



# **Securing a National Approach to Heavy Vehicle Regulation**

**Report to The National Road  
Transport Operators Association**

**(NatRoad)**

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*Confidential*

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## **Executive Summary**

The regulatory arrangements for heavy vehicles in Australia's road transport sector are currently determined at a State and Territory level. This has resulted in differing legislative and regulatory structures between States and Territories. This approach has led to inconsistent regulation leading to a loss of productivity and increasing administrative and compliance costs for transport businesses operating within multiple States and Territories, and for those operating across State and Territory borders.

A single national regulator for heavy vehicles could be one way of addressing the differences between the States and the Territories, and solving the compliance problems businesses are currently experiencing.

Responding to a direction from the Commonwealth Government, the Department of Infrastructure, Transport, Regional Development and Local Government (the Department) published a Consultation Regulatory Impact Statement (RIS) in December 2008, canvassing reform options for improving the current regulatory approach. One of the reform options explored is the adoption of a uniform set of laws for heavy vehicles, to be administered by a single national statutory regulator.

At present there is an independent statutory body, the National Transport Commission (NTC) that develops and submits reform recommendations to the Australian Transport Council (ATC) of Federal, State and Territory Transport Ministers for approval. NTC also plays a role in co-ordinating and monitoring implementation of approved reforms in the heavy vehicle sector.

The National Road Transport Operators Association (NatRoad) asked Castalia to review the reform options in the RIS and to assess if adopting uniform regulatory arrangements will deliver significant efficiency gains for the industry, and ultimately for the Australian economy.

The Commonwealth Government has publicly announced that it wants to eliminate duplication in regulation and government services between the Commonwealth and the States and Territories, through the Commonwealth of Australian Governments (CoAG) process. This report is about supporting policy makers in achieving this objective for the heavy vehicle sector and providing feedback to the Department as part of its consultation process.

### **Key problems with the current regulatory approach**

We have identified the following key problems with the current regulatory approach:

- Duplication of regulatory requirements between jurisdictions
- Lack of guidelines in complying with the regulatory requirements
- Some regulations are not practical
- Lack of consistency in regulatory requirements across jurisdictions
- Poor enforcement and administration.

These problems are the result of four key elements in the existing approach to regulating the heavy vehicle sector:

- Different States and Territories have different rules and regulations for heavy vehicles

- Different States and Territories have different skills and experience in certain aspects of heavy vehicle regulations, and different cultures of operating as a regulator
- Different States and Territories have different priorities and exercise different degrees of discretion
- Each State and Territory focuses on heavy vehicle regulation in its jurisdiction but does not consider any of the national effects of the regulations it enforces.

The impact of the above problems is that the regulatory burden of complying with the regulations is increased for businesses operating in the heavy vehicle industry.

The RIS presents four reform options for improving the current regulatory approach:

- **Option 1:** Retain the status quo (the “base-case”)
- **Option 2:** A non-statutory national body supported by States and Territories, developing “best-practice” models and systems to achieve greater uniformity in the administration of heavy vehicle laws
- **Option 3:** Establish uniform template law, agreed to and adopted individually by each jurisdiction, with no national regulator
- **Option 4:** Uniform legislation administered by a single, national, statutory regulator.

We consider that Option 4 is the only reform option that will address the key elements behind the regulatory problems faced by the industry.

#### **Cost benefit analysis of Option 4**

To confirm that Option 4 is the best reform option for the industry, we estimated the potential value of the reform using a cost benefit analysis. We estimate that the quantifiable benefits of Option 4 come mainly from reductions in compliance and training costs within the industry. These cost savings are estimated to be \$1,430 million and \$254 million respectively in present value terms. The costs of Option 4 are drawn mainly from establishing a new national regulatory agency. However, these costs are to some extent offset by savings in scarce regulatory resources that will no longer need to be invested by the States and Territories, as there will be a single national regulator.

Our analysis suggests that a net benefit to the Australian economy of approximately \$1.7 billion (in present value terms) could be achieved if Option 4 is adopted.

#### **Principles for developing the national regulator**

In order to have an efficient and effective regulator there are some key principles that a national heavy vehicle regulator (NHVR) can adopt. These principles are:

- **Transparency:** NHVR should be clear about its roles and responsibilities and open in its activities
- **Accountability:** There should be clear lines of accountability for the NHVR and the States and Territories
- **Targeted:** NHVR should ensure that the national regulations are targeted to priority problems
- **Clear:** NHVR must make regulations easy to understand, for example with publications in user-friendly language

- **Proportionate:** NHVR must ensure that the regulation is proportionate to the perceived problem or risk and justifies the compliance costs imposed.

### **Key requirements for a successful national regulator**

We have identified some main requirements that will be key to making NHVR successful in achieving better regulation. We consider that NHVR must:

- Have clear roles and responsibilities. NHVR would have the power to enforce the national regulations. The existing States and Territories would have delegated powers from NHVR. For example, this was the case when National Offshore Petroleum Safety Authority (NOPSA) was created
- Political leadership skills to manage relationships with service providers in each jurisdiction, to ensure that the delegated powers are used in line with the guidelines. For example, NOPSA has Memorandum of Understandings with Designated authorities and other stakeholders
- Be a credible regulator with “teeth”, that is, a regulator that has credibility with the delegated authorities and the heavy truck industry. Further, NHVR must not be afraid to administer its powers.

At present, the States and Territories have the power to enforce their own regulations. As stated in the RIS, under Option 4, the NHVR would be responsible for the administration of the national law but would delegate the powers to the agencies of each jurisdiction. The legislation would include provisions on NHVR’s functions and powers, constitution, operations, finance, staff and powers of delegation. The administering of the legislation would be carried out by the staff of existing State and Territory regulators acting under delegations from the NHVR following national guidelines set by NHVR.

A national regulator would need to have the credibility, skills and experience to carry its function and ensure that its service providers in each jurisdiction follow the national guidelines. Therefore NHVR needs to have the political leadership skills to manage the service providers as they experience a change in autonomy as a result of the formation of NHVR. These skills will be essential in improving the regulatory arrangements that currently exist and will benefit all jurisdictions.

### **Summary and conclusions**

Our analysis suggests that the heavy vehicle industry will benefit if Australia were to adopt a uniform set of laws administered by a single national regulator. We consider that Option 4 presents the most effective means of achieving this objective because it is targeted at neutralising the key elements behind the regulatory problems that impact the industry under the existing arrangements. Gavin Anderson & Company (GA & Co’s) conducted a review of stakeholders’ perceptions of establishing a single national regulator and confirmed that there was support for regulatory reform. A summary of GA & Co’s findings is provided in Appendix A.

If implemented, we estimate that Option 4 will save the industry \$1.7 billion in present value terms and involve no additional bureaucracy overall.

If a national regulator for the heavy vehicle sector is adopted (Option 4), we suggest that further analysis is carried out to give careful consideration of the governance and organisational structure of the NHVR. The key challenges will be enabling the NHVR to access expertise in the State Transport Ministries and successfully harnessing State level agencies for enforcement.

# 1 Introduction

The National Road Transport Operators Association (NatRoad) has asked Castalia to review options being considered by the Australian Transport Council (ATC) to improve heavy vehicle regulation, and to assess if adopting uniform regulatory arrangements will deliver significant efficiency gains for the industry.

The regulatory arrangements for heavy vehicles in Australia's road transport sector are currently administered by nine governments—the Commonwealth, the six State Governments and the two Territory Governments. This has resulted in differing legislative structures and often inconsistent regulation between jurisdictions. The duplication and inconsistencies have increased administrative and compliance costs for businesses operating in multiple States and Territories and for those operating across State and Territory borders—reducing the productivity of Australia's road transport sector.

Policy makers first recognised the benefits of developing “uniform or consistent” regulatory arrangements for heavy vehicles across Australia through the 1991 Inter-Governmental Heavy Vehicles Agreement. Since this time, governments and their regulators have made significant efforts to reduce administrative costs by implementing a coordinated approach to the regulation of the road transport sector. However, despite this resolve of policy makers and regulators, progress towards developing a national approach to regulating the sector has been slow.

In 2008, the Australian Government committed to using the Commonwealth of Australian Governments' (CoAG) reform process to eliminate areas of duplication that exist between Commonwealth and State regulation and service delivery.<sup>1</sup> This report is about supporting CoAG in achieving this objective for the heavy vehicle sector. We find that unifying heavy vehicle regulation will save the industry \$1.6 billion in present value terms.

## 1.1 Structure of this Report

This report is structured into seven sections.

- Section 2 presents a brief background of heavy vehicle industry in Australia
- Section 3 defines the problems found with the current regulatory arrangements
- Section 4 describes and analyses the options for improving regulatory arrangements in the heavy vehicle sector, as detailed in the Australian Transport Commission's Draft Regulatory Impact Statement (RIS)
- Section 5 presents a cost benefit analysis of enacting a uniform set of transport legislation and a national regulator for the heavy vehicle sector
- Section 6 outlines and explains the principles we suggest are essential to implementing a successful national approach to the regulation of heavy vehicles
- Section 7 summarises our conclusions.

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<sup>1</sup> Prime Minister of Australia 2008 “*Address to Heads of Agencies and Members of Senior Executive Service*”, 20 April 2008. [http://www.pm.gov.au/media/speech/2008/speech\\_0226.cfm](http://www.pm.gov.au/media/speech/2008/speech_0226.cfm) (accessed, 30 January, 2008).

## 2 Heavy Vehicle Industry Background

A heavy vehicle is a vehicle with a Gross Vehicle Mass (GVM) of more than 4.5 tonnes. There are many different types of heavy vehicles, including rigid trucks, articulated trucks, non-freight carrying trucks (those that carry plant and equipment), buses and heavy trailers.

Heavy vehicles are used to carry people and goods and services. The road freight industry is a key part of the production, distribution and consumption of goods and services in the Australian national economy. In 2007-08, transport companies (hire and reward) contributed \$18 billion to Australia's national income, accounting for approximately 1.7% of gross industry value added.<sup>2</sup> Therefore, it is important that the transportation of people, goods and services occurs in a safe manner and that there are rules and regulations to ensure road safety.

The road transport sector is forecast to grow at an average annual rate of 3.8% through to 2020, leading to an increase in road transport in the domestic freight market and a doubling in the output of road freight transport over the period.<sup>3</sup> As a result of this estimated growth, it is important to ensure that regulatory frameworks are flexible to realise this growth and any further potential growth.

While the regulation of heavy vehicles and their operations is largely the responsibility of State and Territory governments, the Commonwealth also plays a role in the regulation of heavy vehicles through its responsibility for the Australian Design Rules (ADRs) and its administration of vehicles engaged in interstate trade which choose to register under the Interstate Road Transport Act 1985.

The regulation of heavy vehicles includes:

- Registration
- Mass and loading limits
- Driver fatigue management
- Transportation of dangerous goods
- Speeding limits, and
- The determination of access to road infrastructure by different classes of heavy vehicle.

In addition to prescriptive regulation, other forms of regulation are also evident in different jurisdictions, such as “best practice” schemes, special accreditation schemes, industry codes of practice and regulator initiated “performance based” systems designed to engage the industry.<sup>45</sup>

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<sup>2</sup> Australian Bureau of Statistics, 2008. “Australian National Accounts: National Income, Expenditure and Product.”, cat. No.5206.0.

<sup>3</sup> Bureau of Infrastructure, Transport and Regional Economics, 2006. “*Freight Measurement and Modeling in Australia.*”

<sup>4</sup> Department of Infrastructure, Transport, Regional Development and Local Government, 2008. “*A National Framework for Regulation, Registration and Licensing of Heavy Vehicles: Consultation Regulatory Impact Statement.*” [http://www.infrastructure.gov.au/roads/vehicle\\_regulation/ris/hvreform\\_ris.aspx](http://www.infrastructure.gov.au/roads/vehicle_regulation/ris/hvreform_ris.aspx) (accessed 30 January, 2009).

<sup>5</sup> The Regulatory Impact Statement highlights a suite of examples of regulatory instruments that operate alongside prescriptive regulation. Examples the RIS lists include: Administrative Guideline: National Driver Licensing and Heavy Vehicle Registration Schemes (compilation), January 2006 (replacing Administrative Guideline: Assessment of Defective Vehicles, February 1999, Administrative Guideline: Proof of Identity Requirements, August 1999, Administrative Guideline National Heavy Vehicle Registration Scheme, March 1998 and Administrative Guideline

While there are currently different regulations across the different States and Territories, under the 2003 Intergovernmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport, “model” laws were developed by the National Transport Commission (NTC) as an attempt to produce a national approach to heavy vehicle regulation. The NTC is an independent statutory body and plays a role in co-ordinating and monitoring implementation of approved reforms in the heavy vehicle sector. The model laws developed by NTC cover the range of areas of heavy vehicle regulation described previously in Section 2.<sup>6</sup>

The development of model laws was meant to deliver a single reference point to encourage consistent implementation of transport legislation by different jurisdictions. However, under the 2003 Agreement, the model laws have no legal effect in themselves and State and Territory governments can choose to not implement them, or enact a varied version of the model laws as they deem appropriate. As a result, there have been differences in the adoption the model laws across jurisdictions and the intended national value of the model law approach has been reduced. It is partly the perceived failure of the model law approach that has encouraged the ATC to investigate options for adopting a framework for a national approach to the regulation of heavy vehicles.

### 3 Defining the Key Problems

There are a number of key problems that arise from the current regulatory structure and impact upon heavy vehicle transport firms operating in more than one state and/or the interstate movements of heavy vehicles. A common thread to these problems—as the Regulatory Impact Statement (RIS) acknowledges—is that, despite 17 years of regulatory reform under a supposed national approach, heavy vehicle operators still have to understand and comply with up to nine sets of laws and rules, and to cope with the inconsistent application of the model laws across different jurisdictions.<sup>7</sup>

The RIS discusses the nature of the problem with the current regulatory approach and summarises in detail the areas the Government has identified as areas of regulatory inconsistency. These areas include:<sup>8</sup>

- **Inconsistency in administration of “black letter” law.** The RIS highlights inconsistencies in regulation caused by the variations in the adoption of the NTC’s model laws by the States and Territories
- **Variations in exercising discretion under the law.** The NTC’s model laws provide the relevant minister with the authority over what provisions should apply to heavy vehicles. However, the model laws do not specify the criteria

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(Interim): Evidence of Identity, August 2005); Roadworthiness Guidelines, September 1995; Administrative Guideline: Pilot and Escort Vehicle Driver Accreditation Procedures, October 2004; National Heavy Vehicle Accreditation Scheme Business Rules, November 2007; PBS Scheme – Review Panel Business Rules, October 2007; Fatigue Authorities Panel Business Rules, June 2008; NHVAS Business Rules Version 3, August 2007.

<sup>6</sup> Department of Infrastructure, Transport, Regional Development and Local Government, 2008. “*A National Framework for Regulation, Registration and Licensing of Heavy Vehicles: Consultation Regulatory Impact Statement.*” [http://www.infrastructure.gov.au/roads/vehicle\\_regulation/ris/hvreform\\_ris.aspx](http://www.infrastructure.gov.au/roads/vehicle_regulation/ris/hvreform_ris.aspx) (accessed 30 January, 2009).

<sup>7</sup> Department of Infrastructure, Transport, Regional Development and Local Government, 2008. “*A National Framework for Regulation, Registration and Licensing of Heavy Vehicles: Consultation Regulatory Impact Statement.*” Paragraph 71. [http://www.infrastructure.gov.au/roads/vehicle\\_regulation/ris/hvreform\\_ris.aspx](http://www.infrastructure.gov.au/roads/vehicle_regulation/ris/hvreform_ris.aspx) (accessed 30 January, 2009).

<sup>8</sup> Department of Infrastructure, Transport, Regional Development and Local Government, 2008. “*A National Framework for Regulation, Registration and Licensing of Heavy Vehicles: Consultation Regulatory Impact Statement.*” [http://www.infrastructure.gov.au/roads/vehicle\\_regulation/ris/hvreform\\_ris.aspx](http://www.infrastructure.gov.au/roads/vehicle_regulation/ris/hvreform_ris.aspx) (accessed 30 January, 2009).

that should be taken into account nor what powers should be exercised. This means rules applying to heavy vehicles in one jurisdiction may not apply in another, even where exactly the same model law has been enacted

- **Administration of the law.** The RIS highlights examples of where guidelines and procedures developed by jurisdictions can result in different outcomes, even where the black letter law is the same. For example, no one place exists where recommended regulations and procedures applying to the model laws are specified—as a result, they are described differently in each jurisdiction.
- **Compliance monitoring and enforcement.** The intensity of enforcement and compliance can vary between jurisdictions, even where the same or very similar laws have been enacted.

The RIS concludes that:

*The regulatory issues identified <in Section 3.1 of the RIS> work against the role that regulation needs to play to supporting the activity and wider economic importance of the heavy vehicle industry. There is limited uniformity of either law or administrative practice across jurisdictions that industry can rely on to produce the “same outcome in the same circumstances”. There is arguably more regulation than is necessary and the existing variations and inconsistencies can add to the costs of regulatory compliance and work against efficiency and productivity gains.<sup>9</sup>*

### **3.1 Castalia’s Main Findings on Key Problems**

Our research highlighted five key regulatory problems that impact on the operations of transport companies. These problems are:

- Duplication of regulatory requirements between jurisdictions
- Lack of guidelines in complying with the regulatory requirements
- Some regulations are not practical
- Lack of consistency in regulatory requirements across jurisdictions or agencies
- Poor enforcement and administration.

We suggest that these problems are the result of four key elements in the existing approach to regulating the heavy vehicle sector:

- Different States and Territories have different rules and regulations for heavy vehicle regulation
- Different States and Territories have different skills and experience in certain aspects of heavy vehicle regulations, and different cultures of operating as a regulator
- Different States and Territories have different priorities and exercise different degrees of discretion, and

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<sup>9</sup> Department of Infrastructure, Transport, Regional Development and Local Government, 2008. “*A National Framework for Regulation, Registration and Licensing of Heavy Vehicles: Consultation Regulatory Impact Statement.*” Paragraph 134, p33. [http://www.infrastructure.gov.au/roads/vehicle\\_regulation/ris/hvreform\\_ris.aspx](http://www.infrastructure.gov.au/roads/vehicle_regulation/ris/hvreform_ris.aspx) (accessed 30 January, 2009).

- Each State and Territory focuses on heavy vehicle regulation in its jurisdiction but does not consider any of the national effects of the regulations it enforces.

The regulatory problems identified above have increased the administrative burden for businesses in the heavy vehicle industry. In our primary research with transport firms, we found that, in general, businesses sought to comply with regulations to differing extents depending on their appetite for risk of breaching the law. For example, a transport company may seek to over-comply and incur higher additional compliance costs if it wishes to minimise the risk of breaching the law. On the other hand a transport company may consider that the compliance costs are too high and undertake minimum compliance activities.

Transport companies understand that they need to comply with heavy vehicle regulations. However, almost universally, the transport companies that we interviewed indicated that there is a lack of guidance from regulators on how to comply. For example, one company stated that if it was unexpectedly faced with court action from the regulator with regards to a possible breach, it would need to show that it has taken reasonable steps to comply with the regulations. Therefore, the company complies to the extent that it can defend itself in court. Consequently, the company has developed its own processes and procedures to ensure compliance. This type of approach to compliance is ineffective and it indicates that the regulatory structure in place is difficult for companies to understand and therefore that compliance is costly. Best practice regulation suggests that regulation should be clear and easy to understand and those complying should be aware of how and when to comply. Further, there should be processes in place to make it easy for businesses to comply.

In the table below we describe further examples of compliance problems experienced by industry under the current regulatory approach.

**Table 1: Examples of Problems with Existing Regulatory Arrangements for the Heavy Vehicle Sector**

Problems with Current Regulatory Framework	Examples from Heavy Vehicle Industry Participants
<b>Duplication of regulatory requirements between jurisdictions</b>	<ul style="list-style-type: none"> <li>▪ NSW has recently introduced fatigue management as part of its employee work cover. There is also a national fatigue management scheme under the heavy vehicle legislation. Consequently, there are two schemes in operation for addressing driver fatigue.</li> </ul>
<b>Lack of guidelines in complying with the regulatory requirements</b>	<ul style="list-style-type: none"> <li>▪ One transport company stated that it has processes and procedures in place to ensure that if it was penalised by the regulator it could show that it had taken reasonable steps to ensure compliance. The company stated that it employed auditors to provide advice on improvements to their compliance processes. Often it would employ more than one auditor to provide advice on different jurisdictions. This suggests that companies are not clear or do not understand the regulatory obligations with which they are expected to comply, and therefore that clearer direction and regulatory compliance guidelines are needed.</li> </ul>
<b>Some regulations are not practical</b>	<ul style="list-style-type: none"> <li>▪ Under fatigue rules, drivers must have a rest after driving for a set number of hours. One transport operator indicated that when the driver is scheduled to rest, there are often insufficient rest stops available, or no appropriate areas to stop. This example was also cited</li> </ul>

Problems with Current Regulatory Framework	Examples from Heavy Vehicle Industry Participants
<p><b>Lack of consistency in regulatory requirements across jurisdictions or agencies</b></p>	<p>in the RIS.</p> <ul style="list-style-type: none"> <li>▪ Under NSW regulation, a 22-25m heavy vehicle can only be driven during day light hours. However, under Queensland heavy vehicle regulations, the same heavy vehicle can be driven after daylight. One industry participant described this inconsistency as a cost to their business in terms of capacity and driver scheduling. For example, if a driver is not able to arrive at Queensland before dark, the driver will have to stop, slowing down the delivery of its goods and services.</li> <li>▪ One of the transport companies contacted provided an example of when one of its employees was injured. It was found that the driver breached Occupational Health and Safety (OHS) Regulations in NSW. The transport company’s customer wanted the driver’s employment to be terminated. However, the company was unable to terminate the driver’s employment because, although he had breached health and safety regulations in NSW, he had not breached health and safety regulations in Queensland.</li> <li>▪ Road worthiness tests for all heavy vehicles in NSW are not recognised in Queensland.</li> <li>▪ Health and safety accreditation in Queensland is not recognised in NSW.</li> <li>▪ Different states have adopted different privacy arrangements around driver information.</li> <li>▪ In Victoria, heavy vehicles can carry extra weight compared to NSW, where in order to carry higher mass vehicles must be Intelligent Access Program (IAP) accredited and have GPS installed.</li> </ul>
<p><b>Poor enforcement and administration</b></p>	<ul style="list-style-type: none"> <li>▪ One transport operator used the example of speeding infringements to highlight the difficulty in administering a “national highway system” through multiple jurisdictions. If a license holder in NSW receives a speeding fine whilst driving in Victoria, then the Victorian regulator will contact the NSW regulator to have points deducted from the driver’s licence. However this is not an immediate process, and there is a significant time lag, so that by the time the points are registered with the NSW regulator, the expiry date of the driver’s deducted speeding points has been reached and therefore the speeding fine is no longer enforceable.</li> <li>▪ NSW introduced a Safety Driving Plan as part of health and safety regulations. It required drivers to undertake a health and safety training module and in return the company received a certificate and a blue card. One of the transport companies we contacted complied with these new regulations, while other companies didn’t think that the regulation would achieve the desired outcome and did not comply. The industry participant stated that the blue card is currently non-existent and it has incurred unnecessary costs.</li> <li>▪ Another transport operator worked with the Victorian regulator with regards to setting height restrictions of transporting frames and trusses for building houses. The final output was published but excluded key details that the transport operator had put forward.</li> </ul>

### **3.2 Conclusions**

Both our research and the responses of transport companies that we interviewed indicate that the regulatory problems faced by industry have developed because of four key elements in the current regulatory approach:

- Different States and Territories have different rules and regulations for heavy vehicle regulation
- Different States and Territories have different skills and experience in certain aspects of heavy vehicle regulations, and different cultures of operating as a regulator
- Different States and Territories have different priorities and exercise different degrees of discretion, and
- Each State and Territory focuses on heavy vehicle regulation in its jurisdiction but does not consider any of the national effects of the regulations it enforces.

We suggest that any new framework for developing a national approach to heavy vehicle regulation must specifically target these areas if the benefits desired by both industry and government are to be achieved.

In the following section, we review the four reform options explored in the RIS for moving towards a national system for heavy vehicle regulation.

## 4 Regulatory Impact Statement Options

In December 2008, the Department of Infrastructure, Transport, Regional Development and Local Government (the Department) released a “Consultation Regulatory Impact Statement” (RIS) that explored options for generating greater uniformity in legal frameworks, their interaction and operation in regulating the heavy vehicle sector across State and Territory jurisdictions. A cost benefit analysis of the options is currently being conducted and will be included in the final RIS document to be reviewed by the ATC and presented to CoAG in 2009.

As we discussed earlier in Section 2, a framework for developing and implementing uniform regulation already exists. However, this has not been successful in producing consistent outcomes. Strengthening the current model to provide a single body of law and a single regulatory body is the option Transport Ministers, through ATC, have agreed to explore. The RIS has explored options on this basis.

This section describes the options presented in the RIS and comments on the advantages and disadvantages of those options.

**The RIS contains the following four options for achieving a single, national, regulatory system for heavy vehicles.**

- **Option 1:** Retain the status quo (the “base-case”)
- **Option 2:** A non-statutory national body supported by States and Territories, developing “best-practice” models and systems to achieve greater uniformity in the administration of heavy vehicle laws
- **Option 3:** Establish uniform national law adopted by all jurisdictions with no national regulator
- **Option 4:** Uniform legislation administered by a single, national, statutory regulator.

These options are very similar to the models of reform identified by the Productivity Commission and which can be categorised as the unified regulatory model, regulatory harmonization and cooperative regulation.

### 4.1 Analysis of Reform Options

In analysing the reform options presented in the RIS, we have taken account of the four factors (Section 3.2) that we believe must be addressed if the regulatory problems facing the heavy vehicle industry are to be resolved.<sup>10</sup>

Our analysis suggests that Options 1, 2 and 3 are unlikely to achieve better regulation in the heavy vehicle industry and are unlikely to provide States and Territories with sufficient incentives to sign up to national rules and regulations.

We consider that Option 4, involving a single national regulator, would best address the regulatory problems experienced by the heavy vehicle industry. A national regulator would combine inter-jurisdictional regulatory responsibilities into a single agency and play a key co-ordination role.

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<sup>10</sup> Future Arrangements For the Regulation of Offshore Petroleum Safety, Department of Industry, Science, and Resources, Offshore Safety and Security, Petroleum and Electricity Division, Australian Offshore Petroleum Safety Case Review Section 9.2

The remainder of this sub-section discusses each of the options canvassed in the RIS in turn.

#### **4.1.1 Option 1: Retain the “status quo”**

We consider that Option 1 is not viable. As concluded in the RIS, and described earlier in Section 3.1, the regulatory problems that have developed under the current approach are imposing increased compliance costs on businesses in the heavy vehicle industry, reducing the productivity of the industry.

Despite repeated attempts by policy makers to use the model laws approach to improve uniformity and consistency in heavy vehicle regulation across jurisdictions, limited success has been achieved using this approach. The continuing challenge under this option is that the States and Territories would retain legislative and regulatory control for heavy vehicles in their jurisdictions. Therefore, the existing lack of incentives for the States and Territories to resolve differences in the content which they adopt in model transport laws and regulation would remain.

#### **4.1.2 Option 2: A non-statutory national body supported by States and Territories**

Option 2 focuses on improving “best practice” in the administration of the body of transport law operated by the States and Territories. It proposes a non statutory “national heavy vehicle practice agency” that, in consultation with the States and Territories, would develop guidelines, operating procedures, and performance targets for the administration of the heavy vehicle sector. It would seek to coordinate how the States and Territories enact guidelines and complementary regulation. It would also act as a central point for the collection of data and industry trends to inform policy development and better coordinate regulator activities. It would not have any authority to control the way in which the States and Territories regulate heavy vehicles in their jurisdictions and the States and Territories would not be bound by any decision taken by the agency.

We consider that Option 2 is unlikely to be sustainable over the long term. While it seeks to address the problems with the status quo, it is unlikely to go far enough and achieve a credible result.

The development of a new non statutory “best practice agency” may produce some greater uniformity in the way regulatory guidelines and administrative best practice strategies are developed—but only in as far as the States and Territories choose to adopt the guidelines or recommendations made by the agency. Further, a major disadvantage is that the differences in the law in each jurisdiction make it such that it will be difficult to achieve national procedures and guidelines. Without enforcement powers over the way in which the States and Territories enact or administer legislation and regulation in their jurisdictions or over how industry complies with heavy vehicle regulations in these jurisdictions, the agency would lack the regulatory “teeth” required to be regarded as a credible regulatory agency by either government or industry.

#### **4.1.3 Option 3: Establish uniform national law adopted by all jurisdictions with no national regulator (template law)**

Option 3 focuses on establishing uniform transport law for the heavy vehicle sector through adopting a “template approach”. This occurs where one state or territory acts as a host jurisdiction for the development of template legislation, in consultation with other jurisdictions. Through an inter-governmental agreement, the agreed template laws would then be enacted by the other States and Territories, creating a uniform body of law across jurisdictions. Crucially, unlike the model law approach currently used, the template approach would not allow for changes in the application of the law to suit individual

jurisdictions. Therefore all policy, legal policy and drafting issues need to be resolved before the text of the template law can be approved.<sup>11</sup>

We consider that Option 3 is not very different from Option 1, which is the status quo. Although the template law approach is likely to lead to some increased consistency of heavy vehicle transport law, the administration of the laws would remain with State and Territory regulators under this approach. States and Territories would continue to implement specific guidelines, and enforce regulations as they deem appropriate for their jurisdiction, therefore retaining the regulatory problems that exist currently. There would be no single entity that could consistently apply or enforce regulations, or interpret legislation under this option.

Option 3 therefore differs only marginally from the model law approach under the status quo (Option 1). Although the States and Territories have adopted the model law to differing extents, no single entity exists to ensure that the States and Territories follow the model or to provide guidance as to how they should implement the law. With no oversight, each State and Territory can continue to operate with variations in the implementation and interpretation of the national law.

#### **4.1.4 Option 4: Uniform legislation administered by a single, national, statutory regulator**

Option 4 represents the development of uniform national law, hosted by one jurisdiction and administered by a single statutory “national heavy vehicle regulator”. That is, Option 4 represents the implementation of the full framework for a national approach agreed to by the ATC.<sup>12</sup>

We consider that Option 4 would best address the problems identified in the heavy truck industry. In particular, a national regulator would combine inter-jurisdictional regulatory responsibilities into a single agency and play a key co-ordination role.

This option will require State and Territory regulators to refer their current legislative and regulatory powers, under agreement, to the Commonwealth. There are precedences for this, an example being the creation of national legislation and regulation of corporations (as described in Box 4.1). We discuss further examples of where uniform law and national statutory regulators have been created in Section 6.1.2 of this report.

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<sup>11</sup> Department of Infrastructure, Transport, Regional Development and Local Government, 2008. “*A National Framework for Regulation, Registration and Licensing of Heavy Vehicles: Consultation Regulatory Impact Statement.*” [http://www.infrastructure.gov.au/roads/vehicle\\_regulation/ris/hvreform\\_ris.aspx](http://www.infrastructure.gov.au/roads/vehicle_regulation/ris/hvreform_ris.aspx) (accessed 30 January, 2009).

<sup>12</sup> Department of Infrastructure, Transport, Regional Development and Local Government, 2008. “*A National Framework for Regulation, Registration and Licensing of Heavy Vehicles: Consultation Regulatory Impact Statement.*” [http://www.infrastructure.gov.au/roads/vehicle\\_regulation/ris/hvreform\\_ris.aspx](http://www.infrastructure.gov.au/roads/vehicle_regulation/ris/hvreform_ris.aspx) (accessed 30 January, 2009).

**Box 4.1: Uniform National Law and Regulation of Corporations in Australia**

The Australian Securities and Investments Commission (ASIC), originally the Australian Securities Commission (ASC), was established to unify corporate regulators around Australia by replacing the National Companies and Securities Commission and the Corporate Affairs offices of the States and Territories. During the regulatory reforms in the corporate sector, a High Court judgment<sup>13</sup> called into question the capacity of Commonwealth officers and authorities to exercise certain powers and functions under legislation. As a consequence, in December 2000, the Commonwealth, NSW and Victoria agreed that the States would pass legislation to refer the necessary powers to the Commonwealth to enact corporate legislations that would apply to all participating States and Territories.

Source: Castalia

A national regulator would be efficient and effective because, in general, there are:

- Limited differences in local conditions and risks. For example, fatigue management and road safety are all aspects of heavy vehicle regulation that can be applied at a national level
- Significant inter-jurisdictional externalities or “spillovers”. Some regulations that have been adopted in one state are likely to benefit drivers in other states that have not adopted the same rules
- Economies of scale and scope. There are efficiency gains through consolidating administrative and technical functions. For instance, there are economies of scale in the processing of heavy vehicle registrations
- Compliance leakages. Mobility of capital and people across jurisdictions undermines the regulatory effectiveness of the sub-national level of government and undermines efforts to secure effective policy outcomes in areas of agreed national significance.

## **4.2 Conclusions**

From our research, the adoption of a uniform set of law and a statutory national regulator for the heavy vehicle industry, as explored in Option 4, is clearly the preference of industry.

Option 4 is the most comprehensive option presented in the RIS. In particular, it is the only option that is targeted at addressing the key elements of the current approach (identified in Section 3.2) which we suggest are causing the regulatory problems that the industry is currently experiencing.

In the next section, we use a cost benefit analysis to explain why adopting Option 4 will provide real economic benefits for the industry and the wider Australian economy. The RIS seeks feedback about the costs and benefits of a national regulatory approach to heavy vehicle reform. Our analysis seeks to support the Department’s cost benefit analysis.

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<sup>13</sup> *R v Hughes (2000) 18 ACLC 394*

## 5 Cost Benefit Analysis

In this section we examine the likely costs and benefits of the adoption of uniform laws administered by a single statutory national regulator. As this approach is the fourth reform option explored in the RIS, we refer to it as “Option 4”.

Cost benefit analysis is widely used by the Commonwealth in assessing regulatory proposals and a comprehensive cost benefit analysis on all of the options explored in the RIS is currently being carried out by the Department of Infrastructure, Transport, Regional Development and Local Government. The intention of our analysis is to support this process. To ensure consistency with the Commonwealth’s approach to cost benefit analysis, we have followed the guidelines provided in the Australian Department of Finance and Deregulation’s Handbook on Cost-Benefit Analysis.<sup>14 15</sup>

Our analysis suggests that adopting Option 4 in full could lead to savings in compliance costs for the heavy vehicle industry of approximately \$100 million per year (or \$1.4 billion in Present Value (PV) terms) and approximately \$17 million per year (\$250 million in PV terms) in training costs. Our analysis also suggests that the cost of establishing a National Heavy Vehicle Regulator (NHVR) will be largely offset by savings generated by state regulators following a referral of their powers to the new national regulatory body. We also identify a number of non-quantifiable costs and benefits that we believe may result if Option 4 is adopted.

The remainder of this section is structured as follows:

- Section 5.1 presents our approach to the methodology that we used to conduct the cost benefit analysis
- Section 5.2 outlines our assumptions
- Sections 5.3 and 5.4 discuss the benefits and costs that are likely to be generated if Option 4 were to be adopted in full
- Sections 5.5 and 5.7 explains how we have valued these benefits and costs
- Section 5.8 discusses potential non quantifiable benefits and costs that may result from adopting Option 4
- Section 5.9 concludes our analysis.

### 5.1 Methodology Used for the Cost Benefit Analysis

Our cost benefit analysis involved five steps:

- Developing an industry overview
- Problem definition
- Identifying costs and benefits
- Quantifying the costs and benefits

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<sup>14</sup> Department of Finance and Deregulation (Formerly Department of Finance and Administration) 2006. “*Handbook on Cost Benefit Analysis.*” *Financial Management Reference No 6, January 2006.*” [http://www.finance.gov.au/publications/finance-circulars/2006/docs/Handbook\\_of\\_CB\\_analysis.pdf](http://www.finance.gov.au/publications/finance-circulars/2006/docs/Handbook_of_CB_analysis.pdf) (accessed 30 January, 2009).

<sup>15</sup> Our analysis focuses on the resource allocation effects of adopting uniform laws administered by a single national regulator for the heavy vehicle sector. Our analysis has not considered transfers between levels of Government, such as such as fees levies and charges, or Gross Domestic Product effects that measure economic activity rather than economic efficiency. This approach is consistent with guidelines advocated by the Australian Government in conducting cost benefit analysis.

- Identifying non-quantifiable costs and benefits.

We explain each of these components of the cost benefit analysis below.

### **5.1.1 Developing an industry overview**

To develop a wide understanding of the industry, we reviewed published papers on the heavy vehicle industry. Sources of the material reviewed included government agencies such as the NTC, the ATC, the NSW Roads and Traffic Authority, and the Commonwealth Productivity Commission. We also reviewed industry commissioned reports on the performance of the heavy vehicle sector commissioned by the industry.

### **5.1.2 Problem definition**

In defining the specific consequences of regulatory inconsistencies, we worked with NatRoad to identify appropriate transport companies that operate heavy vehicles or are engaged with the heavy vehicle industry. We sought to ensure that our sample of transport operators was representative of NatRoad's membership and of the various operational levels of the heavy vehicle industry.

We conducted one hour phone interviews with compliance officers and other relevant employees from the selected sample of transport companies.

The sample of transport operators included:

- Large Transport Companies with 100 or more heavy vehicles
- Small Transport Companies with 20 or more heavy vehicles
- Ancillary Companies that maintain a fleet of vehicles to support their main business.

To understand the positions of the States and Territories and of the industry as a whole on the options presented in the RIS, we also interviewed a number of representatives from State and Territory regulatory authorities, and industry associations from the transport and infrastructure sectors.

### **5.1.3 Identifying costs and benefits**

Using the primary research gained from the phone interviews with representatives of the transport companies, State and Territory regulators, and industry associations, we identified the potential costs and benefits that we would expect to accrue if Option 4 were implemented in full. We discuss the benefits and costs identified in sections 5.3 and 5.4 respectively.

### **5.1.4 Quantifying the costs and benefits**

To aid in quantifying costs and benefits, we requested financial and other information from the transport companies we interviewed. An example of our information request is provided in Appendix C. We used the information provided to us to develop a representative cost structure for transport companies and to identify where potential cost savings could be gained, if compliance obligations were reduced. We also used information gained from our discussions with State and Territory regulatory authorities to quantify likely costs and benefits to the regulators under Option 4.

In quantifying the costs and benefits, we:

- Identified annual costs and benefits

- Discounted costs and benefits to a present value <sup>16</sup>
- Conducted sensitivity analysis on key variables in our cost benefit analysis, including the discount rate <sup>17</sup>
- Calculated the net present value (NPV) of the all the costs and benefits.

Consistent with the Commonwealth's guidelines on cost benefit analysis,<sup>18</sup> we used a 7 percent real discount rate and conducted a partial sensitivity analysis over the range from 3 percent to 11 percent.

## 5.2 Assumptions

In assembling order to generate our representative sample of industry participants and to quantify the impact of the costs and benefits of implementing Option 4 to the heavy vehicle industry and government, we made the following assumptions:

- **Compliance costs for a transport company are proportional to the number of trucks the company operates.** Our interviews with transport companies suggest that compliance costs are often “vehicle specific”. For example, each new truck that a company buys must have a unique registration number, and a range of permits—depending on the type of goods carried and the according to which jurisdictions the operator intends the truck to travel through  
  
Each additional truck obtained by the company adds approximately the same amount of additional tasks to ensure the new truck and driver are compliant with all relevant heavy vehicle laws and regulations
- **Regulatory costs.** We assume that State and Territory regulators maintain similar organisational structures and that the number of staff employed to administer heavy vehicle regulation is proportional to the volume of heavy vehicle traffic within the jurisdiction
- **Driver ratio.** To estimate the number of drivers in the heavy vehicle industry, we used an industry average driver to power unit ratio of 1:25 <sup>19</sup>
- **Companies within the heavy vehicle industry can be divided into two segments: transport companies and ancillary companies.** Transport companies derive their revenue from delivering goods and services to clients. In contrast, ancillary companies derive their revenue base from other operations, but have a fleet of trucks to support their main operations. A supermarket chain is an example of ancillary company
- **Complete Reform.** All relevant policy and legislative requirements to enable Option 4 to be implemented are enacted.

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<sup>16</sup> Present value is the value on a given date of a future payment or series of future payments, discounted to reflect the time value of money and other factors such as investment risk

<sup>17</sup> Sensitivity Analysis is a statistical tool used to test the level of uncertainty associated with a mathematical model.

<sup>18</sup> Department of Finance and Deregulation (Formerly Department of Finance and Administration) 2006. “Handbook on Cost Benefit Analysis.” *Financial Management Reference* No 6, January 2006. [http://www.finance.gov.au/publications/finance-circulars/2006/docs/Handbook\\_of\\_CB\\_analysis.pdf](http://www.finance.gov.au/publications/finance-circulars/2006/docs/Handbook_of_CB_analysis.pdf) (accessed, 30 January, 2009).

<sup>19</sup> A power unit is defined as a prime mover or a rigid truck.

### 5.3 Identifying the Likely Benefits from Adopting Option 4

Our research has identified four benefits for industry and one benefit for government that are likely to accrue if Option 4 were to be implemented. These benefits are presented in the table below:

**Table 5.1: Summary of Likely Benefits to Industry and Government under Option 4**

<b>Industry</b>
Reduction in compliance costs
Reduction in training costs for staff
Reduction in barriers to competition in heavy vehicle industry
<b>Government</b>
Increased efficiency in the use of public service human resources

We discuss each of these identified benefits to industry and government in the following sub-sections.

#### 5.3.1 Likely benefits to industry

##### Reduction in compliance costs

The tasks that companies are required to undertake to comply with legislative and regulatory requirements represent a direct cost to business. From our research, it is apparent that regulatory compliance costs in the heavy vehicle industry are directly related to the labour cost of employing additional employees in the following roles:

- Compliance Officers
- Scheduling Staff
- Drivers.

##### Compliance officers

All of the companies (both transport and ancillary based) interviewed for this cost benefit analysis employ specific staff to ensure the company complies with all relevant legislation and regulations, across all the jurisdictions in which the firm operates. These employees are referred to as compliance officers.

The objective of transport operators and ancillary companies is to maximise the capacity utilisation of their vehicles assets. The operation of different legislation and regulation between the States and Territories under the status quo makes this a challenging task. For example, after making a specific delivery, the return route for a truck is not always certain. Transport operators often keep return routes open to ensure flexibility in responding to clients' delivery needs. A truck due to return to a base in Queensland, following a delivery in New South Wales, may instead go to Victoria if there is a client requiring a load to be transported from New South Wales to Victoria. In this scenario, the transport company would require both the driver and the truck to be carrying the appropriate licences and permits to comply with operating a heavy vehicle in three separate jurisdictions (Queensland, New South Wales and Victoria).

Compliance officers of several transport companies we interviewed stated that they often “over comply” in order to ensure maximum capacity utilisation, by ensuring that all heavy vehicles in operation carry permits for all jurisdictions, regardless of the route they are scheduled to travel. Compliance officers we interviewed also stated that the lack of

consistent guidance from State and Territory regulators and a lack of a central resource for monitoring changes in regulation between jurisdictions, multiplied the effort required by transport firms to meet their regulatory obligations.

We consider that adoption of Option 4 would significantly reduce the workload of compliance officers and the total compliance effort of transport and ancillary firms. Table 5.2 describes the potential savings in the time of compliance officers if Option 4 is adopted.

**Table 5.2: Reduction in Compliance Costs from Adoption of Option 4**

Problems that Option 4 Addresses	Benefits to Industry (Compliance Officers)
Eliminates duplication in legislation and regulation between States and Territories	<ul style="list-style-type: none"> <li>▪ Saving in labour costs of compliance officers</li> <li>▪ Avoids confusion on compliance requirements</li> </ul>
Eliminate inconsistencies in the application of legislation and regulation between jurisdictions	
A national regulatory body is likely to develop consistent and clear guidelines to assist industry in complying with a single set of regulations	

**Scheduling Staff**

The role of scheduling staff in transport companies is to plan the capacity utilisation and routes for the company’s fleet. In order to carry out this role effectively, schedulers are required to coordinate closely with compliance officers, understand the legislative and regulatory differences in each State and Territory where the firm operates, and make adjustments for this in the schedule.

Variations in the applications of regulations complicate the scheduling task. For example, scheduling staff must assess the journey times of potential assignments to comply with fatigue management rules, which despite being a national system, differ in application between jurisdictions. A further example relates to access times to road infrastructure. Heavy trucks between 22m-25m long can travel at anytime during the day or night in Queensland and Victoria. However, the same truck cannot travel within New South Wales during the night.

We were advised that the adoption of Option 4 would address jurisdictional inconsistencies of this type—reducing both the complexity in the scheduling task and the compliance burden for scheduling staff.

**Drivers**

One of the transport companies interviewed stated “whenever a driver crosses the imaginary border line between states, they have to switch their mind to a different set of rules.” Although ensuring compliance for transport companies is carried out by compliance officers and scheduling staff, it is the drivers of trucks that face the prospect of the regulations being enforced. As such, truck drivers must understand the regulatory obligations placed on them according to each jurisdiction where they are operating a heavy vehicle. Several transport companies stated that the risk of getting “caught” causes significant stress for drivers of heavy vehicles. In this sense, differences in legislation, regulation and the enforcement of regulation between States and Territories serve as a

distraction for drivers operating heavy vehicles across state borders, potentially compromising safety.

It seems likely that driver stress—stemming from concern in meeting the regulatory requirements in different jurisdictions—will be reduced if Option 4 is adopted.

### **Reductions in training costs**

Transport companies provide training for all compliance officers and operational staff to ensure that they understand the legislative and regulatory obligations that they must comply with in each jurisdiction where the company operates. The costs companies incur providing this training can be classified as:

- **Direct costs of providing training.** This includes the cost of trainers, examinations, training certificates and any in-house training provided by the firm
- **Productivity lost while staff are in training.** For example, capacity left unutilised while staff are in training, represents lost revenue for the company.

In some cases, jurisdictions mandate specific training in order for a driver to be allowed to operate a heavy vehicle, even where the specific regulatory requirement is similar to that in operation in another jurisdiction. Several operators indicated that this has created occasions where companies have been required to deliver the same training multiple times in order to ensure drivers are compliant. Training requirements for compliance and operational staff are likely to be streamlined if Option 4 is adopted, leading to reduced time required, and therefore less productivity lost, while staff undertake relevant training.

### **Reduction in barriers to competition**

It is likely that the legislative and regulatory differences that exist between States and Territories under the current approach is hindering competition in the heavy vehicle industry. The prospect of an additional compliance burden was cited by several firms we interviewed as a reason for why they would not seek to operate beyond one jurisdiction, or (where they were operating in multiple jurisdictions), to expand operations further to cover additional jurisdictions. This restriction of competition protects the market share of incumbents to some degree, reduces the pressure on costs and may allow sustaining the market price of transport services to be above the level they would likely be at if there were no barriers to competition.

We consider that the adoption of Option 4 would reduce the unintended barriers to competition resulting from the current regulatory structure—therefore increasing competition and efficiency in the heavy vehicle sector.

#### **5.3.2 Benefits to Government**

The adoption of Option 4 is likely to enable government (the Commonwealth, the six States and the two Territories) to better utilise scarce regulatory and technical expertise.

Effective regulatory staff are expensive to train and difficult to retain in the public service because their experience is in high demand in the private sector. It is therefore important that governments seek to maximise the use of scarce regulatory expertise in the administration and application of regulations. The current regulatory approach for the heavy vehicle sector, where regulatory expertise is stretched across nine separate regulatory agencies, fails to do this and therefore compromises the effectiveness of regulation.

## **5.4 Identifying the Likely Costs of Adopting Option 4**

This section discusses the likely costs that will accrue to the industry and government if Option 4 is adopted. Our analysis suggests that the most significant costs likely to be faced by industry will be the one-off transition costs of moving to a uniform set of legislation and regulation, administered by a single national regulator. The costs for government in adopting Option 4 will be the transition costs associated with establishing and operating the new national regulator.

### **5.4.1 Transition costs in moving to Option 4**

We anticipate that the cost of transitioning to Option 4 will fall on industry and government in the following areas:

- Additional training costs
- Additional administration and set up costs.

#### **Additional training costs**

Additional training will need to be provided by transport companies for all compliance officers and operational staff on the new uniform laws and regulations once enacted.

On the government side, additional training will need to be provided to the new national regulator's staff and the regulator's delegates on the uniform laws and regulations, the policies and operating procedures of the new regulatory entity, and the management of the new regulatory entities delegates across the States and Territories.

#### **Additional administration and set-up costs**

Transport companies may need to purchase new information technology (IT) systems, upgrade scheduling software and update policy and procedures to ensure compliance and effective capacity utilisation under the new national legislative and regulatory structure.

The government will also face additional IT and set up costs in establishing and operating the new national regulator.

## **5.5 Valuing the Likely Benefits of Adopting Option 4**

In this section we value the benefits we have identified as likely to accrue if Option 4 is adopted. We find that:

- **Industry would benefit from cost savings of at least \$100 million per year from reduced compliance costs.** This equates to approximately \$1.4 billion in present value terms.
- **Government (as a whole) would save over \$2 million annually.** These savings would be expected to come from the reduced resources presently required to be invested by the States and Territories in regulating the heavy vehicle sector.

The remainder of this sub-section explains how we calculated the value of these benefits to industry and government.

## **5.6 Value of Likely Benefits to Industry**

### **Savings in compliance costs**

We have established that likely benefits to industry from Option 4 would primarily come from cost savings in compliance and scheduling functions within transport companies. (Section 5.3.1). Based on our primary research, data from the information requests and our interviews with transport companies, we have quantified cost savings as follows.

For transport companies:

- We have assumed that an experienced compliance officer or scheduler earns approximately \$75,000 annually
- If Option 4 is adopted, we estimated that transport companies with 100 or more trucks are able to redeploy approximately 6.5 employees (made up of 4 compliance officers and 2.5 scheduling staff) to alternative revenue raising tasks within the company

At \$75,000 per employee, this equates to approximately \$500,000 per annum in cost savings for the company.

For ancillary companies:

- We estimated companies with 100 or more trucks will be able to redeploy 1.5 employees to revenue based tasks if Option 4 is adopted. Assuming the same \$75,000 salary for a compliance officer, a company in this position would therefore save approximately \$110,000 in compliance costs annually
- We estimate that smaller ancillary companies with 50 – 100 trucks would save approximately \$55,000 annually
- We have also estimated that ancillary companies with less than 50 trucks are unlikely to achieve significant savings.

Table 5.3 presents our findings on the value of cost savings.

**Table 5.3: Savings to Industry from Reduction in Compliance and Scheduling Tasks**

No. of Trucks	10-19	20 - 49	50 – 99	100+
Transportation companies	508	211	42	30
Savings per Firm	\$ 60,000	\$125,000	\$250,000	\$500,000
<b>Total:</b>	\$82,355,000			
<b>Present Value</b>	\$1,176,500,000 <sup>20</sup>			
Ancillary Companies			206	61
Savings per Firm			\$50,000	\$100,000
<b>Total:</b>	\$16,400,000			
<b>Present Value:</b>	\$257,714,286			
<b>Total Present value:</b>	\$1,434,214,286			

Source: RIS, Castalia calculations

### Savings in training costs

We estimate that industry could save approximately \$17,780,000 in annual training costs if Option 4 were adopted. We calculated this figure using the following approach:

- We estimate that there are approximately 35,000 heavy trucks that operate cross border transportation
- Using the driver to truck ratio of 1.25,<sup>21</sup> we estimate that 44,000 drivers operate heavy trucks interstate
- We understand that a driver of heavy trucks receives approximately 3 days of compliance training per year. If Option 4 were to be adopted, we estimate that 2 days of compliance training could be saved
- Using the financial data collected through the information request, we established that drivers are paid on average \$25 an hour and work 8 hours per day. This equates to \$17,780,000 in training costs saved annually (\$254 million in present value terms).

#### 5.6.1 Value of likely benefits to government

We used the following approach to evaluate the likely benefits to government if Option 4 is adopted:

- Based on our primary research, we estimated the number of regulatory staff employed in state agencies with a specific focus on the heavy vehicle industry. Table 5.4 summarises our calculations.

<sup>20</sup> This is the present value of the benefits on a perpetual basis.

<sup>21</sup> From our interview, a company with 15 trucks employs 19 drivers and companies with 60 trucks employ 85 drivers.

**Table 5.4: Extrapolation of Regulatory Staff in Different States**

State	Tonne Kilometres (million)	Number of Staff
NSW	41923	16
VIC	25172	10
QLD	29362	12
SA	11271	5
WA	16268	7
TAS	1884	1
NT	2975	2
ACT	161	1
<b>TOTAL</b>		54

Source: Australian Bureau of Statistics, Castalia

- In total, 54 regulatory staff are currently employed in policy design for regulating the heavy vehicle industry across all state and territory jurisdictions. If Option 4 is adopted, we estimate that approximately half of these staff can be redeployed to other activities. We have not assumed that **all** policy staff can be redeployed at the state level because it seems likely that the states will retain policy specialists to advise the national regulator.
- Assuming each regulatory policy specialist earns approximately \$75,000 per year, we estimate that government could save approximately \$2 million per year.

## 5.7 Valuing the Likely Costs of Adopting Option 4

In this section we explain how we valued the likely costs to government if Option 4 is adopted.

### Cost to government in setting up the national regulator

As shown in Table 5.4, we estimate that State and Territory regulators require between one and sixteen regulatory policy staff to manage the regulation of heavy vehicles within their jurisdictions. On this basis, we believe that a national regulator will require around half the regulatory expertise—27 employees—to manage the regulation of heavy vehicles on a national basis.

The RIS suggests that 40–60 staff will be required for the new national regulator to operate, which is substantially more than our estimate. However, the range stated in the RIS is based on the premise that the national regulator will eventually take on additional tasks from States and Territories, moving beyond its core role of regulating the heavy vehicle industry.

At least initially, it is likely that savings in regulatory resources by the States and Territories will exceed the cost of appointing new staff and set up costs (such as new office space, IT systems and other costs) for the national regulator.

## **5.8 Non-Quantifiable Benefits**

### **Reduced driver stress**

Reduced driver stress is the main non-quantifiable benefit we believe will accrue if uniform legislation and regulation is adopted.

The option of a uniform set of legislation and regulation would enable drivers to travel across jurisdictions confident that they are compliant with all relevant legislation and regulations. This would lead to reduced driver stress, enabling drivers to focus on operating the vehicle and on the delivery task at hand. It is clear that this will lead to increased driver productivity and greater road safety. However, the valuation of the productivity gain and the improvement in road safety are beyond the scope of this analysis.

## **5.9 Conclusions**

Our analysis of the likely costs and benefits of adopting Option 4 indicate that the likely benefits to industry clearly outweigh the potential costs.

The key benefits at an industry level are likely to be generated from labour cost savings in compliance and scheduling functions, and savings in compliance training costs for transport and ancillary companies.

On the government side, State and Territory regulators are likely to save regulatory resources if Option 4 is adopted. However these savings would be offset by the establishment of the new national regulator, which would engage its own regulatory staff. It is also possible that regulatory staff currently engaged in state and territory agencies may transfer to the new national regulator.

Overall our analysis suggests that a net benefit to the Australian economy of approximately \$1.7 billion in present value terms could be achieved if Option 4 is adopted.

## 6 Principles for Developing the National Regulator

We have not attempted to design the proposed national regulatory agency in detail. Instead, this section highlights the main principles of best practice regulation that should guide the new regulatory body. These principles are being applied by the current State and Territory regulators; the problem we have been addressing is not the quality of current regulation but the quantity, the duplication and inconsistencies. The particular challenges for a new NHVR will be:

- Harnessing state-level agencies—in particular the State transport regulators—to monitor and enforce national regulations, while
- Engaging effectively with those same state-level agencies to identify appropriate regional variations in standards and rules.

Best practice principles are already being applied by other national regulators in Australia and in the UK and Ireland, and are therefore not new. The principles are:

- **Transparency:** NHVR should be clear about its roles and responsibilities and open in its activities
- **Accountability:** There should be clear lines of accountability for the NHVR and the States and Territories
- **Targeted:** NHVR should ensure that the national regulations are targeted to priority problems
- **Clear:** NHVR must make regulations easy to understand, for example with publications in user-friendly language
- **Proportionate:** NHVR must ensure that the regulation is proportionate to the perceived problem or risk and justifies the compliance costs imposed.

This section explains the background to these principles and what they would mean for a new national regulator in the heavy vehicle industry. This section also outlines some key requirements for a successful national regulator, as well as some specific recommendations for the NHVR.

### 6.1 Achieving Better Regulation

When a market fails to deliver efficient outcomes, it may be necessary to introduce regulation to achieve better outcomes for society and the economy. Such regulations could involve rules and laws that require the government to monitor compliance and undertake enforcement activities.

In the regulation of the heavy vehicle industry, as discussed earlier, the problems arise from the multiplicity of regulations rather than from whether there is a need for any regulation. Industry agrees that there is a need for regulation. For example, weight and speed restrictions and fatigue management are important for road safety; however, having different sets of rules across jurisdictions increases the administrative burden of compliance. As a result, some drivers may not comply because it is complicated and time consuming, while other drivers may attempt to comply but fail to do so due to a lack of understanding of what is required. Both forms of non-compliance impose a threat to road safety.

Therefore the purpose of the NHVR is “simply” to deliver one consistent set of national rules and regulations. Drawing on the experience of state-level regulators, there should be no doubt about maintaining effective and efficient road safety regulation.

In this section we outline examples of this harmonization process. We draw on:<sup>22</sup>

- Examples of countries implementing consistent and co-ordinated regulation across individual states, and
- Examples in Australia, where a single authority has been established to obtain “seamless” regulation across the States/Territories.

### **6.1.1 Seamless regulation**

Many countries have sought to lower the administrative burden of regulatory compliance by introducing measures to create seamless regulation across individual States/Territories. For example, Australia has already emphasised a desire to reduce the administrative burden of complying with regulation across the States and Territories. A move to NHVR would be consistent with the Business Council of Australia’s (BCA) goal to complete the implementation of a seamless economy for business regulation by 2010<sup>23</sup>.

Canada, which comprises ten Provinces and three Territories, and Europe which consists of 27 member states, have also recognised the administrative costs regulation can impose when dealing with more than one regulator in several jurisdictions. Consequently, both Canada and Europe have plans to reduce red tape to make compliance quicker and easier.

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<sup>22</sup> More details are provided in Appendix B

<sup>23</sup> Towards A Seamless Economy, Modernising the Regulation of Australian Business, The Business Council of Australia p4

**Table 6.1: Examples of Countries Adopting Seamless Regulation**

Country	Description
<b>Australia</b>	<p>BCA has published its concerns that Australia is not one market, rather it has nine regulatory regimes, with eight States and Territories each seeking to regulate in their own way. BCA identified that the resolving issue of overlap and duplication between different governments must be tackled by:</p> <ul style="list-style-type: none"> <li>▪ Clarifying roles and responsibilities</li> <li>▪ Institutionalizing co-operation</li> <li>▪ Reforming Commonwealth-state funding arrangements</li> </ul>
<b>Europe</b>	<p>In October 2005, the European Commission proposed a common EU methodology for measuring administrative costs imposed by legislation. The methodology is based on the Standard Cost Model applied in several Member States. The EU Standard Cost Model takes into account the fact that EU legislation often replaces 25 different national legislations and thus decreases operating costs at EU level. The benefits of the EU Standard Cost Model include:</p> <ul style="list-style-type: none"> <li>▪ Bringing clarity about possible differences in procedures followed by the EU institutions and different Member States;</li> <li>▪ Facilitating cross-country or cross-policy area comparisons, benchmarking and the development of best practices;</li> <li>▪ Offering economies of scale in terms of data collection and validation.</li> </ul>
<b>Canada</b>	<p>The “Smart Regulation” agenda differs from existing regulatory policy as it includes:</p> <ul style="list-style-type: none"> <li>▪ An explicit commitment to limit Canadian regulations and to harmonize with the U.S. regulatory system in order to integrate markets</li> <li>▪ Further entrenchment of trade and commerce promotion as the primary consideration in regulation (and NOT health and safety protection)</li> <li>▪ A commitment to “seamless” harmonisation of provincial and territorial regulations with federal regulations – with the likely outcome being regulations that are based on the lowest common denominator.</li> </ul>

### 6.1.2 Single national regulators in Australia

There are some examples in Australia where a single regulator has been established to achieve a consistent and co-ordinated approach to regulation across the States and Territories.

**Table 6.2: Examples of a Single National Regulator in Australia**

Single Regulator	Description
National Offshore Petroleum Safety Authority (NOPSA)	NOPSA is a statutory agency regulating Commonwealth, State and Territory coastal waters with accountability to the relevant State and Territory Ministers. NOPSA commenced operations on 1 January 2005.

Single Regulator	Description
	<p>In 1999, the Commonwealth Government commissioned a review of offshore safety in Australia. At the time, the States and Northern Territory (NT) carried out day to day offshore petroleum safety regulation using a combination of the safety case approach<sup>24</sup>, where the regulator (NOPSA) scrutinises and approves how operators identify and mitigate hazards and risks at facilities, and prescriptive legislative rules.<sup>25</sup> The review identified a number of shortcomings in the legislative and administrative structures. It recommended the current framework of laws be revised, and the regulatory system be restructured by establishing a national petroleum safety regulatory authority.</p>
National Competition Council (NCC)	<p>The NCC was established by all Australian governments in November 1995 to act as a policy advisory body to oversee their implementation of the National Competition Policy.</p> <p>Although the Council is funded by the Commonwealth Government, it is accountable to all Australian States and Territories through the Council of Australian Governments (CoAG). As a statutory body, the NCC is independent of the executive (political) arm of governments.</p>
Australian Competition and Consumer Commission (ACCC)	<p>The ACCC is an independent statutory authority. It was formed in 1995 to administer the <i>Trade Practices Act 1974</i> and other acts. The ACCC promotes competition and fair trade in the market place to benefit consumers, business and the community. It also regulates national infrastructure industries.</p> <p>The ACCC is the only national agency dealing generally with competition matters and the only agency with responsibility for enforcing the Trade Practices Act and the state/territory application legislation.</p> <p>In fair trading and consumer protection its role complements that of the state and territory consumer affairs agencies which administer the mirror legislation of their jurisdictions, and the Competition and Consumer Policy Division of the Commonwealth Treasury.</p>
Australian Energy Regulator (AER)	<p>The AER regulates the wholesale electricity market and is responsible for the economic regulation of the electricity transmission and distribution networks in the national electricity market (NEM). The AER is also responsible for the economic regulation of gas transmission and distribution networks and enforcing the national gas law and national gas rules in all jurisdictions except Western Australia.</p> <p>Prior to the AER, there were five operators in the gas and</p>

<sup>24</sup> The Safety Case Approach was adopted following the 1988 Piper Alpha disaster in the North Sea which resulted in 167 deaths and substantial financial losses. It mandates that all operators of facilities produce a document, which identifies hazards and risks, describes how the risks are controlled, and describes the safety management system in place to ensure the controls are effectively and consistently applied. The document is scrutinised by and must be approved by NOPSA before operations at the facility can commence.

<sup>25</sup> National Offshore Petroleum Safety Authority <http://www.nopsa.gov.au/safety.asp> (accessed 15 February, 2009)

Single Regulator	Description
	<p>electricity markets (NEMMCO, VENCORP, REMCO, GMC and IMO). An Energy Reform Implementation Group was set up by COAG to implement a single electricity and gas regulator in Australia.</p> <p>The AER may acquire additional functions in the future under state and territory laws, in accordance with inter-governmental agreements. The AER has been established as a separate legal entity, and a constituent part of the ACCC.</p>

## 6.2 Regulatory Principles for the NHVR

Based on Australia’s best practice guidelines and principles used in the UK, Canada, Ireland and New Zealand, we suggest that the NHVR, as a single regulator, follows these key principles.

- **Transparency:** NHVR should be clear about its roles and responsibilities and ensure transparency in the single national law for heavy vehicle regulation. At the outset, this means being transparent on what changes will occur under a national law and what impact the changes will have on different industry participants. Going forward, the NHVR should ensure that those being regulated are made aware of their obligations under the new national law and the consequences of non-compliance.

NHVR should also be transparent about its planned monitoring and enforcement activities, its stakeholder communications, its industry consultations

- **Accountability:** There should be clear lines of accountability and the NHVR should be accountable to the Minister for Infrastructure, Transport, Regional Development and Local Government

NHVR should justify all its decisions and be subject to public scrutiny

- **Targeted:** NHVR must focus on the problems identified with the status quo and seek to address those problems and minimize the side effects in doing so. The NHVR should target regulation to priority areas
- **Clear:** NHVR must make regulations—for example on weight and speed restrictions, vehicle registration and fatigue management—that are easy to understand. This means publishing regulations in user-friendly language and designing application forms that are easy to fill in. However regulations should not be compromised in achieving the regulatory objective
- **Proportionate:** NHVR must ensure that the regulation is proportionate to the perceived problem or risk and justifies the compliance costs imposed. Regulation must not have disproportionate affect on certain groups of drivers

Table 6.3 shows some examples of how each of the principles could be applied to the regulation of the heavy vehicle industry.

**Table 6.3: Application of Key Principles for the NHVR**

Principles for the NHVR	Examples of Application of the Principles to the Heavy Vehicle Industry
Transparency	<p>NHVR website would contain all the necessary information about what was required to register maintain and operate heavy vehicles in any part of Australia and the face-to-face point of contact would be the state agencies</p> <p>Publication of investigation decisions and reasons for them</p> <p>Publication of compliance strategy or plan-Western Australia has developed a Heavy Vehicle Operations Compliance Plan-the national regulator would develop a plan for the country as a whole and publish that plan, so everyone is aware of what is required.</p> <p>Publication of minutes of key meetings</p>
Accountability	<p>Accountable to the Minister for Infrastructure, Transport, Regional Development and Local Government</p> <p>Establishment of a Board with members from industry</p> <p>National regulator will have performance targets and will be accountable to delivering outcomes.</p> <p>Regulatory Review processes must be conducted regularly</p> <p>NHVR could produce a Regulatory Plan</p>
Targeted	<p>The regulator publishes a compliance strategy on the top 5 high risk areas. Produce annual plans and programmes and performance targets to address these risks. These reduce ad hoc enforcement activities</p> <p>Better co-ordination with the police regarding enforcement issues</p> <p>In consultation with the States/Territories, the NHVR would develop key business and operational strategies-focus on effective and strategic use of resources</p> <p>Targeted Chain of Responsibility investigations</p>
Clear	<p>Produce guidelines and forms that are easy to understand for heavy truck users and so are better able to comply given the mobility of trucks</p> <p>On-line registrations, on-lines forms</p>
Proportionate	<p>Small truck companies are treated the same way</p> <p>Truck drivers in one state are treated the same way</p> <p>Regulation is proportionate to the perceived risks of non-compliance</p> <p>The penalties of non-compliance are proportionate</p>

By adopting the above principles, the NHVR will be effective and efficient and would increase compliance of heavy truck regulation. Greater compliance will deliver benefits to the economy and reduce the regulatory burden on businesses. In addition, applying these

principles, NHVR would be able to achieve the principles of the ATC outlined in the RIS, which are:<sup>26</sup>

- Uniform laws and administrative practices should achieve the same outcome in the same circumstances across Australia
- Regulatory burden will not increase overall as a result of the reform
- Legal and administrative costs of regulatory compliance will be minimised
- Productivity, effectiveness and safety of the heavy vehicle industry are enhanced

### **6.3 Key Characteristics for a Successful NHVR**

In order for the new regulator to be successful in achieving the benefits identified in this paper and in implementing the principles outlined above, Castalia recommends that NHVR must

- Have clear roles and responsibilities. NHVR would have the power to enforce the national regulations
- Political leadership skills to manage relationships with service providers in each jurisdiction, to ensure that the delegated powers are used in line with the guidelines
- Be a credible regulator with ‘teeth’, that is, a regulator that has credibility with the delegated authorities and the heavy truck industry. Further, NHVR must not be afraid to administer its powers.

At present, the States and Territories have the power to enforce their own regulations. As stated in the RIS, NHVR would be responsible for the administration of the national law but would delegate the powers to the agencies of each jurisdiction. The legislation would include provisions on NHVR’s functions and powers, constitution, operations, finance, staff and powers of delegation. The administering of the legislation would be carried out by the staff of existing State and Territory regulators acting under delegations from the NHVR following national guidelines set by NHVR.

The establishment of a national regulator will face a challenge in encouraging the States and Territories to surrender their existing powers. This same problem was found in the development of NOPSA, a single offshore petroleum safety regulator. The Commonwealth recognised that to get the States and Northern Territory to move to a fully integrated national safety authority would be difficult. It had the view that few if any of the jurisdictions will be easily convinced to move away from the status quo or to move the responsibilities for State operations to an independent authority. It stated that there would need to be substantial reworking of the existing legislation and the development of new processes and procedures, which will need to negotiate with the States, the Northern Territory and other stakeholders.

Further, the BCA in its comments on a seamless economy noted that:

*A seamless economy is a critical factor in lifting the long-term productive capacity of the economy. It is not about:*

- *Abolishing the states*

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<sup>26</sup> Para 25, A National Framework for Regulation, Registration and Licensing of Heavy Vehicles, Consultation Regulatory Impact Statement

- *Abolishing all regulation*
- *Undermining the capacity of states to raise revenue, or*
- *Moving responsibility for all regulation to the federal government*

We consider that NHVR will need to encourage and assure States and Territories that they have a key role to play and that national regulation will deliver a number of benefits to the Australian economy. We would expect that the NTC would play this role while the NHVR is being set up, and will continue to support this process once the NHVR commences—ensuring the NHVR gains legitimacy. If the NHVR is considered to be reputable in the eyes of the States and Territories and has the desire to achieve good working relationships, it is mostly likely to get “buy-in” from the States and Territories.

The Productivity Commission in its report on Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector<sup>27</sup> stated that

*This discussion assumes that the necessary legislative reform would be carried out by all relevant jurisdictions to make these changes possible.*

A national regulator would need to have the credibility, skills and experience to carry its function and ensure that its delegates in each jurisdiction follow the national guidelines. Therefore NHVR needs to have the political leadership skills to manage the service providers as they experience a change in autonomy as a result of the formation of NHVR. These skills and experiences will be essential in improving the regulatory arrangements that currently exist and benefit all jurisdictions.

## **6.4 Key Features of the NHVR**

Castalia has considered some of the key features of NHVR to ensure that it implements effective and efficient regulation. We suggest some high-level approaches and strongly recommend that if a national regulator is to be established, the governance and organisation structure will need further analysis and consultation with industry.

There are several potential models for assigning regulatory functions that could be adopted by the NHVR. The Productivity Commission in its report on an upstream petroleum regulator outlines some possible approaches that could be adopted.<sup>28</sup> We have considered some of the models proposed in our suggestions of key features of the NHVR.

Should CoAG choose to proceed with Option 4, we make the following observations on elements that we believe should be considered in the design of the NHVR:

- ***NHVR will likely delegate some of its powers to the States and Territories:*** A key consideration will be defining clear roles and responsibilities of the NHVR and the current State and Territory regulators. The current nine regulators will continue to exist as they will continue to perform non-heavy vehicle regulatory functions. However, with a national regulator, the State and Territory regulators will have delegated powers and will report to NHVR. Examples of regulators that have delegated their powers are shown in Appendix G. The NHVR would have agreed high-level objectives as well as procedures for accommodating regional differences.

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<sup>27</sup> <http://www.pc.gov.au/projects/study/upstreampetroleum/draft>

<sup>28</sup> <http://www.pc.gov.au/projects/study/upstreampetroleum/draft>

- ***NHVT should focus on policy formulation with approval from the Minister.*** We suggest separating responsibilities for policy formation from regulatory compliance. NHVR's role would be to create national policy and standards. The State and Territory regulators which will have delegated powers would be responsible for implementing the national regulations set by NHVR and ensuring that the heavy vehicle industry complies with the regulations. We envisage that each State and Territory jurisdiction would be involved in day-to-day operational activities of heavy vehicle regulation. For example, the Australian Government Department of the Environment, Water, Heritage and the Arts develops and implements national policy, programs and legislation to protect and conserve Australia's environment and heritage and to promote Australian arts and culture. Each State and Territory has a regional agency that administers the legislation.

The separation of policy and regulatory compliance activities will increase the effectiveness of regulation, as it will improve the credibility of the single national regulator, and create stability and consistency.

This approach is similar to that considered in deciding on the future arrangements of NOPSA. It was proposed that:<sup>29</sup>

*The main functions of the national authority were to establish consistency in the regulatory approach and the application of the legislative framework, undertake all assessment and acceptance of offshore safety cases and manage the regional offices including their auditing activities.*

*The main functions of the regional offices would be to undertake an audit on the oil companies for their adherence to their safety cases, and to be a focal point for the industry's contact in all health and safety matters.*

- ***NHVR should report to a Commonwealth Minister*** but operate at arms-length. For instance, NOPSA must comply with directions from the Commonwealth Minister relating to the performance of NOPSA's functions or the exercise of its powers
- ***NHVT should ensure that national laws are followed within the guidelines.*** At present not all States and Territories comply with the template law. Different States and Territories have different skills and resources and so have implemented the template law to differing levels. Further, the States and Territories have insufficient incentives to implement the template law, as their main focus is on regulation in their jurisdiction rather than national harmonisation.

Currently, there is no entity responsible for ensuring that the template law is being applied and that it is being applied consistently by the States and Territories. The NHVR would have the appropriate resources and time to ensure consistency in complying with national law, rather than burdening the States and Territories that may have limited resources to implement the template law.

NHVR would produce guidelines and training on the national regulations.

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<sup>29</sup> Future Arrangements For the Regulation of Offshore Petroleum Safety, Department of Industry, Science, and Resources, Offshore Safety and Security, Petroleum and Electricity Division, Australian Offshore Petroleum Safety Case Review Section 6.3.3

- ***NHVR must have clear objectives for setting national policy and standards.*** NHVR must have clear objectives for its policy formulation functions. The Productivity Commission outlined some desirable objectives for an improved institutional model include. The following objectives are applicable here:
  - Minimising multiple approvals or duplicate assessment requirements
  - Minimising administration by multiple agencies, or ensuring clear administrative arrangements where multiple agencies are involved
  - Minimising inconsistencies in legislative requirements and decision making
  - Ensuring regulators have clear regulatory objectives and do not face significant conflicts of interest
  - Ensuring regulators are adequately resourced with appropriately skilled people; and
  - Consolidating specialist expertise, efficiently using scarce resources and enhancing the ability to retain specialist expertise.
- ***NHVR should develop processes and procedures for maintaining good relationships with the service providers.*** In order for the new heavy vehicle regulation to be effective and efficient, co-ordination between NHVR and service providers will need to be maintained. This was overcome in the development of NOPSA, for instance, the Offshore Petroleum Act 2006 requires NOPSA to co-operate with other Commonwealth agencies having functions relating to offshore petroleum operations, States or Northern Territory agencies and Designated Authorities of the States and the Northern Territory. NOPSA has signed Memoranda of Understanding (MOUs) with several stakeholders.

## **7 Summary and Conclusions**

We consider that Option 4 is the only credible way of achieving better regulation in the heavy vehicle industry. Australia requires a national regulator setting uniform rules and regulations. This is confirmed by GA & Co's perception audit, which found that there is support for regulatory reforms in the sector. The other options presented in the RIS will not provide adequate incentives for heavy vehicle States and Territories to implement the uniform standards required to solve the regulatory problems raised by Industry. We estimate that the national regulator will save the industry \$1.7 billion in present value terms and involve no additional bureaucracy overall.

If a national regulator option is adopted, we suggest that further analysis is carried out to give careful consideration of the governance and organisational structure of the NHVR. The key challenges will be enabling the NHVR to access expertise in the State Transport Ministries and successfully harnessing State level agencies for enforcement.

## **Appendix A Perceptions of a Single National Regulator**

Gavin Anderson & Company (GA & Co's) conducted a perceptions audit of core NatRoad stakeholders. The objectives of the audit were to engage with key political, industry and media stakeholders to gather non-attributable information about:

- The rationale for the proposed introduction of a single national heavy vehicle regulator
- The hierarchy of key issues needing to be addressed as part of any new regulatory framework.

A summary of the audit is provided below.

### **A.1 Methodology**

GA & Co's conducted interviews during January and February 2009. Interviews were guided by a set of questions previously agreed between NatRoad, Castalia and GA & Co's, however participants were encouraged to elaborate or diverge where they considered this to be relevant to the policy debate. Respondents were targeted from three key stakeholder groups:

- Government and Federal/ State Public Service
- Industry/ Industry Associations
- Media.

### **A.2 Overview of Findings**

The audit found that in-principle there is support for the establishment of a national heavy vehicle regulator and that improving safety for road users remains the key justification for the reform among policy-makers.

The perceptions audit also found that there was a lack of coordination and cooperation among stakeholders and within the industry itself and this was affecting progress. In addition, the GA found that the States and Territories are reluctant to cede existing powers, especially where that entails any reduction in registration revenues, the dilution of road safety rules that have taken time and effort to implement, or public service redundancies.

## Appendix B: International Best Practice Regulation

The UK, Ireland, New Zealand and Canada are just some examples of other countries that have published principles for achieving better regulation (see table below).

**Table 7.1: Examples of Countries Promoting Best Practice Regulation**

Country	Principles for Best Practice Regulation
New Zealand	<p>The Code of Good Regulatory Practice discusses:</p> <ul style="list-style-type: none"> <li>▪ Efficiency</li> <li>▪ Effectiveness</li> <li>▪ Transparency</li> <li>▪ Clarity</li> <li>▪ Equity.</li> </ul> <p><a href="http://www.med.govt.nz/templates/MultipageDocumentTOC_22149.aspx">http://www.med.govt.nz/templates/MultipageDocumentTOC_22149.aspx</a></p>
United Kingdom	<p>The Better Regulation Taskforce outlined five principles for better regulation:</p> <ul style="list-style-type: none"> <li>▪ Transparent</li> <li>▪ Accountable</li> <li>▪ Proportionate</li> <li>▪ Consistent</li> <li>▪ Targeted.</li> </ul> <p><a href="http://www.berr.gov.uk/files/file22967.pdf">http://www.berr.gov.uk/files/file22967.pdf</a></p>
Ireland	<p>The principles of better regulation that the Government wishes to promote are:</p> <ul style="list-style-type: none"> <li>▪ Necessity</li> <li>▪ Effectiveness</li> <li>▪ Proportionality</li> <li>▪ Transparency</li> <li>▪ Accountability.</li> </ul> <p><a href="http://www.betterregulation.ie/upload/Regulating_Better_html/overview.html">http://www.betterregulation.ie/upload/Regulating_Better_html/overview.html</a></p>
Canada	<p>The Government's Smart Regulation Initiative is based on the following five principles:</p> <ul style="list-style-type: none"> <li>▪ Serving the public interest</li> <li>▪ Facilitating timeliness, efficiency and policy coherence</li> <li>▪ Making decisions based on evidence</li> <li>▪ Instilling trust and confidence in Canadian regulatory frameworks, creating more accessible and responsive regulation</li> <li>▪ Promoting effectiveness.</li> </ul> <p><a href="http://www.hc-sc.gc.ca/ahc-asc/legislation/smart-intel/index-eng.php">http://www.hc-sc.gc.ca/ahc-asc/legislation/smart-intel/index-eng.php</a></p>

## **Appendix C: Castalia Data Request**

This Appendix shows the data request Castalia sent out to industry participants in the heavy vehicle industry.

### **NatRoad Submission for Adopting a National Heavy Vehicle Regulator—Data Request**

**20 January 2009**

This data request follows Castalia's discussion with your company in relation to National Transport Commission's (NTC) proposal that Australia adopt a National Heavy Vehicle Regulator and common regulation for the heavy vehicle sector. Castalia appreciates your time and your offer to assist us by providing data on your company's operations.

The data that you provide us with will enable us to undertake a cost benefit analysis of the proposals currently being canvassed by the Commonwealth and State Governments—through the Commonwealth of Australian Governments (COAG) process.

This note explains:

- The purpose of this information request
- That all information supplied to Castalia is treated as **commercial in confidence**
- The specific components of data that we require.

#### **C.1 The Purpose of this Data Request**

Adopting a National Heavy Vehicle Regulator and a national approach to regulation is currently being debated between Transport Ministers and transport departments from the Commonwealth Government and all State Governments. Through the COAG process, Ministers are considering four options for moving to a national approach. NatRoad has engaged Castalia to analyse these proposed options, and to perform a cost and benefit analysis.

Castalia understands the current regulatory arrangements are imposing an unnecessary cost burden of industry. The purpose of this information request is to obtain detailed data from operations of transport companies so that we are able to:

- Identify specific examples of how the current regulatory arrangements are imposing costs on industry
- Quantify these examples using a financial model
- Use the information generated by the model to demonstrate the cost savings that could be achieved if a national regulator and a national regulations are adopted.

#### **C.2 Information Treated as Commercial in Confidence**

All information supplied to Castalia by your company will be treated as commercial in confidence.

Where required by your company, Castalia will sign a confidentiality agreement.

### **C.3 Specific Components of Data Request**

Castalia would appreciate it if your company could provide the information listed below. (We appreciate that you may not be able to provide all aspects of our information request. Where this is the case, please provide what you are able to. **(An Excel spreadsheet is attached that may assist you with the data collection process)**)

We would appreciate it if data could be provided to Castalia by Wednesday, 28 January.

We recognise and apologise for this short timeframe. Unfortunately, the urgency is dictated by the upcoming COAG meeting in February, which is considering the National Heavy Vehicle proposals.

#### **C.3.1 Tonne kilometres for your company**

This is the product of the kilometres travelled by the truck and the tonnage it carried.

We understand that your company may not record freight movements in this way. Please leave blank if this is the case.

#### **C.3.2 Size of Your Fleet with different types of trucks**

#### **C.3.3 Financial Statements**

Profit and Loss and balance sheet financial statements for the last 3 years.

NOTE: Reviewing your profit and loss and balance sheet statements for multiple years will enable us to identify where your costs have increased as the regulatory burden on your company has increased.

We will use this information to calculate the cost savings that will be generated by moving to a National Regulator.

#### **C.3.4 Labour Employed**

##### **Drivers**

- Number of drivers your company employs
- Driver wages and other allowances.

##### **Admin and Management (No. of staff + salary)**

- Compliance officer
- Schedulers
- Others.

##### **Operation & Maintenance Costs**

- Repairs and Maintenance per year and per km
- Other Non-Labour Administration Costs.
  - ♦ Per year for the business
  - ♦ Per vehicle per year.

##### **Capital**

- Replacement cost of trucks
- Average Age of Trucks.

## Appendix D: Castalia Data Template

This Appendix shows the data template Castalia sent to industry participants to assist with the cost benefit analysis.

	2005	2006	2007	2008
<b>1.1 Tonne kilometres for your company</b>				
<b>1.1.1 Size of Your Fleet with different types of trucks</b>				
Number of Movers				
Number of Trailors				
Average Kilometres a Trailor Travel Annually				
Average Load per Trailor				
<b>1.3 Labour Employed</b>				
<b>Drivers</b>				
Number of drivers your company employs				
Driver wages and other allowances				
<b>Admin and Management</b>				
Number of Compliance officers				
Compliance officer wages and other allowances				
Number of Schedulers				
Schedulers wages and other allowances				
Others				
Salary				
<b>1.4 Operation &amp; Maintenance Costs</b>				
Repairs and Maintenance to Vehicles				
per year				
per km				
Other Non-Labour Administration Costs (Please Specify)				
Per year for the business				
Per vehicle per year				
<b>1.5 Capital</b>				
Replacement Cost of Movers				
Average Age of Movers				
Replacement Cost of Trailors				
Average Age of Trailors				
<b>1.6 Financial Statements</b>				
Profit and Loss Statements*				
Balance Sheet*				

\* Profit and Loss statements and Balance sheet can be attached in separate files

## Appendix E: Sensitivity Analysis

The following table provides the results of the sensitivity analysis conducted on the present value calculation of cost savings in compliance and scheduling costs if Option 4 is adopted.

**Table E.1: Sensitivity Analysis of Present Value of Compliance and Scheduling Cost Savings**

Discount Rate	PV of the benefits
3%	\$3,346,500,000
5%	\$2,007,900,000
7%	\$1,434,214,286
9%	\$1,115,500,000
11%	\$912,681,818

The table below shows the sensitivity analysis of the present value calculated for training cost savings if Option 4 is adopted, under different discount rates.

**Table E.2: Sensitivity Analysis of Present Value of Training Cost Savings**

Discount Rate	PV of the benefits
3%	\$592,550,000
5%	\$355,530,000
7%	\$253,950,000
9%	\$197,520,000
11%	\$161,600,000

## Appendix F: Examples of Regulatory Mis-match

The RIS summarises useful examples of where the current approach to the regulation of heavy vehicles is not matched with the operational practice of transport firms. In addition to the examples we have cited in this report, we provide the summary table from the RIS below.

**Figure F.1: Examples of Regulatory Mis-match**

Scenario	Description	Regulation Issues
<b>Scenario 1</b>	Six-axle, 42.5 tonne semi-trailer transporting general freight between Australia's mainland capital cities	Include fatigue, change over and rest areas, roadworthiness, configuration if 4.6 high and any other issues/items.
<b>Scenario 2</b>	Six-axle, 45.5 tonne semi-trailer running on the Higher Mass Limits (HML) network transporting general freight between Brisbane and Victoria	Include route availability and compliance, accreditation, suspension maintenance, (SA route certification and NSW IAP), load distribution, fatigue regulations, change over and rest areas, roadworthiness, configuration if 4.6 high and any other issues/items.
<b>Scenario 3</b>	Nine-axle, 62.5 tonne B-double transporting general freight between Australia's mainland capital cities	Include route availability and compliance, last and first mile access including additional permits, load distribution, tow vehicle suitability, FUPS, state level one off's like no reversing in ACT, fatigue regulations, change over and rest areas, roadworthiness, configuration if 4.6 high and any other issues/items.
<b>Scenario 4</b>	Seven-axle, 49 tonne low-loader transporting plant and equipment through the east coast states to Western Australia	Include route availability, permit application process and information requirements, escort requirements, pilot accreditation, travel times, Christmas and other holiday periods, load distribution width and height, fatigue regulations, change over and rest areas, roadworthiness, configuration spread tri v quad, load on gooseneck, deck height, spreading v non-spreading low loader and any other issues/items.
<b>Scenario 5</b>	Heavy truck and dog trailer combination operating in and around the Albury-Wodonga and Coolangatta-Tweed Heads border regions	Include mass allowed and configuration requirements, load distribution, fatigue regulations, roadworthiness, and for some commodity type and PBS conditions and any other issues/items.
<b>Scenario 6</b>	Modern road train operation from Mareeba in North Qld to Tocomwal on route to Victorian Markets	Include route availability and compliance, accreditation, suspension maintenance, (SA route certification and NSW IAP), load distribution, fatigue regulations, change over and rest areas, roadworthiness, configuration if 4.6 high and any other issues/items.
<b>Scenario 7</b>	Modern Road Train (using	Include load distribution, fatigue regulations (including

Scenario	Description	Regulation Issues
	HPV) operation Toowoomba to Darwin return	two up driving), change over and rest areas, roadworthiness and any other issues/items.
<b>Scenario 8</b>	Modern container port landside operations (Brisbane) import and export chains	Include route availability and compliance, accreditation, suspension maintenance, (IAP), most suitable HPV and allowed axle weights in and outside port precinct, load distribution, fatigue regulations, change over and rest areas, roadworthiness, configuration for high containers, customs issues and any other issues/items.

Source: RIS

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## Appendix G: Examples of Delegation

The following table provides examples of where a regulator has delegated its powers.

**Table G.1: Examples of regulators delegating their powers**

Regulator	Examples of Delegated Powers
<b>National Offshore Petroleum Safety Authority (NOPSA)</b>	A Designated Authority is the relevant State/Northern Territory (NT) Minister or Commonwealth Minister with responsibility for upstream petroleum matters as defined by s14 of the Petroleum Submerged Lands Act (PSLA). In the Guidelines, the term “Designated Authority” (DA) is also used to describe State/NT and Commonwealth officials where those officials assist the DA or have powers delegated to them by the DA (refer s15 of the PSLA).
<b>Civil Aviation Safety Authority Australia (CASAA)</b>	CASAA staff members with the appropriate expertise may be appointed as delegated or approved persons. In the case of members of the aviation industry, the CEO appoints persons as flight crew licensing delegates on the recommendation of the Field Office responsible for the area in which the delegates will be operating. Approvals can be issued by a CASAA officer who holds a delegation under the relevant regulation—usually the Team Leader Flying Operations (TLFO).
<b>Australian Communications and Media Authority (ACMA)</b>	ACMA is Australia's regulator for broadcasting, the internet, radio communications and telecommunications. It was formed on 1 July 2005 by the merging of the Australian Communications Authority (ACA) and Australian Broadcasting Authority (ABA). ACMA has offices in Canberra, Melbourne and Sydney and employs approximately 500 staff. Under the Telecommunications Act 1997-SECT 441, the ACMA may, by writing, delegate any or all of the powers conferred on the ACMA to a body corporate. ACMA's day-to-day activities are managed by an executive team comprising the Chair, the Deputy Chair, the full-time member, five General Managers and 13 Executive Managers.
<b>Australian Council for the Arts</b>	The Australia Council for the Arts is the Australian Government's arts funding and advisory body. All committees under the Council have delegated powers with clear guidelines and conditions for those powers. Below are the instruments of delegation for all committees and boards of the Council with their delegated powers. <ul style="list-style-type: none"> <li>▪ Aboriginal and Torres Strait Islander arts board</li> <li>▪ Appeals committee</li> <li>▪ Community partnerships</li> <li>▪ Decisions review</li> <li>▪ Decisions rescission</li> <li>▪ Generic art form board</li> <li>▪ Major performing arts board</li> <li>▪ Reserves fund.</li> </ul>





T: +1 (202) 466-6790  
F: +1 (202) 466-6797  
1700 K Street NW Suite 410  
WASHINGTON DC 20006  
United States of America

T: +61 (2) 9231 6862  
F: +61 (2) 9231 3847  
Level 10, 1 Castlereagh Street  
SYDNEY NSW 2000  
Australia

T: +64 (4) 913 2800  
F: +64 (4) 913 2808  
Level 2, 88 The Terrace  
PO Box 10-225  
WELLINGTON 6143  
New Zealand

T: +33 (1) 45 27 24 55  
F: +33 (1) 45 20 17 69  
7 Rue Claude Chahu  
PARIS 75116  
France

----- [www.castalia.fr](http://www.castalia.fr)