let's revisit them within a reasonable time period, which is exactly what happened with our fatigue review, D and A, et cetera.

30 So in order to get it up and running you do need to accept that you are not going to get utopia from day one, but for me had there been a little more detail agreed as part of those intergovernmental agreements where there was a high commitment to it, it would have been made, the transition was
35 just that bit easier.

MR LINDWALL: On the network rules and access requirements, which vary of course and they're outside your scope to really improve, but what you just mentioned about streamlining makes a lot of sense. Is there a
40 way of identifying what the key differences are and maybe taking a role of technology in allowing to operate on different networks without - in an easier fashion, is that something that's going to improve over time?

MS McCARREY: Look, there are. I mean there are again - the only -
45 we do have the ability to step in if obviously there is something that is

unsafe. So I just want to make that clear. But when it comes to just a decision about what system do they actually choose to use each of those systems can produce a similar safety outcome. I think there are ways around it. There are systems out there, particularly if you're talking about freight systems, because the passenger systems, particularly the metropolitan passenger systems tend to be quite isolated from the rest, but when you're talking about the freight system across Australia there is technology available for example which would almost subsume some rules that are probably sitting there and causing frustration.

One of the issues is we've got each rail infrastructure manager, each company out there looking at what they're going to do, and two or three looking at different systems. That is incredibly frustrating. I mean we along with industry would actually like those rail infrastructure managers, possibly with governments who own those tracks, so a lot of them might be leased to private enterprises, but in many cases they're owned by government state or Commonwealth, to actually sit in a room and make a recommendation that could be used across the freight system and go with the same system, or at least systems that have a really good integration, so that the train driver of the train isn't dealing with two or three systems across the country.

So technology is getting smarter where it can talk to each other, but I think there would be huge benefits for industry if those decisions could be made together as opposed to individually.

MR LINDWALL: Where do you think in future, and it's a very safe operation generally speaking when you look at the data - I will talk a bit more about attempted suicide and that later - but where do you think the major gains in safety might be in the future?

MS McCARREY: Look, definitely technology. Technology, and then probably community education needs to constantly be a focus. Technology is getting smarter and smarter in the rail system. You know, we are seeing huge step forwards where because there's an increased use in technology - even protecting track workers working on track - particularly there's some great developments happening overseas in this space now.

We do see now the introduction of driverless trains in Australia. We actually see the Metro Train Sydney system and of course the Rio Tinto in the north of Western Australia, where contrary to what is popular belief doesn't always reduce the number of staff you have in a company, because they often use and have a different role, but it does actually remove human error, and that technology is getting smarter and smarter, is being used

across - so it's basically your train communication system and your train control system. So it's the way in which the rail systems are using IT, or what we call operation technology, OT systems, to manage the movement of trains, which actually includes ensuring that the trains remain separated, which of course is what we want.

So technology is getting better and better in that space, a little bit like I think most people who fly now are aware that, you know, the pilot is there and can intervene and does intervene on many cases, but is actually often being flown by an automated system. So that's where I think the greatest safety benefits will be, trying to make sure we use that technology in the best way in Australia where we get that, but the other one is that community education, because regardless we have that constant interface and every single time I talk publicly, and probably my friends even get tired of it at a local barbecue, is reminding people level crossings never ever ever - and that constant community education campaign around not breaching the lights, the stop sign.

If the lights are flashing do not cross. If the train crosses don't try and zip across, because chances are there's another train behind it, you won't know that. Don't assume. We often find in regional areas in particular, 'That's that one train a day, I can go now.' They don't know that another train has actually been put on there. So, you know, that constant community education, because I think it was about 95 per cent of those sorts of rail crossing accidents are caused by the road user, whether it be car or trucks.

MR LINDWALL: Yes. I imagine that's true because people get complacent, and I know where I live near Canberra you see one train going past and you assume, I'm sure people do, that there's no one following. Anyway, Malcolm, did you - - -

ROBERT C: Just a couple if you don't mind. Julie, thanks very much for your help with this inquiry. A couple of perennial problems or questions, and this has been a very helpful briefing. On productivity, so clearly the rail sector has strong commercial incentives to improve its productivity, and regulators have a supportive role in that. In some cases as with the NHVR the regulator does have a clear productivity mandate which it must balance up with its responsibilities for safety. In the course of conversations we've had with stakeholders the view has been put that rail will benefit from having a body with an explicit productivity mandate or responsibility. No one has actually suggested how this might work, or who might do it. Do you have any thoughts, is this a matter for a different architecture around the COAG Ministerial Council or is there some other way forward that you would suggest?

MS McCARREY: Look, it's often sort of talked about, the sort of similarities. I think people forget there is quite a difference too between the national rail safety regulator and the national heavy vehicle regulator. The people sort of ultimately responsible for safety from a legal perspective on the road tends to be first of all the road owner and the police. Under the rail safety I actually have some pretty powerful legal responsibilities for rail safety. It's one of the reasons why governments agree that there should not be a board because you cannot have two entities with that legal accountability for rail safety. In any strong governance model you cannot have those two.

With the national heavy vehicle regulator with trucks on roads the key prosecutory agent for major incidents tends to be the police. That's why there's a very close working relationship obviously with the national heavy vehicle regulator, the police who are involved in sort of that ultimate sort of policing if you like of the road rules, et cetera, out there. That's not to say that the national heavy vehicle regulator doesn't have a role within that, they have a very important role with that, but it's quite a different system where in the rail system the national rail safety regulator has that key legal accountability and prosecutory powers. So even that sort of role around prosecutions of rail entities it's not referred on to a local - public prosecutions is the word I'm after, which happens in other spaces, not necessarily heavy vehicle, but in other spaces, whereas under the rail safety national law the single decision as to whether or not to prosecute sits with the regulator.

So they are different systems for a reason. One of the key set-ups, and part of this as my previous role was obviously involved in setting up the national reforms as a deputy director-general in Western Australia, was around - in the first instance was around access to roads. So when we say it has a productivity mandate with the national heavy vehicle regulator that was about having somebody who could actually facilitate allowing trucks on to roads where road managers are obviously saying 'No'.

So it's an access issue. We are about rail safety on behalf of the community. Somebody is out there watching for that rail safety. So that's why there were set up differently. Having said that to say we have no productivity mandate is actually not quite right. First of all I mentioned those outcomes in the reform, it was looking for productivity, but we also have elements in the law which actually requires that if I as a regulator am requesting a rail company to do something that would really impede financially that organisation, and there are no major safety benefits, in other words the cost benefit is not there, under the law that can be challenged and a rail company can actually challenge that decision, and

therefore there is a requirement for then a cost benefit analysis to be undertaken and for the decision to be reviewed and looked at.

5 So there are mechanisms within the law where that can be taken into account, but we are different organisations. I guess one of the frustrations is a lot of the savings that were seen to be this national reform, and if you go back and look at the documentation it was because they were saying because we've got seven different regulators that's why we can't get a single set of national network rules and access requirements. Seven years
10 down the road with great frustration nothing has particularly changed in that space. I would be frustrated too if I was - and in fact I am frustrated that we haven't seen that change.

15 So then it's how do you facilitate that. I think it can be facilitated. I'm not sure it's the rail safety regulator's role to do that, but I think there are other entities, you've got National Transport Commissions. As I mentioned pretty much all of the track in Australia is owned by governments, Commonwealth and state. They are privatised some of them, but that's usually through a leasing arrangement, so therefore ownership actually
20 sits. It's a different set-up in the Pilbara in the north of Western Australia, but of course they are isolated lines, they're not integrated. So therefore the issue doesn't arise. So I think there are ways in which this can be tackled. I think it's kind of too easy to say the rail safety regulator should fix it.

25 **MR ROBERTS:** The point is well made and I understand there's work underway as part of the rail plan. A question around compliance and regulatory cost, and I recognise you started from an inconsistent base. Like most of the regulators we've looked at when state and territory
30 responsibilities have been rolled into a national body different practices around different states, different levels of cost recovery and it's messy, and the impact on operators will vary from place to place, and on occasions might be seen as a cost by them because of their circumstances of pre-harmonisation. But I'm just wondering about whether you see there are
35 possibilities now that the national regulator has been placed across the country to look at some of the points that have been raised with us, instant reporting for example and arguments around the reporting times and the threshold for instant reporting. You probably know where some of these comments have come from.

40 **MS McCARREY:** Yes. Yes, I do.

MR ROBERTS: But it would be interesting to know whether you see
45 potential there to look at the reporting framework.

MS McCARREY: Absolutely. One of the things I mention in the presentation, but very quickly, is we actually did instigate a review through the national data strategy. We're working very closely with industry, because one of the things what we are trying to resolve is we
5 have a requirement for industry to report certain things to us. A lot of them have responsibility to report to their government entities in their state. They will have a reporting requirement to somebody else. Some of them can actually have a huge number of different entities they're actually being asked to provide data to, including their own industry bodies like
10 the ARA and the Rail Industry Safety Standards Board.

So one of the things we instigated, and it's a project that on ONRSR's behalf Julie leads, is a review into the whole national data set, and what we're trying to do is say, look let's not focus on who owns the data at this
15 stage. If we had, particularly with modern technologies now with data, if you had a central repository area where this data could go, and then I have authority to pull the data that I need, each of the governments has authority to pull what they need, industry has authority to pull what they need, but at least that industry is only reporting it once. That is exactly the
20 goal of the national data strategy, which I have to say we have pushed to get up and going and is now being done in partnership with the Australasian Railway Association for that very reason.

The other thing we're reviewing as a part of that is the timeframes of reporting. It is something that we have inherited around - there's not a
25 huge amount of argument around what we call our category A incidents, and they are the sorts of incidents which you see on the track. In fact those who track these things on the media would have seen an incident last night in Victoria. We need to be notified immediately for that, for
30 very good reason, we have powers to actually protect a site. So we have powers to protect evidence, we have powers to get out there and do drug and alcohol testing with everyone involved. Therefore we need to be notified immediately, and we were.

What we have then is a whole range of incidents which need to be reported within 72 hours. Now, we're questioning that. We have gone
35 back, we're the ones who are actually leading this space saying we need to review - what do we need within a 72 hour period because we might need to ask further questions to see if it was more serious than what they thought. What could we get quarterly, six monthly or annually. All of
40 that is part of that national data strategy which we're under way and doing. Now, of course that's not an easy task, these things do take a bit of time and we're working as I said in partnership with ARA. There's a reference group that they've got from industry who are working with us which is
45 working really, really well, and also representatives from the Rail Industry

Safety Standards Board are working with us well. So there's a great piece of work actually being done reviewing all of that.

5 In the meantime where we've seen an obvious fix we've made a change straight away. There are some things which they were being asked to report monthly, they don't need to report monthly any more, they can report annually. So where we've seen an easy one we say, no, let's just fix that now. We are actually doing that and there's a couple of others coming up which we will probably fix fairly quickly as well. Without going into
10 sort of too much detail, but there's certainly around - the big freight trains unfortunately hit an animal for example out in the middle of the desert, it's not great for the animal and as an animal lover it's not great, but it's not a safety issue for these big trains. So therefore should they be reporting to me immediately that they've hit a kangaroo. No, I don't need to know that
15 straight away. But looking at it as a trend across the country (indistinct) potentially.

So that is a major piece of work that is already under way. I guess part of the issue is trying to make sure. Because we are working with a reference
20 group with industry and there are certain companies involved I often find others aren't up to date with the work that's out there, and even sometimes in these organisations their staff are involved in the project, the CEO doesn't always know about it. So I think that's again a frustration of trying to get that communication out there as to what's happening.

25 **MS BULLAS:** Just on that one particularly from 28 March we will actually be going up to all the companies in a major consultation exercise running across Australia for two weeks. So I think getting the broader industry involved will happen, but obviously we have to do a lot of work
30 to get where we want to go before we go out for a consultation, and they're actually workshops, it's not - this is what ONRSR and ARA, this is where we're going, and we will be spending quite a bit of time with all the people across the country come 28 March.

35 **MS McCARREY:** So there will be workshops in every capital city around the country.

MS BULLAS: Yes, and in industry groupings as well. So we're taking - investing a lot and taking it really seriously, but expecting to see some
40 major change.

MS McCARREY: There's actually an industry, sorry, safety manager's group that meets three or four times a year and Julie and my chief operating officer, Peter Doggett attend every single one of those meetings.
45 If you actually brought that group together they would know all about

these sort of things, but often you talk to the CEO of the company, 'I don't know anything about that.'

5 **MR ROBERTS:** Well, just one quick thing, what's your expectations around when the national data strategy might be settled and you've got a fair idea?

10 **MS BULLAS:** Well, the actual timeline of the strategy is 2022, and the reason for that is because of potential technology changes that industry have asked for to come in. I personally see some changes - - -

MS McCARREY: And legislative any requirements (indistinct words).

15 **MS BULLAS:** And legislative, yes, but those things that don't need legislative requirements to change, after consultation we're going to then say 'Okay, we've - this is what you've said. Let's implement. I personally would love to see if from one 1 July, those ones, yes.

20 **MR ROBERTS:** Very good, thank you.

MR BAXTER: So what happens in the case of Sydney where the tram track actually goes alongside the main road but then traverses it, which is the road of course out near the stadium? Who takes responsibility for that and who's got the ultimate say so as to what happens?

25 **MS McCARREY:** Yes. Within the rail corridor, which is the tram corridor that you see.

30 **MR BAXTER:** Yes.

MS McCARREY: That is myself. Sorry, I've got this frog this morning; it doesn't seem to want to go. My apologies to everyone.

35 **MR BAXTER:** Not at all.

MS McCARREY: Within the rail corridor, the tram corridor, that's us, also including where they actually - because you're intermixed with road signals that interact with the tram, but there's usually, in these modern ones, like the one just over in Sydney, there's actually a signal for the tram driver; that's us. So if they breach that signal, report it to us.

40 **MR BAXTER:** Yes.

45 **MS McCARREY:** Obviously we do work - because they're on the road system too, so if there's an accident at a crossing with a tram, so a car with

5 a tram, which happens far too often for my liking, the police will often be involved, but we have MoUs - Memorandums of Understanding - with all of the police, and we actually work with them. So, we'll often be on the phone to them saying - and the police will say that 'We're going to investigate this', because it's often road user behaviour. If, for example, it looked like it wasn't necessarily road user behaviour - maybe it was to do with the tram operations - we will take the lead in the investigation, but we have that conversation. In the same way we do, if somebody is injured in a depot, for example, a rail depot, if it's the type of accident or incident that could happen in any depot anywhere, then often the work health and safety organisation in that jurisdiction will take the lead on the investigation and keep us informed.

15 If it was an injury due to actual rail operations, movement of trains, working on a track in a depot, we will take the lead and work with. So we actually have those conversations on a regular basis, but yes, the tram system, the actual signalling system related to the movement of the trams, we regulate where it is, tram drivers, and within the track, that's us.

20 **MR LINDWALL:** Okay, do you need anything else?

MR BAXTER: No, no I don't.

25 **MR LINDWALL:** It's quite appropriate that we're hearing the rumbling of trains (indistinct).

MS McCARREY: Yes, we are.

30 **MR LINDWALL:** Talking a bit more about that - the safety risks, obviously level crossings is one. There must also be, I would have suspected, the quality of track in some cases, where there's a tight corner and a train driver going too fast around it and derails it. How big an issue is that and how does that get addressed, and what's your role, in, saying to recommend the - a pinch point or a danger point?

35 **MS McCARREY:** Look, certainly those things can occur. Can I say, in Australia the one - the sort of example you use, going too fast around a corner, very rarely. The last one that I remember, certainly in the five years that I've been in the job, was the one that was in Tasmania, not long after I started actually. So, it does happen occasionally but not very often. It's almost like got two tracks. So first of all there's when rail lines have been constructed. So when they're actually being constructed one of the things we do do as a regulator is we are looking at what is the design that's being used, and if we see that the corners are too sharp we actually - part

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of our job is to say 'No, you've actually got too sharp a bend', but can I say, the rail industry is pretty smart in Australia.

5 **MR LINDWALL:** I would have thought so, yes, yes.

MS McCARREY: We're a bit beyond some of that now, so you know, they generally know there are engineering design standards that say if you want to run a train at this speed your curve cannot be more than, you know, so - and those standards exist and they're generally constructed to that. If we do have an incident occur we will, as part of any investigation, we will then look at, well what caused that derailment? You know, when you talk about going too fast around a corner, that can be did the driver lose situational awareness?

15 **MR LINDWALL:** Yes.

MS McCARREY: So they didn't know where they were, and we've seen some incidents around the world where there has been a complete loss of - I think the Philadelphia incident, where a complete loss of 'I thought I was somewhere else on the track'.

MR LINDWALL: Yes.

25 **MS McCARREY:** So then we'll actually look in to training, how - what are the training records of this particular driver? Did the organisation actually provide the briefs and training that this driver needed to be able to do their job? When was the last time - yes, that's when you look at rosters and fatigue. Did they actually lose situational awareness? So an investigation into an incident like that will be very thorough and look at what actually caused that to occur, which obviously then helps us in dealing with that operator, and obviously that's where I make decisions as to is there any penalty that needs or be applied, but also helps us with learnings across the industry. So if we see something that we - well actually, there's a really good learning out of this investigation that we can spread to the rest of the rail industry we'll do that.

MR LINDWALL: Yes, yes.

40 **MS McCARREY:** So it all depends on, yes, generally if it's exceeding track speed, and then we'll look at if it's a busy enough rail system should there have been other systems in place to actually detect that that train was going too fast? And there are a lot of sort of modern systems, particularly in the metropolitan systems where, you know, the train control system knows that a train is actually going too fast through a section and can intervene in some of those. So there are different systems around

Australia, but generally we'll do a complete thorough investigation and try and - what caused that to actually occur? Is that a major issue in Australia? No.

5 If you ask me what are the biggest issues, we've touched on suicides, which unfortunately is largely out of the rail operator's control. Level crossings are one of the highest risk areas in Australia, and to suggest that we grade separate every single level crossing is just totally impossible. So it needs to come down to that constant education of community and
10 community awareness. The other issue which is very much a focus, yes, it's a concern about track condition. Is the track condition at the level it needs to be for the rail operation that's running? It's a very different track condition for Sydney trains and the type of operation, the speed, and the frequency of trains than it is, for example, in a regional area that has one
15 or two freight trains a day travelling at 40 or 50 kilometres an hour, but is it the right track condition for the operation that's running?

MR LINDWALL: Yes.

20 **MS McCARREY:** The other area that's very much a focus for us is track worker safety, and the safety of those people who are out there trying to keep these systems running so that people can actually get to and from work on a regular basis. So, we have a very strong focus on the
25 protections in place for those track workers and we are working very closely with industry on some of the new technologies that are starting to be used elsewhere around the world.

MR LINDWALL: On level crossings, if a person violates a - through, say, a flashing light, do they get an automatic penalty now?

30 **MS McCARREY:** If we have - yes. A lot of the time the - the front facing cameras of trains are very clever nowadays, will actually often pick up the number plate of the car. We actually report that - well, we don't. The operator generally is quicker than us.

35 **MR LINDWALL:** Yes.

MS McCARREY: That's reported to the police, and the police will regularly prosecute based on the road rules. Depending on what the actual
40 incident is, sometimes the powers under the Rail Safety National Law can be used, particularly also, we get (indistinct) people who hitchhike rides on freight trains. Please don't do it. We've also had some very nasty injuries as a result of that, of people trying to get off the train.

45 **MR LINDWALL:** I'd imagine, yes.

5 **MS McCARREY:** And we have had fatalities and major lifelong injuries as a result. We can then - we - I then give a delegation to the local police to use my delegation under the Rail Safety National Law to prosecute some of these incidents under the Rail Safety National Law because there's often a stronger penalty because they've interfered with safety systems, particularly when they're interfering with the safety systems of a railway. So again, we work pretty - and the operator themselves work really closely with the police. They have this regular - 'We've got the number plate; here it is'. The police are out there, bang, absolutely, prosecuting or fining the person who breached the system.

15 **MR LINDWALL:** Final question from me, relating to suicides, because this is an issue that also affects heavy vehicles obviously too, where - - -

MS McCARREY: Absolutely.

20 **MR LINDWALL:** And it affects families and other people. Is there anything that comes to mind or that we should be talking about in our report, or generally government should be thinking about how to reduce the harm there?

25 **MS McCARREY:** Look, it's a really complex issue, and I am not a mental health expert, and I think that's where, when you're talking about suicides on the rail system you're talking about sort of almost the end of the line. Where we have been able to we have worked with mental health organisations. Often our data is useful to them, because they can then look at where the - it's awful to talk about it, but the hotspots are on the rail system.

30 **MR LINDWALL:** Yes, yes.

35 **MS McCARREY:** And you do have areas that tend to be. Now, that can be because it might be close to mental health facilities. It may be - one of the things we do work with, where we do have hotspots, we'll work with rail operators is about access, but you can't again fence an entire rail system, and you can't fence stations.

40 **MR LINDWALL:** No.

45 **MS McCARREY:** People have to be able to access and get on and off. It's a much - where we can we work with - because it's a much bigger issue on suicide in society generally. Rail is just one of the methods that's chosen, so where we can we work with them, and can I absolutely hold out, the rail industry themselves set up the TrackSAFE Foundation

specifically to help deal with this. TrackSAFE isn't - is a wonderful organisation. It provides support materials to train drivers and all other rail workers who are faced with these issues, and they do a terrific job, and that has been purely set up by industry and funded by industry.

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Where we can we need to work with those organisations who are the mental health experts, and where we can we do. We provide them any information we can, but it is - it's a wider societal complex issue around suicide as opposed to it just being a rail issue, but yes, where we can, and I know TrackSAFE have facilitated some - in every single state across Australia now with all of the government ministers involved, a suicide round table discussion. We have participated in each of those, so wherever we've been able to provide information. But there is no easy answer, because there's no easy answer to the complex issue of mental health and suicide in Australian society.

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MR LINDWALL: Exactly. Yes.

MR BAXTER: Sue, a technical question. Who determines the amount of ballast that was put in underneath various sections of rail?

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MS McCARREY: My goodness, that is a technical question.

MR BAXTER: Well, I notice that in some cases that you've got a low volume rail which has got minimum ballast underneath it.

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MS McCARREY: Yes, almost dirt.

MR BAXTER: And other cases you've got it there, there'll be minimum but certain stages it will go to fairly substantial ballast underneath it. Are there a set of standards?

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MS McCARREY: Yes.

MR BAXTER: That either you set or somebody else sets?

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MS McCARREY: We don't set in the sense that it's actually set by - the rail company themselves has to determine 'What standard am I going to use?' My job is to make sure it's the right one.

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MR BAXTER: Yes.

MS McCARREY: So if they're actually using a standard for a - so if a major freight line that is taking huge amounts of heavy freight trains, like iron ore or coal, et cetera, if they are using a standard of track that you

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might see in a grain network that gets one grain train a day during a seasonal harvest period we - 'No, not good enough', and we say 'It's not good enough. You are not managing the risk.' So there are - but there are standards that exist that actually says if you're running trains and it's around weight of trains - so it's the axle load. So if you are running trains of a certain axle load you want to run trains at this speed, this frequency, then these are the track standards that exist.

Included in that track standards is the sort of amount and ballast, and the formation that sits underneath the track bed. So you'll see, in some of the old grain networks around Australia, particularly ones that they might be used once a year to move grain, they will often almost be sitting on dirt, but those trains run at incredibly low speed. So, one of the productivity gains that can be made in the rail industry is investing in some of the older track networks to lift those standards, which will allow faster trains, closer together, more often, higher frequencies.

So often it can be an investment in that infrastructure, but until that investment is made there then is a restriction on the speed that the train can run, so then if you do - often these are, you know, 20 kilometres an hour, so if there is a derailment it's almost a slip off, it's not a major incident, but yes, those track standards exist right through to the formation, which includes the ballast. If the rail operator is not using the right standard for the type of operation, that's where we step in and say it's not good enough.

MR LINDWALL: All right. Well, Sue and Julie, thank you very much, and I would also thank you for - - -

MS McCARREY: Sorry, I did all the talking. Poor Julie (indistinct words).

MS BULLAS: I'm used to it.

MR LINDWALL: I'd like to thank OSRSR for, also, its submission and helping us, you know improve our final report from our draft report, and your contributions here today, and look forward to future interactions, so thank you very much.

MS McCARREY: No worries. Thank you very much.

MR LINDWALL: Our next witnesses are Penny Howard and Garry Keane from the Maritime Union of Australia. If anyone wants to grab a cup of tea first please feel free. At around 10.40 or so I understand

morning tea will be brought in, so something more substantive, but just - so if we could - yes?

5 **UNIDENTIFIED SPEAKER:** Just to clarify, Penny is unavailable, so Fiona Lloyd is with us (indistinct).

10 **MR LINDWALL:** If you could both, when you're ready - no hurry - just sit down and say your names and positions for the record, and give us an introductory statement.

MR KEANE: For the record, I'm Garry Keane, a National Officer with the Maritime Union of Australia, division of the construction forestry (indistinct) Maritime Union of Australia.

15 **MS LLOYD:** I'm Fiona Lloyd. I'm a policy advisor with the MUA.

MR LINDWALL: Thank you, Garry and Fiona. So, who would like to start?

20 **MR KEANE:** Thanks for the invitation to appear again today. I'd just like to make an opening statement and then refer back to our latest submission, which you guys advised me you've got copies of.

25 **MR LINDWALL:** Thank you, yes.

MR KEANE: Probably just kick off with, when the Productivity Commission released its draft report on long-running economic impacts on transport and regulatory reforms agreed by COAG in 08/09 relating to heavy vehicle safety and productivity rail and maritime safety, and to make recommendations for further reforms towards a more integrated national market for transport services, just around about 90 pages. It took a bit of getting through. My secretary actually, when I sent it to her, a couple of things to print off, I had that as a - as one of the attachments, and she printed off the lot for me, which I thought was - - -

35 **UNIDENTIFIED SPEAKER:** It's good reading, Garry. You should - - -

MR KEANE: It was, and single-sided on the page, so it actually sits about that high.

40 **UNIDENTIFIED SPEAKER:** Go and see the mental health report. That's about three times as long.

45 **MR KEANE:** So, the MUA submissions. We've made a submission in August. It's covered similar material to our - as our submission on

AMSA, including recommendations regarding regulations, incident reporting, training, health and safety issues, as well as recommendations regarding ports, reducing transport emissions and measures to improve the competitiveness of shipping in the domestic transport sector. Some of the key points that the MUA made include the importance of properly trained seafarers in the Australian - to the Australian economy, the problem of having dual regulations on both the Navigation Act and the inadequate DCV Act, inadequate training of domestic seafarers, the necessity of having appropriate regulations in a safety environment, the inability of the ATSB to investigate the majority of marine incidents, and the overly complex and ineffective WHS environment.

MUA issues in the PC draft report: In the Productivity Commission's draft report you have picked up on some of the issues that we raised. Some of these have been expanded on and recommendations made to correct them. In chapter 7, 'Assessing the national regulator', the PC was very critical of AMSA's performance as the national regulator. Issues identified included the lack of effective stakeholder relationships and poor preparation for the national system transition. Other submissions to the Commission were critical of the AMSA board and organisational culture. However, the PC has decided to refrain from commenting on this at the time of the draft report, and the Commission is also recommending that the scope of AMSA's responsibility be reduced, and suggests that hire and drive vessels be returned to the jurisdiction of the states and territories, and we'll go into some of this stuff when we get to the latest submission.

The PC draft discusses types of regulations and how they affect innovations, as well as the types of regulated community that benefits from differential - different types of regulations. It says that an innovative regulated community has an evolved safety culture as well as the ability and skill to evaluate and manage risk and benefit from nonprescriptive and risk-based regulations. However, AMSA acknowledges that there is not sufficient data to operate a risk-based regime and that there is not a reporting culture, and that's referred to in page 251. The PC does not go so far as to say that there is a poor safety culture in the domestic fleet, unlike the international fleet that was recently the subject of a safety culture research project. No such study has been conducted on the domestic industry.

The Productivity Commission finds that the grandfathering of vessels leads to significant variations in consistency between the states, who will have some operators a competitive advantage and encourages a use of older vessels past their used by date. These arrangements lead to significant safety issues which are covered on pages 123-126 of the report, and 167-169, whereas the PC recommends that the grandfathering be phased out

and indefinite grandfathering ended. The PC finds that the range of DCVs of larger states still regulate recreational vessels. The Productivity Commission recommends transferring the regulation of hire and drive vessels back to the states on page 255. They also make a request for input regarding shifting other vessels or operations back to the states.

The Commission finds that AMSA is not far enough along in capabilities and systems for implementing the DCV Act, lacks incident data, and lacks vessel data. There has been no significant change in safety incidents since the introduction of the DCV Act; however the data that is available is not sufficient to draw conclusions regarding safety trends. There is a lack of safety data regarding domestic commercial vessels. AMSA acknowledges that there is no reporting culture in the DCV fleet. The Productivity Commission recommends that AMSA improves incidence reporting and also that the ATSB is funded and legislated to gather data and carry no blame incident investigations for all DCVs.

The Commission notes the importance of an external body investigating safety outside the remit of an investigator, recommended improvements in reporting, and that the ATSB be requested and appropriately funded to investigate safety incidents in - on DCVs. Both the Productivity Commission and AMSA's submission agreed with the MUA that WHS is complicated and unclear. AMSA is quoted in the draft report as saying while the COAG intergovernmental agreement specifically stated that occupational health and safety regulations was outside the scope of the national system, and would operate in conjunction with the national laws, the delineation of responsibilities and obligations between AMSA and the WHS regulatory authorities is unclear.

There is a need for greater clarity, education, and awareness of the role of ASMA and co-regulators' particularly important role at state and territory work health and safety regulators play in ensuring that domestic commercial vessels - that our workplaces are safe. Other points in the draft report are that cost recovery is one of the areas where AMSA is lagging behind rail and heavy vehicle transport regulators. The federal government is continuing to subsidise AMSA's operations as well as DCV sections of AMSA being subsidised by AMSA's other operations. It is unclear how much the DCV Act costs ASMA to regulate. Consistent arrangements across the three transport regulators will eliminate the risk of distorting intermodal choices.

The Commission offers the suggestion that for domestic commercial vessels a tiered surveying regime could be used to improve safety, with survey requirements for vessels set according to risk profiling. The problem with this kind of targeting approach is that AMSA does not yet

5 have adequate data to create risk profiles for domestic commercial vessels. The Commission draft includes a substantial section on emerging technologies, and for the new technologies, such as autonomous vessels, AMSA will need to manage transitioning technologies with flexible regulations until requirements are established.

10 The MUA issues that have not been sufficiently dealt with in the PC draft: although the draft report picks up on some issues that the MUA have raised there are several that are not sufficiently addressed in the draft report. The report focuses on the introduction of the DCV Act and ignores the previous existence of and significant changes made to the Navigation Act that were made in conjunction with the introduction of the DCV Act. We do not believe that the PC draft has placed enough emphasis on the consequence of large numbers of vessels changing
15 jurisdictions from the Nav. Act to the DCV Act, and the lack of synchronisation with these change with the WHS laws and the investigation report of the ATSB.

20 The jurisdiction of the issues that the MUA believes should be further considered by the PC for the report are the jurisdiction of the Navigation Act and the DCV Act. Removing interstate vessels from the Navigation Act was a significant change as part of the reforms. This affected the regulatory regime of hundreds of vessels, yet this change has not been addressed as part of the draft report. The MUA holds the position that
25 certain vessels will be better regulated under the Navigation Act than the DCV Act. This change has and will continue to affect training, quality of - quality and quantity of Navigation Act seafarers, and exasperate the skill shortages that will affect the productivity of this country.

30 Navigation Act seafarers not only crew international trading ships, they are required to fill many vital shore-side roles such as pilots, harbour masters, loading masters, lecturers, and ship surveyors. The draft did not pick up on the fact that state WHS laws do not apply to all DCVs. The (indistinct) and the reporting by ATSB applies to DCVs on interstate
35 voyages. This arrangements means that both WHS and reporting obligations can change on a day to day basis. Unlike road and rail, vessels can and often do operate outside of the Australian EEZ, the limits of the reach of the - outside the reach of the limits of the DCV Act.

40 While also meeting state and national requirements, many vessels in their lifetime also need to comply with international laws. Fishing vessels often operate outside the EEZ. Vessels working in the Torres Strait cross in and out of Australian waters. Offshore support vessels operate in the Joint Petroleum Development Area, and some are built overseas, go for
45 dry dock and maintenance periods in Southeast Asia, and can be sold

when no longer required in Australia. These vessels can be granted special exemptions, temporary licences, and permits to operate in these circumstances. This creates a non-transparent and uncompetitive environment for ship operators with small profit margins.

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When addressing the productivity and safety of the Australian maritime industry it is necessary to investigate how the entire industry has been turned on its head since the COAG's reform. The freight that is carried to and from - to, from, and around Australia passes through many regulatory environments. The carriage of dangerous goods in package form is standardised in the global environment - global marine environment. In Australia, however, a shipper must know how to package and transport goods for transportation in different states, countries, and on different modes of transport. The DCV Act has no regulation regarding the transport of dangerous goods, leaving up to individual companies to develop individual safety management systems.

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The International Maritime Dangerous Goods Code, on the other hand, lists thousands of goods and their compatibility for transport with other goods and passengers. Any shipping containers that come from overseas are packed and transported in accordance with these rules. However, DCV's transporting these goods around the coast are not required to comply. This is a definite lowering of the safety standards since the introduction of the DCV Act, and as some of these vessels also carry passengers, have the potential for catastrophic risk.

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The opportunity for improving safety and lowering emissions and reducing road congestion by shipping freight onto ships, the need for Australian domestic freight markets to operate on a level footing, along - among all modes of creating competitive neutrality between all modes of transport - part of this would be to ensure that road and rail and shipping are regularly subsidised, and our final point is the functionality of intermodal freight terminals and supply chain efficiency. That's our opening statement, and we would refer back to our submission for discussion. The only one thing I would say with that is, where we've outlined the dangerous goods we think is just the perfect example of the dangers of going away from regulations in an industry that has the potential - touch wood it never comes up, but in any analysis of a significant or catastrophic incident on some of these vessels, the first thing that would be attacked is the fact that we went away from a regulated position that prevents it from happening, and we are doing it at a rate of knots. Thank you.

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MR LINDWALL: Thank you, Garry. Could I start just by clarifying something? Firstly, you know, at the time of the COAG reforms, which

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introduced the DCV regime for AMSA, there - was that coincidental, or was that you're saying it's related to the Nav. Act itself was strengthened under the Safety of Life at Sea Convention? Was that related to the COAG reforms or separate from it?

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MR KEANE: Part of the - not specifically related to it at the time, but it was dealt with by changes to the marine orders, and the marine orders are related to AMSA's detailing.

10 **MR LINDWALL:** Before the COAG reforms the DCVs were in the main regulated by state and territory jurisdictions. So if I clarify, there's X number of vessels which were formerly regulated by state and territory, now regulated as DCVs under AMSA. Also, as you're saying, there were some that were formerly under the Nav. Act that are now under the DCV
15 Act. Could you quantify the latter, and also perhaps reflect on how the DCV regime varies in safety, from your perspective, compared to the state and territory regime? In other words, are they less or more safe than they were under the state and territory, including under dangerous goods transport?

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MR KEANE: Yes. Basically what it's come down to now is the only vessels that really need to be covered by the Navigation Act are foreign-going vessels. The number of vessels that have come across from having been covered by the Navigation Act to be covered by the national law has
25 been massive. It has been such a big shift across that it's definitely got an impact on the fair trading abilities of those that are maintained in the Navigation Act, and some of the - got to be careful in the way you put it - some in the industry have taken advantage of going across to a far less structured regime of safety, training, all of the things that we've outlined
30 in here, to the extent that you can have, now, under current proposals, under the original state acts, where you may have had deckhands working in enclosed waters in harbours, et cetera, under a training regime that took nearly four to five days, maybe seven days to train up a deckhand. That's changed to, now, that deckhand having possibly two days' training and
35 being able to trade up to 200 miles out at sea. That's madness.

MS LLOYD: Can I interrupt you for a second?

MR KEANE: Please.

40

MS LLOYD: Right, so to start with I think what we're really trying to get you to understand is that prior to 2020 there were state systems, and there was a national system.

45 **MR LINDWALL:** Yes.

5 **MS LLOYD:** And the national system ran along the same lines as the international system. Changes to the Navigation Act were made at the same time as the Marine Safety National Law came in in 2012. The changes to the Navigation Act in regards to updating it along the lines of international regulations with the SOLAS Convention - Safety of Life at Sea Convention - were generally in line with the Maritime Labour Convention. So, the Navigation Act got updated and reviewed from the 1912 Navigation Act into a new system under - - -

10 **MR LINDWALL:** That's right.

15 **MS LLOYD:** Well, pretty much the same, just a little bit updated into the 2012 Navigation Act. With those changes the implementation of the Marine Safety National Law, when state systems were transitioned into the national system, the Navigation Act was changed - the jurisdiction of the Navigation Act was changed. So previously Australian vessels that traded between states were required to be regulated under the Navigation Act. State vessels - all state vessels - including hire and drive, are now
20 regulated under the Marine Safety National Law. To give you a bit of context, it's easiest to look at Tasmania when you look at the Spirit of Tasmania and the toll ships running between Tasmania and Victoria.

25 So previously they were required by law to run with the Navigation Act standards. Today, with the Marine Safety National Law, they are not required, although they do, opt in to be regulated under the higher safety standards of the Navigation Act. Recently, as part of the EBA for the toll vessels, we have actually asked them to put in their EBA protections that those vessels will stay as Navigation Act vessels. So, instead of being
30 regulated to a higher level of safety we're pushing for those safety standards as part of EBAs, which is - we don't believe that we should be pushing for safety standards in industrial relations in that way. So, if they chose, those vessels could be regulated under the Marine Safety National Law. So we're talking about really big roll on/roll off vessels.

35 **MR LINDWALL:** Yes, but what you're saying, they are regulated by the Nav. Act?

40 **MS LLOYD:** They are because they choose to be.

MR LINDWALL: They choose to be.

MS LLOYD: Yes, okay.

5 **MR LINDWALL:** So what are examples of - if you wanted to continue, please, but I just wanted to ask, what are examples of ships that were regulated under the Nav. Act who are taking the opportunity to get the MSNL and haven't decided to, well in fact downgraded their safety is what you're saying?

10 **MS LLOYD:** Look, it's really difficult to tell because there is no public record, of which vessels are DCVs and which vessels are RAV. In fact, you can be sailing on those ships and not know, but we can identify that there are vessels in Queensland, and we're generally talking about the major trading fleet. So, passenger vessels: Currently there is only one, we believe, regulated Australian passenger vessel, but the - - -

15 **MR LINDWALL:** It's mainly the trading fleet, you think?

MS LLOYD: Yes, so we - - -

20 **MR LINDWALL:** Because I assume the fishing fleet, which of course is a notoriously - they're probably the ones that are the least safe; I mean, you've got trawlers and so on. They probably were operating under the state regime and now under (indistinct).

MR KEANE: They were.

25 **MS LLOYD:** Yes.

30 **MR KEANE:** And we believe that's part of - that creates part of the problem, where the - and we have it in the submission, where some of the recommendations from the Commission finding are around the hire and drive going back into state regulations. We believe there's scope there for fisheries to be covered by the state regulations again. We don't believe that throwing them - all of the trading vessels into the one bundle with that was ever effective or beneficial to the industry under any circumstances. Again, we come back to one of the major things with this, being the level of training for crews on board these vessels, where I was referring to that issue around that deckhands being able to do a couple of days' training and go 200 miles out to sea.

40 Under the Navigation Act the Australian seafarers have got to go through 12-15 months training to become qualified in a graded ratings. Now, that's a significant difference to a couple of days' training to throw some - it could be a backpacker that's come out for a bit of work, throws two days' training in, jumps onto what was intended to work around the harbour or a river, and all of a sudden you're 200 miles out at sea on a domestic - on a commercial trading vessel.

45

MR LINDWALL: Yes.

5 **MR KEANE:** It's - we just don't see that that is an acceptable position (indistinct), sir.

10 **MR ROBERTS:** If I could ask you, Garry, this might be a bit - you know, a very particular question, but in taking that example a little further, was there a consistent approach, when regulations under the states and territories, to that issue?

15 **MR KEANE:** No, that was a part of the problem; there was no consistency between the states, and part of the COAG idea was to get a regulated position nationally and - but the strict terms of that were without reducing safety. It had cut costs, which we're all in favour of, but without reducing the safety. This has dramatically and identifiably opened up safety issues.

20 **MR LINDWALL:** And you're saying mainly in the trading vessels; is that right?

MR KEANE: In the trading vessels, or - - -

25 **MS LLOYD:** We mainly look at the trading vessels. On page 14 of our original submission there's a list of vessels and what we think arrives in DCVs.

MR ROBERTS: Yes, yes.

30 **MS LLOYD:** One of the larger ones would be the Wunma and the Donnacona. We believe Donnacona's still a RAV but it doesn't look like Wunma is. (indistinct). The Toll Osprey - we think that used to be a RAV. So it's a little bit hard to tell, and we have no idea basically, so it will be - - -

35 **MR KEANE:** And AMSA hasn't been able to answer those questions when we requested (indistinct).

40 **MS LLOYD:** No. If you ask AMSA 'Is this vessel a RAV or a DCV?' you'll probably getting umming and ahing for half an hour before they can tell.

MR BAXTER: Hasn't the Wilmar vessel disappeared?

45 **MR KEANE:** It has now, yes.

MS LLOYD: Wilmar?

MR BAXTER: Yes.

5 **MS LLOYD:** No, I believe it's up in the Gulf. It was in PNG.

MR KEANE: It's still running. Come back (indistinct words).

10 **MS LLOYD:** But I believe it's come back to Australia as a RAV and then got transferred into a DCV.

MR LINDWALL: This was the one that they had operating out of Perth with the trade through to the Middle East?

15 **MS LLOYD:** No, that would be a RAV, but that wouldn't be Australian.

MR KEANE: No.

20 **MR LINDWALL:** It was originally, I think, Wilmar, Australian flagged vessel.

MS LLOYD: Sorry. Sorry, I was talking about Wunma, which is the major trans-shipment barge up in the Gulf.

25 **MR LINDWALL:** Yes, okay. No, I was talking about Wilmar. That's good we've clarified it, yes.

MR BAXTER: Now we're getting very detailed.

30 **MR LINDWALL:** Did you have anything more? Sorry, because I know Malcolm's about to ask a question, so.

MR KEANE: No, no, no, that's fine, as I'd said.

35 **MS LLOYD:** No. So, also in the - one of the appendixes of our original submission we've got a table that goes through the specific sections of, and details the differences between the Navigation Act and the Green Safety DCV Act. As Garry says, the differences of training for ratings is especially bad, but if you look at things like whale watching outside of

40 Sydney, those vessels are DCVs. They're under 24 metres. A master less than 24 metres AMSA says is a low complexity qualification, but you can go out to 200 miles with a master less than 24, and the vessels that go outside the heads watching for whales, they've got more than 100

passengers on board and we don't see how that is a low complexity qualification. That's quite - - -

5 **MR BAXTER:** It wasn't on the day I went out.

MS LLOYD: You know, to operate these vessels, you know, they might have the experience and the knowledge and training to do the job. We're not saying they don't. We're just saying that AMSA says it is a low complexity qualification and there are similar international standards, for
10 example, a master less than 500 tonnes, which is a longer process, more involved, and you have to go to AMSA to sit an oral exam before you could get that with a master less than 24, the registered training provider -
- -

15 **MR LINDWALL:** Yes, yes.

MS LLOYD: : - - - can assess you as being competent and we think that's a bit of a conflict of interest there.

20 **MR LINDWALL:** : Well, that's your other inquiry, isn't it, Malcolm.

MR BAXTER: Yes. Yes.

MS LLOYD: : So, you know, just to summarise some of the differences
25 between the Nav Act and the DCV Act, physical standards of survey are different. Working conditions, as I mentioned before the Navigation Act actually sets out specific conditions, working conditions for seafarers. You know, just one of the random ones is that if you're a seafarer on a vessel that's regulated under the Navigation Act you're exempt from jury
30 duty when you're at sea. If you're on a domestic commercial vessel, that could be precisely the same - precisely the same operation, you're not exempt from jury duty when you're at sea. Things like that, things like that your employer has to return you to your home port, that's a Navigation Act provision, not a DCV Act condition.

35 **MR KEANE:** The basics of crewing.

MS LLOYD: Yes.

40 **MR KEANE:** The numbers and the requirement for vessels, in our opinion, should not be left to safety management systems.

MS LLOYD: Yes.

5 **MR KEANE:** You get a skipper or an owner, whether he be, you know, reputable or irreputable, and I think the reality is in such a vast industry you do have non-reputable out there having the ability to say what training their crew has and how many of them will be on board a vessel, that may be pertaining to carriage measures or anything else is just not acceptable. There should be minimum legislated standards that have to apply.

MS LLOYD: Yes.

10 **MR BAXTER:** Hasn't this matter been raised on several occasions by magistrates in Queensland in particular?

MS LLOYD: : Yes.

15 **MR BAXTER:** Where there have been deaths and accident of a serious nature and - - -

MR KEANE: Well, there's the - - -

20 **MR BAXTER:** - - - nothing appears to have happened?

MS LLOYD: : Yes, - - -

25 **MR KEANE:** Part of the problem around the DCVs is that you don't really have some regimes that can do the investigations. The ATSV was referred to in our submission and I know they've put their own in. Don't actually do investigations.

MR BAXTER: No, because they're not funded for it really.

30

MS LLOYD: No.

35 **MR KEANE:** Yes. Well, not even funded. They're not - it's not legislated. They don't - AMSA don't do investigations in some of these vessels in serious incidents. It's left to the police force who have no expertise or no skills in maritime structures. The - AMSA will insist obviously, but it's - to us it's - the ATSV should be involved.

40 **MR LINDWALL:** So when it comes to the actual regulation, though, that's not - AMSA applies the law as it is, right? So you're arguing that, aren't you, that what you want is a tightening up of the DCV legislation, or perhaps even to put it into the Nav Act with a different - - -

45 **MR BAXTER:** Well, perhaps if we go to the submission.

MS LLOYD: The Navigation Act and the DCV Act allows AMSA to make a regulation under those laws.

MR LINDWALL: Yes, yes.

5

MS LLOYD: : So we can still have the DCV Act, but the regulations that AMSA is making under the DCV act are all risk-based regulations.

MR LINDWALL: Yes, yes.

10

MS LLOYD: So it basically says, 'Do a risk assessment. Sort it out for yourself'. The Navigation Act has a suite of marine orders as well and they're specific regulation that says, for example, that you have to have a certain number of people or you have to have a minimum safe manning document that's assessed by - - -

15

MR LINDWALL: And all this comes from the SOLAS type connection.

MS LLOYD: : And this is coming from SOLAS, but - - -

20

MR KEANE: And the IML, the International Maritime & Logistics.

MS LLOYD: Yes, those marine orders are made by AMSA under the Nav Act.

25

MR LINDWALL: Yes. Yes.

MS LLOYD: And AMSA could apply those marine orders under the DCV Act as well, but the regulation that they have made under the DCV Act is non-proscriptive and risk-based, and we're saying that that doesn't work. So under the, as Garry was saying, crewing numbers under the DCV Act are assessed. There is a minimum number. For example, it's two or three for whatever size of vessel that you like, but you make a risk assessment to decide your own crewing for your own operation.

30

35

If you have a regulated Australian vessel, bearing in mind that these are exactly the same vessels doing exactly the same operation, that you have to submit your crewing - you have to submit your crewing numbers to AMSA and they have to approve that. That then has to be issued in a document that's available for the crew to see so they know if their own ship is being undermanned.

40

MR KEANE: And you mentioned before the fishing fleet.

45

MR LINDWALL: Yes.

5 **MR KEANE:** There's quite a lot of angst inside the fishing fleet itself about being tangled into where, at the moment we believe there should be a division between that, whether it goes back to the state structure or reverts to some vessels coming back under the Navigation Act. Maybe if we actually go to the submissions that we've put in from yesterday.

MR LINDWALL: M'mm.

10 **MR BAXTER:** The bottom part's over to findings which support - - -

15 **MR KEANE:** Yes, yes, that we agree with. 4.3 was support, 5.4, 5.5. These are all logical things that we comply - you know, that we believe are necessary. 8.3, 'The government should impose a general safety duty on all parties with significant influence over the safe operations of autonomous transport details'.

MR LINDWALL: Yes, no argument.

20 **MR KEANE:** Draft recommendation 9.3, 'Australian and state and territory governments should formalise the role of the Australian Safety Bureau to investigate all serious incidents involving domestic commercial vessels and agree with funding models to support this role'. Absolutely we believe this must. 'Agree to a funding model to enable the ATSB to
25 radically carry out its established role as with the investigation of rail safety.'

30 9.4, 'The remit of the Australian Transport Safety Bureau should be extended to include any incidents where autonomous technologies at or above SA Level 3 autonomy may have been involved'. We just - anyway, so they're - - -

MR LINDWALL: You're all happy with that?

35 **MR KEANE:** Absolutely, yes.

MR LINDWALL: Yes, I don't think you need to go through it.

40 **MR KEANE:** No.

MR LINDWALL: I mean, we have read and we've - it's more, what I really want to understand is what's different about maritime compared to rail, say, where a risk-based approach seems to work quite well in rail and probably also to some extent in heavy vehicles, but it's - you're saying it

doesn't work in maritime and why is that? I mean, what's the nature of the business?

5 **MR KEANE:** Well, when you're talking heavy vehicles, they've got an underlying regulation that's required for them to be operating.

MR LINDWALL: Yes.

10 **MR KEANE:** You take the changes that have come about going from the Nav Act to the DCV Act. It's like taking a lot of the requirements out of that heavy vehicle system. You can't, for example - the owner or operator of the heavy vehicle has to have a minimum requirement licence. Now, technically the operator of a DCV, as - - -

15 **MR LINDWALL:** Yes.

MS LLOYD: Yes.

20 **MR KEANE:** - - - Fiona was just saying, depending on the length of the vessel, has certain requirements that come up at certain, you know, like, so we believe, as Fiona just pointed out, some of those have tightened up for the - - -

25 **MR LINDWALL:** Yes, yes.

MR KEANE: - - - operator or skipper of the vessel, but coming under that, the requirements under the DCV as opposed to the Navigation Act for skilled seafarers is totally inadequate. As I said, the prime example is deckhands being able to go 200 kilometres out to sea. That was just never an intention of anyone, and yet it's come across now to a position that, again, if you're talking about a fishing vessel going out to sea, they shouldn't have to be burdened with some of this stuff that the trading vessels and that should be burdened with. The dangerous cargoes, the prime examples. We've got - an example we raised at the Senate Select
30 an intention of anyone, and yet it's come across now to a position that, again, if you're talking about a fishing vessel going out to sea, they shouldn't have to be burdened with some of this stuff that the trading vessels and that should be burdened with. The dangerous cargoes, the prime examples. We've got - an example we raised at the Senate Select
35 Committee hearing about vessels carrying passengers that also carry some dangerous cargoes, that has applied to increase the number of passengers which is, really, the regime itself will probably allow that, whereas if you look at the international regime would not allow it under any circumstances.

40 **MR LINDWALL:** Yes.

MS LLOYD: I think one of the - so why we don't believe it respects regulation is - is it's - we don't believe it's suitable for most DCV
45 operators at the moment, and that's because there are lower training

standards between the DCV Act and the Nav Act, so people aren't getting the training that they need to do that. On page 30 of the draft, you've got a table, Figure 8, that says various models of safety regulation relevant to transport, and that says, I mean, and you have said this of us, - - -

5

MR LINDWALL: Yes.

MS LLOYD: - - - that highly prescriptive regulation is suitable for operators with low capacity for developing and documenting systems and processes, and we would say that most DCVs, I mean, there's a massive range of DCVs.

10

MR LINDWALL: Yes, there is.

MS LLOYD: A lot of them are masters operating their own vessel.

15

MR LINDWALL: Correct, yes.

MS LLOYD: With very poorly trained crew. Like, as Garry was saying, you can get a backpacker, put him on a fishing vessel. We've got a master with a master less than performing in coastal operating out to 200 nautical miles. He doesn't necessarily have the capacity for developing his own safety management system.

20

MR LINDWALL: Yes, yes.

25

MS LLOYD: And deciding what is appropriate.

MR LINDWALL: He's like the small owner/operator truck driver - - -

30

MS LLOYD: Yes.

MR LINDWALL: - - - who should have a more proscriptive set of regulations, sort of thing.

35

MS LLOYD: Exactly.

MR KEANE: But the thing with a truck driver, he doesn't have a crew underneath him that he's responsible for their safety.

40

MR LINDWALL: He could have a small owner/operator business with a few truck drivers, but I'm trying to compare it to - - -

MR KEANE: But on a particular truck.

45

MR LINDWALL: Yes.

MR KEANE: You've got the driver and that's it.

5 **MR LINDWALL:** That's true. I'm more thinking about the very large providers which are in the trucking business, that'd be the Tolls and the - -
-

10 **MS LLOYD:** Well, speaking of.

MR LINDWALL: - - - Linfoxes and so on.

MR BAXTER: Speaking of?

15 **MS LLOYD:** You have to have an understanding of the risk and the way that seafarers work is that they're very comfortable with the risks in their own operation. However, when it's - it's actually quite perverse because when you get to a bigger operator they might not actually understand fully the risks in their own system, and those risks have been dealt with around
20 the world for the last 100 years in proscriptive regulations, so there's actually not a massive understanding of the underlying risks, and that's what AMSA's doing, is that they've taken away all those proscriptive regulations, said, 'Look after your own risks', but there is actually no guidance saying what those risks are.

25 So we'll go back to dangerous goods because it's something that keeps coming up for us is that, for example, the IMDG Code sets out segregation of dangerous cargoes on vessels, so you don't put gunpowder next to pyrotechnics - - -

30 **MR LINDWALL:** Oxygen cylinders.

MS LLOYD: Yes. We don't like putting gunpowder next to - like, it makes sense, right? But we know that because we know it's a bad idea,
35 just the same as at home we deal with Domestos and bleach and we know that if you stick both of them down the toilet you'd pass out. Cargoes carried on vessels are a lot more complex than that and they've been dealt with with this big book that you run down the columns of the books and you say, 'All right, don't put those things next to each other', but it doesn't
40 say why. So people around the world don't really need to know why. They just say, 'All right, we won't do that', and that's fine and that's how we deal with the risk.

45 **MR LINDWALL:** Yes.

5 **MS LLOYD:** Not understanding the risk is a massive issue. For example, hay is a dangerous good because it self-combusts, but if you have an operator that doesn't have a proscriptive regulation and forgets to check that hay is a dangerous good, then they're putting hay next to petrol on the same boat, and AMSA doesn't look at that.

10 In AMSA's most recent submission to the PC Commission on page 25, they've got a section about Operation Holiday, and I don't know if you remember there was a big diving vessel incident in the US.

MR LINDWALL: Yes.

15 **MS LLOYD:** So AMSA's response to that is that they went around and they looked at diving vessels, and this is them in the submission trying to look good, but they actually say that the laws which are currently grandfathered don't require smoke detectors in accommodation spaces on passenger vessels where passengers are staying overnight, and AMSA can't make them to it. So they've said, 'Well, you need to assess the risk', and the operators are apparently saying, 'Well, we've assessed the risk and we don't like smoke detectors', and AMSA has to walk away and do nothing about it.

MR LINDWALL: They could do a marine order presumably.

25 **MS LLOYD:** So why not have a marine order have a marine order that says you must have smoke detectors. It's not difficult, it's not hard, but if these companies aren't even assessing the fact, the risk appropriately to stick a smoke detector in accommodation spaces, that's not an appropriate safety culture to be having risk-based regulation.

30 **MR LINDWALL:** Okay.

MS LLOYD: So we're saying that in the WHS laws they talk about due diligence.

35 **MR LINDWALL:** Yes.

MR BAXTER: Yes.

40 **MS LLOYD:** In the DCV Act there's nothing about due diligence. So you must assess the risk, but there's actually no requirement for appropriate risk assessments, good safety management systems or having due diligence in the law.

5 **MR KEANE:** One of the recommendations that we put in is that we seriously believe that having two national overlapping jurisdictions with very different standards is a major issue that we believe should be - must be addressed in the final report. We think it's just a recipe for disaster.

MR BAXTER: Yes, that point comes through clearly.

10 **MS LLOYD:** It's also economically uncompetitive because it's cheaper to operate a vessel under the lower standards, create risk assessments that remove all the risk, but you've got the operator next door that's decided to remain around because they think it's safer or operate their DCV with good risk assessments at a slightly higher cost, maybe adding more crew, but the person next to them isn't required to do that and won't get into any trouble until there is an accident.

15 **MR KEANE:** Well, either adding more crew or having sufficient, or what we believe should be sufficiently crew.

MR LINDWALL: We haven't got much time, so if you want to - - -

20 **MR BAXTER:** Just a quick question. How do we compare with New Zealand?

MR KEANE: Less. Our standards are less than New Zealand. New Zealand has a regulated process.

25 **MR BAXTER:** Right.

MS LLOYD: New Zealand's just recently reorganised their system as well. Interestingly, though, there is - New Zealanders can use their qualifications over - their domestic qualifications over here, we can use ours over there, but they've recently reorganised the system to go straight through from the domestic system to the international system, so you can go, say, from your master 24 to master less than 500 and we don't actually

30 have that option in Australia. It's very difficult to change from the domestic system to the international system.

MR BAXTER: Okay.

40 **MR KEANE:** And the New Zealanders are saying that's not sufficient.

MR LINDWALL: No. I'm sorry, - - -

MR KEANE: I can see the time, so.

45

5 **MR LINDWALL:** No, one final question on then which we should ask which is about grandfathering. You know, we have recommended it to be cost effectively looked at and we said five years as a period to bait it out. I mean, we've had some feedback since the draft report that, you know, some of the - well, you can't build a fishing vessel in Australia. It's very hard and expensive to get, so it can be quite prohibitive to say that you have to have a - get rid of grandfathering totally, and then someone can't operate their shop and they've got no choice because it's not viable. What do you have - how do you assess that in terms of the grandfathering, the economics of it, that is for the operator, which oftentimes in the case of fishing trawlers are operating very close to the bone versus improving safety.

15 **MR KEANE:** That again depends on what you're looking at. I know some of the exemptions that were handed out were - there was rail size, rail height. Those exemptions weren't given a time factor to fix that. They were rolled over.

20 **MR LINDWALL:** Yes.

MS LLOYD: Yes.

25 **MR KEANE:** If you're rolling over exemptions, the exemptions come as the norm, and that's exactly what other people in the industry are saying, 'Hang on, he's getting away with doing that. I've got to get this nice new boat that comes up to speed and has everything else. I'll just buy one of the old boats'. Again, you've got some variation between the fishing fleet to where we're sort of specifically talking about, and maybe handing fishing fleets back to state regulations or - because most of the fishing fleets aren't particularly travelling between the areas.

MR LINDWALL: No, they're just going to one - in and out, yes.

35 **MS LLOYD:** I think it's also important to say that it's not just physical standards that have been grandfathered to operational standards. So if you've got a grandfather operation you can continue those crew requirements.

40 **MR LINDWALL:** That's right.

MS LLOYD: Say that you had a poor operation, a poorly regulated operation under the state, is that that operation and the requirement that you only need two crew on board, for example, is grandfathered with the vessel. So the whole of the vessel is one thing, but grandfathering the

operation without a finish date seems to be very silly. Vessels themselves have an incredibly long lifespan.

MR LINDWALL: Yes.

5

MS LLOYD: But it's not that people are buying grandfathered vessels and not making changes to them because then they cease to be grandfathered. So if you increase the rail height on a vessel, for example, then the entire vessel ceases to be grandfathered, so small changes to - - -

10

MR LINDWALL: That's a discouragement from doing something.

MS LLOYD: Exactly. It's - it's - - -

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MR LINDWALL: That's a good point actually.

MS LLOYD: Yes.

20

MR LINDWALL: All right. Garry and Fiona, thank you very much for your time. We've run out of time unfortunately. Thank you for your submissions and look forward to further engagement, and much appreciate you turning up.

25

MR KEANE: Just to finalise, we would reiterate that we believe the dual system isn't working, and that the final court ruling must look at that as part of your - thank you very much for us being here today.

MS LLOYD: Thank you.

30

MR LINDWALL: Thank you very much. Now, I think we're supposed to have a short break now for a coffee or something. I think the food's supposed to be coming in. I'll just check that.

35

ADJOURNED

[10.51 am]

RESUMED

[11.02 am]

40

MR LINDWALL: Well, if you could all just introduce one after the other yourselves and then maybe an opening statement.

45

MR LAWRENCE: Yes, sure, I was going to do that, yes. Thank you.

MR LINDWALL: At your leisure. There's no hurry.

MR LAWRENCE: Yes. Yes, so good morning. I'm Stephen Lawrence. I'm the Vice-President, Rural and Regional of Local Government New South Wales. Our president, Linda Scott, is on a tour of bushfire affected areas and she sends her apologies. To my immediate right is Kelly Kwan.

MR LINDWALL: It's probably better for them to say.

MR LAWRENCE: Certainly. Please.

MR LINDWALL: To link the voice on the microphone.

MS KWAN: Kelly Kwan. I'm the Executive Manager for Advocacy at Local Government New South Wales.

MS PARTRIDGE: I'm Jane Partridge, Strategy Manager, Planning & Transport, Local Government New South Wales.

MR SATHIAH: And I'm Sanjiv Sathiah, Senior Policy Officer, Roads & Transport.

MR LINDWALL: Thank you.

MR SATHIAH: At Local Government, New South Wales.

MR LAWRENCE: Yes, so thank you for the opportunity to appear today on an issue that is of obvious importance to local government and the communities that we represent, being the commission's draft report on National Transport Regulatory Reform.

As the peak body for 128 local governments, we request the commission to consider the concerns that our members have with regards to aspects of the draft report, those pertaining to heavy vehicle access in particular. Local Government New South Wales, in New South Wales is concerned that some aspects of the heavy vehicle reform agenda are driven by an industry-first perspective. This is distorting debate in our view around the perceived need for changes in the current heavy vehicle law, particularly with regard to heavy vehicle access.

With councils in New South Wales responsible for around 90 per cent of the road network, we maintain that the views of council need to be given equal consideration, particularly where legislative reform impacts on the role and budgets of councils. Our role is to ensure the wellbeing of our local communities.

5 Increased freight access carries obvious inherent safety risks, concerns about the long-term sustainability of our infrastructure, the road network assets and lack of funding to upgrade and maintain those assets, as well as concerns about the amenity of local communities. Local government is cautious of any changes to heavy vehicle law that could undermine our fundamental role in managing our local road networks and any inherent risk to their communities.

10 I won't obviously take you through the entirety of our submission, but I - -

MR LINDWALL: Thank you for the submission there.

15 **MR LAWRENCE:** I might just take you just to two key points, firstly, our recommendation 2 which I think you will find on around pages 4 or 5 of our submission.

20 **MR BAXTER:** Yes, at four.

MR LAWRENCE: It's our view the productivity gains sought by industry in this regard will not be realised from changes to the permit approval process or the legislation, but through the necessary investment from federal and state governments to bring aging bridge and road infrastructure up to a standard capable of supporting the movement of restrictive access heavy vehicles in a way that is efficient, safe and sustainable.

30 Lastly, in terms of some specific reference to our submission, we do take particular issue, I suppose, and this is encapsulated in our recommendation 3 in relation to a key point made in the draft report stating, 'approval processes for access to local roads can still be inconsistent, slow and lack transparency', or it's our concern - we have a concern with the accuracy of that statement and would see its amendment or deletion, I suppose, and you will see under our recommendation 3, so National Transport Commission statistics are drawn from its current review of the heavy vehicle national law which show 96 approval rate, only 4 per cent being declined and 93 per cent of applications being processed inside the one week period.

40 So just in conclusion, I suppose our key positions are that councils should retain its legislative role as road managers of the local road network. Councils and local government should be engaged in reform as equal partners with state and federal government. Councils are doing a good job of managing local road network access and this is supported by the data.

Access improvements will not fundamentally be achieved through legislative changes. Access improvements can continue to be achieved through ongoing collaboration between councils, industry and the regulator of the NHVR.

5

Significant gains in heavy vehicle access, in our view, will only be achieved through the provision of better data to councils regarding freight movement. I understand that's a particular issue at the moment with the industry not flowing that data to us and therefore limiting our various capacities, but most importantly through increasing funding for roads and bridges. So those were the key points I wanted to make by way of opening statement.

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MR LINDWALL: Thank you.

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MR LAWRENCE: Thank you.

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MR LINDWALL: Are you aware of how Tasmania, and I know it's a smaller jurisdiction, has done - set up a system where truck operators can find that they want to go from A to B and it gives them recommended routings and helps - and it builds information about where are the bottlenecks and where are the pinch points; how this bridge has this much capacity and this road has that much capacity and so on. It's all nicely mapped out. That doesn't happen in New South Wales. Is that something that might be very helpful to local councils?

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MR LAWRENCE: It sounds so. I'm not aware of it. I might refer that in the first instance to Ms Kwan. I might refer it on.

30

MR SATHIAH: I am aware of it and I think it is universally agreed that that is the gold standard that we've all been waiting for. Obviously I think there's a lot of reform and issues that are sort of moving us in that direction. The national freight data hub, for example, would be a good starting point, but you know - and we need to undertake full road network assessments to be able to achieve that and there's no simple task and no cheap task. It's going to be quite expensive, and obviously our roads are substantially more complex than in Tasmania.

35

MR LINDWALL: Yes.

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MR SATHIAH: But, yes, that would definitely be the ideal way to go if we can do it.

45

MR LINDWALL: Now, what about for councils now. Of course, some councils are fairly large. They have a pretty good capacity and they have -

are fairly well-resourced, and other councils not so and some councils have a lot of traffic going through them, and a lot of potential traffic going through them. Some might only have one or two applications a year.

- 5 How is it best you see – and I make that point because I understand Local Government Queensland has some – they’ve tried helping the councils in more remote parts of Queensland – is there something that the LG New South Wales could be more involved in or the New South Wales Government? How do we assist the councils that don’t really have the capacity to do the work?
- 10

MR LAWRENCE: Yes, I wonder whether this could be something dealt with through the joint organisation process, but I refer that again.

- 15 **MS KWAN:** Yes. Look, I think capacity and capability is a key issue for local government, particularly in, as you mentioned, smaller council areas. Yes, obviously the bigger councils have often the skills and capabilities and the right systems and the data in terms of reviewing their assets and managing access applications. So we do have the joint organisations, which is I think a fairly recent feature, which essentially brings together a number of regional councils under sort of the umbrella organisation, and Local Government New South Wales is working with those joint organisations in terms of potential collaborative initiatives that we could pursue.
- 20

- 25 I think, certainly, something like building their capacity and capability in that area, sharing of resources amongst the smaller councils is obviously a really big part of that.

- 30 **MR SATHIAH:** I could just add to what Kelly had said, and that is that familiar more with Local Government Queensland, where they have got a support officer, jointly funded by the NHVR and LGAQ, and I believe the OSOM recommendation suggested that the other jurisdictions investigate that particular approach. Transport for New South Wales has approached us about that. But it would be about around the funding of that role that – you know, that doesn’t sort of sit with us in terms of how our model operates, LGAQ may be a bit different. But that sort of role, undoubtedly, as shown in Queensland, would help if they did have that subsequent liaison role, undoubtedly.
- 35

- 40 **MR LINDWALL:** Do councils appreciate that sometimes a high performance vehicle which can theoretically carry more freight but has a lesser impact upon the roads and the bridges than some other vehicles, and perhaps fewer movements?
- 45

MR LAWRENCE: I might refer that to Ms Kwan, sir.

5 **MS KWAN:** Yes. Look, absolutely. I mean, obviously one of the key principles of councils is improving amenities into their local – reducing the impacts of freight movements on their local communities. So I think local councils are supportive of performance-based vehicles, high productivity vehicles, and granting access where they can. I guess that just needs to be balanced against things like – well, any adverse impacts, in terms of road safety, and also impacts on assets such as bridges and that sort of thing.

10 So I think there's definitely a commitment to trying to accommodate access to high productivity vehicles where possible, but it's just that balancing act.

15 **MR LINDWALL:** So how would you feel or how would councils feel, do you think, if there was a slight change whereby for example an approval for a particular type of vehicle was given in the past, and because of that, for this particular part of the road network, because of that there should be, not an automatic approval, but a more streamlined approval process for future applications for permits by similar or same type of vehicle?

20 **MS KWAN:** Look, I think councils, again, are supportive of streamlined processes that would potentially reduce the administrative load on them, but I think a key concern is having visibility of those access approvals. As an example, I suppose if you've got a vulnerable bridge, you may decide to approve a permit application on the basis that that particular vehicle is crossing that bridge two or three times, within the limits of that permit. If you then extend that sort of blanket approval process, and you've potentially then got 10 vehicles making multiple trips, that obviously would impact that asset.

25 So I think again it's a bit of a balance between being able to streamline processes for both industry and local government, but also at the same time understanding the potential impacts on assets.

MR LINDWALL: Malcolm, did you need to ask some questions?

30 **MR ROBERTS:** Well, I think we respect the fact that local government is the asset manager and has to take into account amenity and community opinion, safety, all those different factors, and thanks for the reference to the NTC paper and the data around approvals, that's helpful, appreciate that.

45

- If 93 per cent of applications are being completed in seven days, and most are being approved, it suggests that, with goodwill on all sides, there must be a way to improve that process so councils are freed from the paperwork burden of that. So just a general question, an open one, as to whether there's anything that local government is thinking about how you might be able to reduce that requirement on local government. Because we've seen evidence that councils that receive most of the applications are also quite timely at getting the decisions made, so they've built capacity and they understand the task.
- But the high incidence of approvals and reasonably quick approvals, you know, suggests that there's a lot of unnecessary work that possibly could be circumvented if we got our procedures right.
- MR LAWRENCE:** I'll pass that to Ms Kwan, but I know that our fundamental concern is that we do maintain that approval role, and that's because we ultimately are the level of government with the grassroots linkages and we are accountable for movements ultimately.
- MR ROBERTS:** It's your asset.
- MR LAWRENCE:** So with those few comments, I'll pass that to Ms Kwan.
- MS KWAN:** Yes, I might pass to Sanjiv.
- MR SATHIAH:** Yes, so with regard to – we're certainly amenable to the idea of notices and gazettals, and I think the NHVR annual reports have shown over the past several years that there's been strong progress in that area. So we don't see a need for a change to the legislation to continue to facilitate that, because the fundamental underlying principles are appropriate: we're talking about safety, sustainability, amenity.
- So what we'd call for is a continued dialogue and discuss between operators, the NHVR and councils to continue to see those gains made where considered. We would caution against removing time limits on notices, we think that it's important that they do remain in place so that one can undertake a review of the network, at the time of notice, might be due for a renewal, so that we can assess whether it continues to be suitable to support that movement.
- So yes, there's no question that where notices are possible and gazettals are possible council will adopt them.

MR LINDWALL: Including with the conditions that they have a need, like not driving through night or limited number of movements per day, or something like that.

5 **MR SATHIAH:** Yes, that's right. So we've seen a lot of positive steps in that regard, and that continues to improve year on – it may not be at the pace that industry necessarily wants, but they'd like us not to be there at all and just have general access whenever they want. So unfortunately, because there is an ongoing mismatch between the quality of the network
10 and the types of vehicles that need to move on them, councils have to continue to play this role.

MS KWAN: I'm not across the detail of necessarily the permit process, but I suppose, yes, council would have an ongoing dialogue with NHVR
15 in terms of the sharing of information of past permit applications and things like that, so that if there has already been a number of approvals as a similar vehicle, there's some kind of notification from the NHVR to the council to say this is a new one, but you've previously approved X, Y, Z, which would potentially make it then an easier process for the council to
20 say yes, proceed or we have concerns because of the terms of the access.

MR LINDWALL: Yes, it's a register of the types of approvals.

MR LAWRENCE: Past decisions.
25

MS KWAN: That's right, yes, and some kind of – a more streamlined system.

MR ROBERTS: I think that would fit into one concern that has been
30 raised, which is, naturally enough, if you ask for something and you don't get it, you'd normally like an explanation. And that explanation, in turn, could be helpful directing future requests and decisions that have to be made by council, so if there's a track record of applications and decisions that are explained, it might be helpful for all parties.

35 The guidelines for granting access which have been developed through the NHVR, I think they've been updated last year, and from a practical point of view are they proving helpful to road managers, is that a good process?

40 **MR SATHIAH:** Absolutely, yes.

MR ROBERTS: That's all.

MR BAXTER: The only question I've got relates particularly to rural
45 and regional areas. Is there any evidence that the timing of getting the

5 approvals is not sufficiently quick and quite often the number of people who run say the trucks will in fact use the phrase “run the gauntlet” and hope to get away with it. Is there any evidence that comes from councils to suggest that that’s either a substantial number of people or is it just a few at the fringe?

10 **MR SATHIAH:** Yes, well, what I understand is that the industry generally want to do the right thing and they don’t want to run and hide if they can avoid it. So if I understand the extent of the problem, I actually don’t think we’ve got the level of visibility over general freight movement and what happens out of sight, yes, unfortunately I don’t think we can capture. So we would support tracking, if at all possible, in return perhaps for improved access.

15 **MR BAXTER:** Right.

MR SATHIAH: I think industry is starting to become a bit more amenable to that.

20 **MR LINDWALL:** It certainly seems to be the case that when the HVNL was first created and applied and there were problems because of all the permit applications, that it seemed like there had been many movements by trucks which had never sought a permit, even though they should have under the previous regime, and that’s not entirely surprising. So in the way, the new regime has led to better enforcement of laws that already existed in one sense or another.

30 Could I ask, what do you think about – the Productivity Commission on various occasions, and I’m sure we’ve spoken to LGA New South Wales past on this, has proposed road pricing and a road fund, by which we mean that the users of the road would put money to a fund which would be for a region, probably, and that fund would then be used to build or improve new infrastructure in that area. Is that something that you’ve thought about or what do you think about that idea?

35 **MR LAWRENCE:** Yes, I might pass that to Ms Kwan.

40 **MS KWAN:** Yes. Look, I think Local Government New South Wales would support some form of road pricing. I think that with the climb in fuel taxes and things like that, it’ll be inevitable that that’s the way it may need to go in the future. I suppose the key concern would be that it doesn’t then reduce the overall amount of funding, and particularly if it’s in certain areas, I suppose one of the issues with road pricing is that if it’s very much user pays in particular areas, obviously in some of the more rural and remote areas that have less freight movements, that could - - -

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MR LINDWALL: Well, I think in our reports we've always said there'll be a level of cross-subsidy for remote areas or regional areas where you can't imagine it would be viable to be fully cost recovering.

5

MS KWAN: Yes, that's right. Yes. But yes, I think certainly given some of the historical under-investment in roads, I think some form of road pricing may seek to address that issue.

10 **MR LINDWALL:** And could I ask, and this is of course in respect of what I – I note that the PC has done a report on natural disaster funding a number of years ago, and in relation to the bushfires have affected badly in New South Wales, of course, there'll be – in that report we did note, for example, that rather than just repairing a particular bridge in a particular
15 location to what it was before, there should be some flexibility that maybe the bridge was in the wrong place, maybe there was a wrong design, maybe there should be scope to have a better thing, even chipped in with separate money. What do you think about that?

20 **MS KWAN:** Local Government New South Wales has had a number of discussions with the Office of Local Government, state government departments, and is about to commence discussions with the Federal Government as well in terms of betterment and resilience. So yes, absolutely, I mean, we're advocating quite strongly for the funding to not
25 just be like for like, but also to actually incorporate betterment and resilience, which I understand under some the Federal Treasury guidelines around that funding, at the moment is like for like.

30 So we'd certainly want to see a change in that position so that, as you said, if a bridge is in the wrong location or it needs to be redesigned to be made more resilient for future disasters, we're absolutely advocating for that. I think one of the other issues with the like for like is that – an example that was given the other day was that if a bridge is currently rated as a sort of 3 out of 5, it was already sort of in some form of disrepair, that the funding
35 would only cover the cost of getting it to that particular standard, and then local government would need to chip in essentially the rest to make it sort of five star.

40 Given that some local government – or all of the local governments that have been affected by these disasters are already suffering quite significantly, that would just add an additional financial hardship to those local governments. So absolutely, I think very strongly advocating for that sort of betterment and resilience and, more broadly, I think, not just for bushfire-affected areas, but more generally - - -
45

MR LINDWALL: Any natural disaster.

MS KWAN: - - - greater funding for resilience for the future, to mitigate any impacts of future disasters.

5

MR LINDWALL: Anything else, Malcolm?

MR ROBERTS: No, no.

10 **MR LINDWALL:** Because we've got a bit of time still.

15 **MR ROBERTS:** But I think the submission brings home the points of concern for you, and I suppose our emphasis here is trying to work out if there's anything that we can hopefully suggest that might improve the process which doesn't take away local government's control of its own asset base and its responsibilities to community.

20 **MR LINDWALL:** Which we strongly support, by the way. I can't think of any more questions because you've thoroughly addressed them, apart from the things that slowly get progressively less relevant to this inquiry, which we could go on all day. I could start talking about nuclear power or something, but that's not very helpful.

25 **MR BAXTER:** The only one that comes to mind about the consequences of the bushfires, both in the south of the state and past the north-west, or north-east, I think, is it possible that the state government may have to in fact provide additional supplemental funding to some local government councils for road restoration, and how would that be treated?

30 **MS KWAN:** Certainly. I think there is already, I think, some committed sort of Federal and state government funding to bushfire-affected councils, not necessarily specifically for road rebuilding, but sort of I guess untied funding that councils could then choose to use for repairing roads and other things. So sort of untied funding. But yes, certainly I think that's –
35 some of that money has already been allocated and we'd certainly be advocating to make sure that that money is sufficient.

40 **MR LINDWALL:** Well, I think, unless – did you have any final points you want to add?

MR LAWRENCE: No, I don't think so, thank you.

45 **MR LINDWALL:** Well, thank you very much, Local Government New South Wales, for coming today and we much appreciate your help.

MS KWAN: Thank you very much.

MR LAWRENCE: Thank you.

5 **MR LINDWALL:** Today in Sydney we've got one more presentation; I'm happy to continue straight on to Dr Richard Tooth. Richard Tooth?

DR TOOTH: Yes.

10 **MR LINDWALL:** Hello, it's Paul Lindwall.

DR TOOTH: Hello, Paul.

15 **MR LINDWALL:** Good to see you. Now, Richard, at your leisure, if you could just introduce yourself and give a bit of an opening presentation, then you can then ask your questions and – it's a fairly informal process.

20 **DR TOOTH:** Yes, sure. So my name's Richard Tooth, my day job is a director with a consultancy called Sapere, where I largely do economic consultancy for a range of organisations including public and private sector and non-profit organisations. I also have a few other affiliations, but the submission I'm doing is on behalf of myself and it's based on previous research that I've undertaken.

25 So I'm focused on one aspect of the draft report, which is related to safety regulation and insurance, and that comes up in chapter 8 on Transport, Technology and Data, and I'll just read from the submission I sort of wrote and put forward to the Commission, which I assume you've got.

30 So just in quick summary, as noted in this chapter, there's potential for insurers to use telematics data to reduce safety risks and, secondly, that the uptake of telematics-based usage-based insurance is limited by insurance regulation which, as I've elaborated in research that you've cited in the
35 draft report, includes unbundling of compulsory third party insurance from motor vehicle insurance and pricing regulation.

40 So just to be kind of clear, just to give you a simple example, in Australia, as we'd all know, we – at various jurisdictions, we buy two insurance products when we – and this applies to households, whether they're using it for commercial or non-commercial use. So you buy two insurance products, one is your motor vehicle, which covers your motor vehicle, and secondly, you buy what's commonly called CTP, compulsory third party
45 insurance.

Compulsory third party insurance is heavily regulated, it's what we often describe as community rated, where effectively – which I think you've quoted what I've sort of stated in the report – which basically means it doesn't matter how badly you drive, how dangerously you drive, what you drive, within certain categories, you pay the same. So it's clearly not risk-based or cost-based.

Now, we contrast this to the UK, and the UK's the best and clearest example, where you buy one product, there is a level of insurance is compulsory, which in the international literature is more commonly referred to as motor third party liability insurance. So there's a mandatory level of cover that you must have. But it's effectively one product. So people coming from the UK come out here and find this kind of strange, what we have.

Similarly, most jurisdictions you'll go to it's one product. So pretty much everywhere in the US it's one product you purchase. I'd look at most English speaking countries, it's one product. I think there's a few other exceptions where it is unbundled.

But the unbundling – so in the UK there's very little regulation, and so effectively the insurer is able to price and manage risks so effectively they price for risk. So this applies to young drivers, but also applies to truck drivers. So then the insurer does a lot to actually manage risk. So they have the incentive and the ability to actually do a lot around risk management.

That's where I sort of get to, and I've done quite a bit of analysis on this, looked at what happens internationally, looked at the international research, and effectively insurers can do – they can influence what you drive – well, first of all they influence whether you drive.

MR LINDWALL: Yes.

DR TOOTH: Secondly, they influence what you drive and then, very importantly, influence how you drive. Now, with telematics that has greatly improved their ability to influence how you drive, and historically it's always been the case that insurers influence whether you drive and what you drive and also how you drive, because of a rating basis.

There is an awful lot of research which demonstrates that when you regulate those rates, you remove the incentive and ultimately it just leads to more crashes. So effectively you've got regulation which is resulting in loss of life and injuries.

- 5 So that context. Now in the draft report, the Commission concludes with a sentence which I said is in the form of, “A shift towards a more risk-based approach to CTP does not appear warranted at this time”. So I’m extremely concerned with that conclusion. So in my opinion, the draft report fails to appropriately discuss the evidence on the case for reform and also a point there, there may be valid reasons for this conclusion, I don’t think there are, but if there are valid reasons, and I’m always open to that possibility, they, in my opinion, are not articulated in the draft report.
- 10 In the draft report the conclusion is justified with – there’s a clause there – “given the many questions raised in box 9.6”, and then if I go through and refer to box 9.6, I have to conclude that, in my opinion, that the analysis in that box is flawed, most of the analysis in there appears to be more appropriately applied against maintaining the status quo. That’s what I
- 15 sort of elaborate there.
- 20 So I guess there are a few other things, just in sort of opening as well, of the importance of this. Road safety is a massive social issue, it’s a good day if only three people have died on the roads today. And then the number of people who are seriously injured, it’s horrific, and if you’ve got children, think about this. Here we have this reform, potentially of doing insurance reform, I put up as being the most cost effective, significant thing we can do.
- 25 No one’s challenged that – no one’s seriously challenged that. You get the odd comment obviously. There’s no serious challenges to that. There hasn’t been, in my opinion, a decent review of road safety regulation. When the Productivity Commission reviews an area, it’s an opportunity. Which is why I sort of took the time to make this submission. And there’s
- 30 been a variety of other things on road safety, but when the Productivity Commission chooses to do something, you pay attention and take the time to actually make a submission.
- 35 So I’ve been working on this area, looking in this area for quite some time, it’s not something I’m doing for any client, but it’s just one of those areas where - - -

MR LINDWALL: You have an interest, yes.

- 40 **DR TOOTH:** It’s societal interest, I mean, it’s a fascinating issue. But my goodness, if I had to rate the issues that we face in society in terms of the significance and the ability that we can easily do something about, this is in the top right hand corner.

Now, I know your scope is around sort of effectively the freight transport area, but this, to my mind, is the one that opens the door for everything else. And when you actually go down this route, and really what we're talking about here is using less the command and control process around managing risks, societal risks. It doesn't stop here; this is potentially – the opportunity is massive.

So I just push forward a few other things. So I mentioned that one hypothesis. I presented at an annual conference of road safety a few years ago and I put forward the hypothesis, the most significant cost effective policy to reduce the road toll involves reforming vehicle insurance markets. I said, please come and challenge me if you think that's not the case, I'm willing to bet on it, putting the words "by a large margin" in front of it.

I've spoken to basically the leading road safety research experts. Privately, they say we can't fault it. Publicly, there's some challenges in pushing this forward. I've also said vehicle insurance market reform provides a cost effective means to managing most key road safety issues relating to safe vehicle speeds and road users, including autonomous vehicles.

Finally, we cannot cost effectively meet road safety goals without reforming vehicle insurance markets. Now, that one I sort of say potentially eventually disappears when we have fully autonomous vehicles. But the others, I think, apply.

So as I've said, I've discussed this with road safety researchers, economists and a variety of stakeholders. I don't think anyone's seriously challenged this. You've quoted a key paper of mine in the report, but you haven't brought through some of the key things in there, the findings and that, which I project – I do, a hard as it is to do projections of the benefits. And they're massive, they're absolutely massive. And that's in terms of lives saved, reductions in serious injuries, which I don't quantify in there, but then I put also an economic value on it.

We're talking tens and tens of billions of dollars in present value. And that's just the direct benefits around societal costs – reduction in societal costs of people killed and injured, when you throw in some of the ancillary benefits if you had reduction in regulation. By the way, at all times, as I sort of say, you can always make something look good if you compare it to something worse.

The command and control system right now, you think if you – most of the road safety regulations, if we look at them right now, we compare

5 them against the worst outcomes. If you compare them against taking a more insurance-based approach to this, a lot won't stack up. And I guess this is the other big issue, this potentially leads us to much less burdensome regulation. You sort of hear lots of discussion going on right now about reducing speed limits, and there's a lot of damage that can be done and a lot of good things, if we are taking a more open-minded approach.

10 So that's kind of in a nutshell, and then I've got in there quite a few other specifics. Another issue around affordability, I do talk about. Just often one of the concerns is around affordability, and I think we can knock that one on the head. When you also look at how no one really examines how affordable the current system is, and it's horribly unaffordable, and if you look, that's the burden of the regulation, who pays fines and penalties, it's usually the poor who are impacted.

20 The other one I sort of found amazing in this is that there's statements in the draft report which talk about well, this might sort of result in – this might not address – capture everyone who's breaking the law. And ultimately – something along those lines – and I'm thinking, ultimately, you know, imagine a world where we've stopped road crashes but we haven't caught everyone breaking the law. And now, think about that. What world would you rather live in? So this is about changing the law, this is about – we're not interested whether people break the law, we're interested in whether people are dying.

MR LINDWALL: Yes.

30 **DR TOOTH:** I mean, if anything you want to change, get rid of those statements. So that's kind of the opening, and you've got the detail there, happy to elaborate.

35 **MR LINDWALL:** Thank you, Richard. Just could you – well, let's compare again with overseas. I lived in France for a while, and you're right, there is a single insurance product. There was variable, that's a mandatory component of it which effectively is that third party, injury-type part of it, but you could calibrate it to be effectively what I'd call comprehensive insurance, versus a third party property insurance, but it was a single product, and you're right, it was risk rated to an extent.

40 Is that what you're talking about basically?

45 **DR TOOTH:** Yes. So the regulations change everywhere, so there are – so when you look at the uptake of telematics, usage-based insurance – by the way, pretty much every young person in the UK will check it out – my

calculation is around about a third of young people have telematics usage-based insurance in the UK, and yes, the evidence suggests it's reducing crash rates by 20 per cent and up. And there are reports there where people are saying this is – a variety of people are concluding this is the biggest thing we've been able to do around road safety.

But the regulations do change country by country, and so the uptake of telematics varies country by country, and I couldn't – it's really hard deciphering why, trying to work your way through regulation, particularly in a foreign language, is tricky. However, so it turns out in France there is a - they're largely free to price, but there is also kind of a residual type of scheme, which then kind of puts a limit on how – anyway.

So France is not the most beautiful example, so the uptake in telematics isn't as strong in France as it would be here. But the broad idea is yes.

MR LINDWALL: I mean, could I then clarify a few things? Firstly, you're not against compulsory insurance that affects - - -

DR TOOTH: No, you need it.

MR LINDWALL: You need at least compulsory.

DR TOOTH: Well, I think you need it. I've got to admit, I haven't – I would say I haven't done the full analysis, but my going in hypothesis would be yes, you do need it.

MR LINDWALL: So what you're really talking about here is a community rating of that part of insurance. In other words, there should be price differential depending upon behaviour. I mean, insurance is a great product, as you know, for moral hazard, as there is a moral hazard issue to it, and there's an adverse selection part of it too. So insurance markets work in a variety of ways, as you say, and in an ideal world, you should have an individualised price that is judged upon the risk that you as an individual is placing upon whatever you're insuring of course.

DR TOOTH: Yes.

MR LINDWALL: Otherwise you open the moral hazard issues where the high risk person is paying a low premium and it doesn't discourage that behaviour. So I agree with that in principle. The usual reason trotted out for having compulsory third party regulated to a price, which effectively it is, although in New South Wales of course you go and get a quote but it doesn't vary terribly much, is more along the lines of the health insurance, which of course is also community rated. You take

private health insurance out and it doesn't matter whether you're a – there might be something on smoking I think, but not much else.

5 So is there something that you could conceptually differentiate between health insurance and driving a car that makes you – I mean, would you support getting rid of community rating of a health insurance for example?

10 **DR TOOTH:** So community rating does an awful lot of damage, but part of the key reason, and it does an awful lot of damage in a lot of insurance markets. I've closely looked at it in disaster insurance, and you – the flood insurance in the US is a disaster, and we've avoided that disaster here in Australia. But in health, I haven't done as much work on looking at it, but my understanding is, from anecdotal evidence, is yes, there is an awful lot of health problems as to the health outcomes of improving the risk, reward would be dramatic.

20 Now, key question of course is the issue around equity. Now, if you wanted to get clever as to how you could address the equity issue, I'd love to talk to you at another stage, and very happy, I've given thought to that, around health. But it's not an area where I've done a lot of work. But - - -

25 **MR LINDWALL:** It's more though I would have thought you're trying to capture a behavioural thing versus say a DNA test that you – a person is at a higher risk of a disease than someone else because of their genetics, you wouldn't want to punish that person, but maybe you'd want to discourage the bad behaviour.

30 **DR TOOTH:** No, absolutely. And this gets to a key thing with most of what we do on the road is choice, right. Pretty much everyone in the room can drive as safely as the other person, there's very few limits on that. Right now you can think of the current system as subsidising the high risks, it is a very – effectively it's an incredibly targeted subsidy to high risk driving and high risk behaviours.

35 **MR LINDWALL:** Yes.

40 **DR TOOTH:** Now, obviously there are some issues where you do have these sort of equity issues, and you worry about sort of grandfathering type of matters, but - and obviously you worry about young people. But if you're going to subsidise young people, subsidise them for being young, not for being high risk and, you know, no one can fake their age - well, you know, obviously you do in nightclubs, but - - -

45 **SPEAKER:** And elsewhere.

DR TOOTH: Yes, I'm a bit past trying to fake it.

SPEAKER: Yes.

5 **DR TOOTH:** But you can do extreme - if you're really worried about the
issue, do the targeted subsidy, you know, and do - there is a range of
things you can do, but don't sacrifice people's lives and sacrifice people's
families, the devastation for the sake of what is really convenience. So,
this gets to the affordability. The affordability matters. So, yes, I'm very
10 much - equity is a key issue but, by the way, if you're going to look at
equity, look at the current system and you'd be appalled.

MR LINDWALL: Yes. But you're happy with the compulsory nature
for the third party?

15 **DR TOOTH:** Absolutely.

MR LINDWALL: What about, then of course then you get the - if you
don't have compulsory insurance, say, you can imagine with bush fires
20 where a lot of houses were not insured and some are, and some were
under insured.

DR TOOTH: Yes, yes.

25 **MR LINDWALL:** What about compulsory in that for third party
property or even comprehensive third party; where do you draw a line on
compulsory in this?

DR TOOTH: So, and we're just getting to a broad ranging topic, some of
30 the key issues in - the key reason for - let's actually sort of take a step back
around the safety issue.

MR LINDWALL: Yes.

35 **DR TOOTH:** And if you go - what is the fundamental problem with
safety? And by the way you do touch on it in the draft report, but to my
mind you don't go the level of depth that you should be going, which -
and that's the other thing, it's like you really want to go deeper and this is a
chance to go deeper. The fundamental problem with safety. Why do we
40 regulate safety? You know, we don't - and ultimately there's two key - I'd
sort of characterise this, two key issues, is one where there's the classic
externality; how I drive affects others.

MR LINDWALL: Yes.
45

DR TOOTH: Another is the behavioural one and I'm always a bit - quite a bit of work on behavioural matters but I'm always a bit careful around behaviour but, you know, the most - it is one of the most, you know, strongest areas where you do see there's behavioural evidence that on -
5 you know, if you survey people about how good a driver they are, you get the statistical impossibility that everyone is better than average.

MR LINDWALL: Of course.

10 **DR TOOTH:** Yes.

MR LINDWALL: I can assure you I am.

DR TOOTH: So there is an over confidence aspect to it. There is
15 another one which is even - people - which I think needs to get more addressed but, you know, we're - if we really want to push the envelope on this stuff as well, is that someone's, even your value to your own life, people - there's next to no associated with that. And I often sort of think about, you know, when I was a young man driving, the main reason I
20 regulated my behaviour was more about caring about what my parents thought. And there is, you know, strong evidence that people - and you know I'm a parent, you'll - they put more value on their kids' lives than they do on their own, and that's - so there is another reason why you do want - so that's another underlying issue. So we have these underlying
25 issues which are affecting the choices. Why the choices aren't optimal and why - the rationale for Government intervention.

Now one nice thing you can say, if there's anything nice about road fatalities, it's very clear when a fatality happened and very clear who's
30 involved, and these days it is - you know, there can be detailed analysis of what's going on. So you can attribute the cost. You can effectively attribute fault extremely well. So you can have very, very targeted, potentially, targeted incentives.

35 Now this is where you get to the insurance problem, is that if, say for instance I break this microphone, I'm assuming it's not that expensive but I'm assuming I could cover it, right, and if I impulsively broke the microphone I assume I could - I'd probably have to deal with (indistinct), but I could presumably pay compensation for it. I assume there's nothing
40 unique or personal about it. Right. And that I could - and it would be detected; you know, I'm here in a public setting and if I broke this - you know, there's a transaction cost associated with, you know, recovering it from me but, you know, moving those away - thinking those away, just abstracting away from those for the moment, yes, I could compensate it.
45 And then effectively that gives me the sufficient incentives. So if I'm

stumbling and falling over and I'm - below me is that microphone and below me is a pillow or something else which is of less value, I will - can deviate my way. Anyway, so effectively the - effectively the compensation that I would have to pay provides the right incentive.

5

Now you get problems when we get to safety. First of all, the lifetime compensation costs around a seriously injured person. Let's do that one. They can be in the order of \$10m. I don't have \$10m. I expect most people in this room don't have \$10m.

10

MR LINDWALL: Certainly not.

DR TOOTH: Yes, and so you get to the case of 'so sue me', which is why you need insurance. So if you're going to effectively price that you need insurance. Now the beauty about insurance as well, you know, whereas I might be an over confident driver, the insurer is not over confident about my ability and they're not - they take a realistic view. So that's another - so effectively you solve that one as well. So there's a beauty about transferring into insurance. Then you get to the question about why - where the Government command a control or whether you get - or whether insurance. And you then very much ask the question, 'What can an insurer do that a government couldn't do?' and you immediately, when you're getting into telematics, hopefully it becomes pretty obvious. Yes. How many of you would willing have a mobile phone when it's provided by the government and they are tracking you?

25

MR LINDWALL: Certainly not.

DR TOOTH: Yes, and willingly, yes. You know, the privacy issues. People willingly. You know, my mobile phone provider can pretty much work out - track my movements today. Do I care? A little, but you know, ultimately if word got out that they were using that information badly they're destroyed. And so they have that - they have that benefit. The other key benefit is the power of competition. And it's not that, you know, they're more capable or anything but if they make a mistake they would correct it darn quickly. If there's a way of doing it better, they will work to find it and people will copy. Regulation doesn't work like that, and so it's the innovation, it's the discipline of competition which drives the innovation to find ways of - and if we can - if ideally we can price things correctly, and I think in road safety we come pretty darn close, then you get that power of competition to innovate, to find the ways of addressing, balancing the burden of regulation and the costs that are the benefits from safety.

35

40

MR LINDWALL: But it all comes down to compulsory third party then, because I mean there's no community rating as far as I understand for comprehensive insurance.

5 **DR TOOTH:** That's correct.

MR LINDWALL: Yet I don't recall, and you know I've got my car insured with comprehensive, - - -

10 **DR TOOTH:** Yes.

MR LINDWALL: I don't recall them saying that they'll give me a huge discount if I get telematics on it.

15 **DR TOOTH:** No.

MR LINDWALL: And the comprehensive insurance, I can't remember, my one's probably about \$500 and, if I recall, my compulsory third party is about \$220 or thereabouts, something like that.

20 **DR TOOTH:** I don't think you can be from New South Wales.

SPEAKER: I was going to say I don't know where you live Paul, but it doesn't sound right.

25 **MR LINDWALL:** Well I'm a low risk driver because I've never had an accident.

DR TOOTH: Yes.

30 **MR LINDWALL:** Maybe there's - but I mean I can't remember exactly what my compulsory third party is, but whatever it is, I thought it was in the 200 range.

35 **DR TOOTH:** Yes.

MR LINDWALL: But maybe I'm wrong. What type of price differentials do you imagine would come if you were (indistinct)?

40 **DR TOOTH:** You see this in the U.K. By the way, the other key issue which gets back to the microphone example; this microphone can be replaced.

MR LINDWALL: Yes.

45

5 **DR TOOTH:** Say the technician over there had, you know, a personal - a highly personal item, something from his mother or something where - and that happened to be sitting on the desk, something that's irreplaceable. You know, the value - - -

10 **MR LINDWALL:** Yes.

15 **DR TOOTH:** The value of replacement doesn't come close to the value of preventing that in the first place.

20 **MR LINDWALL:** Yes.

25 **DR TOOTH:** And that is the key problem with - that's the other key problem around safety. And that's a problem we've still got in the U.K, that's why the U.K hasn't solved it despite - they've still got safety issues. But anyway, so - just so you know on that. So then how would the prices vary? Well, you know, you look to the U.K and, yes, the young drivers pay an awful lot more; however they get massive discounts for things like - - -

30 **MR LINDWALL:** Telematics.

35 **DR TOOTH:** Telematics. In the report that you sighted, if you go digging into that you'll see an example where automotive emergency braking - autonomous emergency braking. In the U.K, someone like us, you know, at our age would probably only get a £10 discount for having installed that. A young person gets something - some ridiculous - it was over 100 quid, I can't - but it was much, much larger.

40 **MR LINDWALL:** Yes, yes.

45 **DR TOOTH:** So the incentives - - -

MR LINDWALL: They're targeting to where the risk is, yes.

DR TOOTH: End up being targeted, whereas we have this sort of blunt way to try to introduce autonomous emergency braking. And the report I quote is in the - I sort of calculated roughly, is that if this - so there's two problems. One is the unbundling of motor vehicle and CTP. So I have my two insurances with two different parties, and so - and also the innovators tend not to be in the CTP space already, so you - so immediately you split the incentives.

MR LINDWALL: Yes.

5 **DR TOOTH:** And that's roughly halved, you know, in terms of the cost. Secondly then, the - I think I actually sort of say that - I think I sort of say this; if we were to - I quoted in the report, but if you were to remove the - if you were to - yeah, I just make that the restrictions roughly quadruple - I've got a typo here - it should say I estimate that if you remove the restrictions you'd - it should say remove the restrictions you'd roughly quadruple the incentive for insurers to address road safety. Now then if you could go the full hog and try to then go to the - worry about the value of prevention, - - -

10 **MR LINDWALL:** Yes.

DR TOOTH: I think you'd get an eightfold increase. So this is this level of incentives you can get.

15 **MR LINDWALL:** Malcolm?

20 **MR ROBERTS:** Richard, you have given us a great submission to work through and this wasn't obviously a primary part of our enquiry but it's come up as an issue because we're trying to anticipate the potential innovation to improve safety. I think I'd just like to say I'm going to give a bit more thought to this. The notion that - I presume in the U.K arrangements have been worked through where - so the young driver does have a reasonable incentive, you mentioned through being pushed, if you like, towards giving the insurer more information on their behaviour as, you know - with a very clear incentive structure in place to make sure that they're aware of that and that it can presumably provide them with a benefit, provided they travel. No, I think this is very worth thinking about and I thank you for the submission.

30 **DR TOOTH:** Good. Yes. Thank you.

35 **MR BAXTER:** Well I'll start with the fact which impressed me because if you're involved in a motor accident one of the things that happens pretty quickly is the police are there. Is they do the testing for blood and all the rest of it. Why hasn't somebody picked up and taken the logical next step of segregating that out and having a policy which says very well, if you are involved in an accident and you - there's no blood alcohol and the rest of it and it was perhaps not your fault, why hasn't it been picked up by the insurance companies?

40 **DR TOOTH:** Sorry, to do?

45 **MR BAXTER:** To actually introduce what you're suggesting.

5 **DR TOOTH:** The clear reason why, you know, we have a million plus policies to - UBI policies in the U.K, (indistinct words), about a third of young drivers in the U.K and hardly anyone here, is the regulation. Is just purely the regulation. There's no technical reason. I've talked to the - you know the technical providers. Nothing - there's nothing stopping it.

10 **MR LINDWALL:** But it must be the community rating side of it because - - -

DR TOOTH: That's the big point, the big one because - - -

15 **MR LINDWALL:** I understand that but the unbundling doesn't entirely make sense. I agree you generally - you have two policies, but is there a legal barrier to stop, you know, Allianz offering a product, a single product - - -

MR BAXTER: A discounted product.

20 **MR LINDWALL:** Compulsory third party.

DR TOOTH: Yes.

25 **MR LINDWALL:** And comprehensive in the one product? I don't know.

DR TOOTH: Yes, there - well, officially you could - I think officially you might be able to do it in some jurisdictions, but I think the evidence is pretty clearly it's too darn hard.

30 **MR LINDWALL:** It's probably - it comes - I think the problem is that when you go and get your car registered you have to firstly get a roadworthy done in New South Wales, then you have to get the green slip, and then you have to go and pay for the registration.

35 **DR TOOTH:** There's a whole bunch of - but even just working through it, I mean you talk to the insurers, and the insurers have tested various things but ultimately, you know, it's just like anything else, if you - with a, you know, a cup of coffee, if you just sort of mandate that now cups of
40 coffee are at half the price, how good a quality of a cup of coffee are you going to get? You know. And then, well, they could produce a good cup of coffee, yeah they could, but we're not giving them the incentive.

MR LINDWALL: Thank you, Richard. Look, from my perspective as an economist, I'm not a great fan of community rating and I agree on what you've said. I would like to reflect on it some more.

5 **DR TOOTH:** Yes.

MR LINDWALL: But, I mean it - but you've made a lot of sense and you're right, the difference between the U.K and Australia in terms of the take up of telematics is quite stark and we need to look at this more, and
10 thank you.

DR TOOTH: And just to - I'm very happy to - very happy to be contacted and provide more information and I am concerned about my
15 typo.

MR LINDWALL: Thank you very much, Richard.

DR TOOTH: Thank you.

20 **MR LINDWALL:** Now, ladies and gentlemen, we have the opportunity, if anyone wants to come and say something now, you're most welcome to. No? In which case I think we'll adjourn these proceedings. We resume tomorrow, Friday 31 January in Brisbane and thanks everyone for coming
25 today.

SPEAKER: Thank you everyone.

MR LINDWALL: Thanks to the transcript.

30 **ADJOURNED UNTIL FRIDAY 31 JANUARY 2020**