

NATROAD RESPONSE TO HEAVY VEHICLE NATIONAL LAW DRAFT REGULATORY IMPACT STATEMENT

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Executive Summary

NatRoad is the largest road transport operators association in Australia representing over 1100 trucking businesses ranging from owner drivers through to multinational logistics providers. Our members span the country with the majority operating trucks that cross State and Territory borders every day.

NatRoad has been a strong advocate for national regulation and released an interim policy position in December 2010. A member survey conducted in 2011 indicated that the establishment of a national heavy vehicle regulator (NHVR) remains the top priority for road transport operators.

After considering the 2011 *Heavy Vehicle National Law Draft Regulatory Impact Statement* (RIS), NatRoad continues to support the implementation of nationally consistent laws administered by a NHVR.

NatRoad agrees that the move towards national regulation will have significant net benefits for road transport operators, industry, government and the community in the order of billions of dollars. This outcome is of course highly dependent on the passage of nationally consistent legislation in all jurisdictions and adequate resourcing of the regulator.

There are some vitally important issues that have not been sufficiently addressed in the RIS relating to funding arrangements and the structure of the NHVR. Further industry consultation is required on these matters that will fundamentally influence the strength and functionality of the NHVR.

The NHVR should do more than simply replace the role of state and territory heavy vehicle regulators. There are many important functions that will require increased resourcing such as chain of responsibility enforcement, information management, access management & facilitation, industry collaboration, education, national mapping, coordination of safety initiatives and service interfaces.

While supportive of the majority of 'high' and 'medium' impact variations outlined in the RIS, NatRoad has some significant concerns about key proposals.

It is greatly disappointing that jurisdictions have not agreed to minimum parameters for higher mass limits (HML). Industry has invested a great deal in road friendly suspension and accreditation without realising the benefits. The current proposal will effectively amount to a continuation of the status quo and NatRoad is highly sceptical of the \$1.75 billion indicative gain attributable to HML identified in the RIS under this scenario.

Rather than introducing HML variations, jurisdictions should adopt the model law while providing for individual network access arrangements such as the case for B doubles, B triples and single trailer combinations. Any jurisdictional variation should also include a maximum 3 year sunset clause to require each government to periodically reconsider the issue until such time as national consistency is achieved.

While supportive of the proposal to revamp the current Advanced Fatigue Management (AFM) system, NatRoad recommends that:

- the WA system be considered as part of the review;
- consideration be given to the establishment of one national fatigue management system;
- increased flexibility be included to alleviate late-loading issues;
- there should be no disadvantage for AFM accredited operators;
- the NHVR should be responsible for accreditation decisions; and
- industry be more closely consulted than in the past.

The national extension of short-rest and split-rest defences is also welcomed, however these should be 'as of right' allowances and guidelines are required to ensure that drivers and enforcement officers have a common understanding of proper application.

An improved decision-making framework has potential to deliver significant benefits to the community and industry, particularly for access and PBS applications. NatRoad generally supports the proposal but has recommended that:

- binding assessment guidelines be developed for all parts of the decision chain and that this occur in consultation with industry;
- the decisions of jurisdictions be open to external review;
- review rights not extend to third parties (i.e. persons unconnected with the application); and
- further consultation be undertaken on:
 - notice/permit wording (to reduce ambiguity);
 - information requirements for access applications; and
 - compliance risk exposure for drivers on emergency routes.

The inclusion of a provision to improve certainty relating to the return of seized goods is supported. NatRoad has however raised concerns about associated provisions governing the circumstances in which goods may be seized and the length of time they may be held before a case proceeds.

NatRoad is opposed to the application of registration sanctions for unpaid fines in respect of offences that are not connected with road transport law and also considers that the establishment of new monetary penalties for non-compliance with the NHVAS is unwarranted.

NatRoad has noted that there are many outstanding issues concerning the scope of service agreement to be established between the NHVR and state and territory regulators. It is recommended that specific training in the interpretation and application of the heavy vehicle national law (HVNL) be a condition of the service agreements and that authorised officers be required to participate in interstate exchange programs. In addition, NatRoad recommends that police should also be brought under the HVNL (and made subject to the same service agreements and training requirements proposed for other service providers) and that the NHVR have the power to review, and if necessary withdraw, any infringement notice issued by an authorised officer.

The establishment of a national registration scheme is likely to sound a death knell for the Federal Interstate Registration Scheme (FIRS). Forced registration transfers required as a result of the HVNL must not disadvantage affected operators.

The application of nationally consistent, rather than truly national HVNL, will require the continued operation of existing state and territory provisions concerning the prosecution of alleged regulatory breaches. To promote fairness and remove cost barriers in defending alleged breaches, NatRoad recommends that a person charged under the HVNL should be free to move a court appearance to a local court closest to their home base.

NatRoad understands that police services have raised concerns about certain provisions of the HVNL relating to powers of search and seizure. While NatRoad does not support legislation that would unduly infringe an individual's right to privacy and personal security, it would seem reasonable that an authorised officer be permitted to search personal possessions if there are reasonable grounds to suspect that evidence of an offence will be found.

To prevent unnecessary disputes arising between consigners and drivers as a result of compliance and enforcement activities, NatRoad recommends that a new provision be included in Chapter 9 (Enforcement) of the HVNL that compels an authorised officer to either replace a trailer seal (with an official seal) or provide documentation to an affected driver stating that a seal was broken as part of an authorised inspection.

The establishment of national laws is just one step on the road to regulatory reform in the road transport sector. The current process does not aim to reform the model heavy vehicle laws beyond removing inter-jurisdictional inconsistencies. Ongoing work will be required to reduce regulatory complexity within the HVNL and to redress the inherent punitive approach that undervalues positive encouragement and overvalues harsh sanctions for inadvertent administrative errors.

Ultimately, the success of the initiative will hinge on securing the ongoing support of industry, governments, regulators and the community. With tight timeframes scheduled for commencement, urgent follow up consultation will be required to resolve all of the outstanding issues to the satisfaction of all stakeholders.

It is against this background that NatRoad sounds a note of caution. It will not be acceptable for the NHVR to become a 9th regulator that is itself hamstrung by persistent national inconsistencies. NatRoad calls on all Australian governments to adhere to the spirit of the original COAG agreement to improve national productivity by establishing nationally consistent heavy vehicle laws administered by an independent authority with the vision, 'teeth' and **resources** to tackle today's problems as well as the problems that will undoubtedly arise in the future.

1.0 Introduction

On 28 February 2011, the National Transport Commission (NTC) released for public consultation a package of draft model heavy vehicle national laws (HVNL) and regulatory impact statement (RIS). The laws will support the establishment of a National Heavy Vehicle Regulator (NHVR) for vehicles over 4.5 tonnes, to commence by January 2013, as agreed by the Council of Australian Governments.

The model laws apply to a range of regulatory areas including registration, mass and loading, fatigue management, as well as compliance and enforcement.

NatRoad appreciates the opportunity to respond to the *Heavy Vehicle National Law Draft Regulatory Impact Statement*.

The RIS marks an important milestone in the move towards national regulation of heavy vehicles in Australia and NatRoad looks forward to further progression of this once in a generation opportunity.

1.1 About NatRoad

NatRoad, the National Road Transport Operators Association, was formed in 1994 following the merger of the National Transport Federation and the Long Distance Road Transport Association.

NatRoad is the largest road transport operators association in Australia representing over 1100 trucking businesses ranging from owner drivers through to multinational logistics providers. Our members span the country with the majority operating trucks that cross State and Territory borders every day.

Under its Mission Statement, NatRoad is committed to provide leadership, support and development of its members, staff and stakeholders in the road transport industry. It strives to maximise members' long term viability by providing tools, networking opportunities and industry education within the following core values:

- National Uniformity of Regulation;
- Promotion of Safety and Compliance;
- Environmental Sustainability;
- Positive Community Awareness;
- Fair and equitable Industrial Relations framework.

2.0 Structure of the NatRoad Response

This submission provides general comments on the RIS and addresses specific 'high impact' and 'medium impact' issues raised by the NTC.

NatRoad has participated in the development of an Australian Trucking Association (ATA) submission made under separate cover. NatRoad supports the ATA submission except where inconsistent with the NatRoad submission. In particular, NatRoad is supportive of the comments relating to Appendix A (non-RIS items) and the technical comments relating to legislative drafting.

NatRoad may also seek to tender a further supplementary submission addressing other matters raised as part of our ongoing member consultations.

3.0 Framework for Analysis

3.1 NatRoad Research February 2009

Following the release of the Consultation Regulatory Impact Statement in December 2008, NatRoad commissioned Castalia Strategic Advisors to respond. The subsequent report *Securing a National Approach to Heavy Vehicle Regulation* was released in February 2009 and found that the best option for Australia was to move to a National Heavy Vehicle Regulator with expected benefits exceeding \$1.7 billion in net present value terms.

The 2011 RIS, and the NatRoad response to it, is predicated on the assumption that a NHVR is the best option for Australia.

3.2 NatRoad Policy Position December 2010

In line with the core values outlined at section 1.1, NatRoad has been a strong advocate for national regulation and released a policy position on the proposed NHVR in December 2010. The policy position addresses over 100 individual issues while also identifying six key criteria against which NatRoad will review the most recent proposals:

1. Consistent outcomes with a focus on safety, efficiency and effectiveness;
2. Well defined function and role of the regulator;
3. Transparency and fairness;
4. Educative rather than punitive approach;
5. Engagement with the trucking industry; and
6. Process for review.

3.3 Industry Consultation on the 2011 HVNL RIS

NatRoad nominated a local industry representative to make a short presentation at seven of the NTC and NHVR Project Office consultation forums held throughout Australia during March and April 2011 (Table1). Each presenter provided the NTC and forum participants with a local perspective on the issues that require a national solution and articulated NatRoad's first impressions of the RIS and associated HVNL.

Forum Location	NatRoad Presenter	Representing
Hobart	Colin Howlett	Howlett Civic Constructions
Albury-Wodonga	Kelvin Baxter	Kelvin Baxter Transport Pty Ltd
Canberra	Bernie Belacic	NatRoad Pty Ltd
Perth	Steve Marley	Marley's Transport
Sydney	Allan Thornley	Shaw's Darwin Transport Pty Ltd
Dubbo	John Morris	John & Trish Morris Pty Ltd
Townsville	Barb Anderson	Anderson Transport Services (NQ) Pty Ltd

Table 1: *NatRoad Presenters at NTC NHVR Forums*

NatRoad also consulted with our members on the key issues raised in the RIS and associated laws as part of eight Business Health Check Workshops facilitated by NatRoad in March and April 2011. NTC representatives attended the Laverton Workshop on 15 April 2011, making a presentation and answering questions on the RIS and associated laws.

NatRoad consulted broadly with members via our weekly newsletter 'NatRoad News' and via a survey which asked members to identify the most important issues affecting their business and also the most important issues that should be addressed by a NHVR.

The NatRoad Industry Issues and Operations Committee considered the key issues posed in the RIS and has endorsed this NatRoad submission. As a member of the Australian Trucking Association, NatRoad has participated in the development of an ATA submission which also comments on technical aspects of the proposed laws.

NatRoad will continue to consult with road transport operators on the proposed HVNL during our annual NatRoad Conference in August 2011 and as part of our Business Health Check Workshops over the remainder of 2011.

4.0 National Regulation

The case for national regulation of the heavy vehicle sector has been well made by the 2009 RIS *A National Framework for Regulation, Registration and Licensing of Heavy Vehicles* and the report *Securing a National Approach to Heavy Vehicle Regulation* commissioned by NatRoad in 2009.

The 2011 RIS *Heavy Vehicle National Law* estimates that, if passed by State and Territory Governments unchanged, the model laws have the potential to deliver gains of \$12.4 billion over 20 years in net present value terms.

If these benefits are to be realised, it is imperative that State and Territory governments and bureaucracies have the courage and foresight to put away their past protectionist approaches and realise that they are not so different from one another – they are more the same than ever.

In years gone by a young Australia experienced significant competition between the States and Territories in areas such as primary production, construction and manufacturing. In an increasingly globalised economy, it is clear that the primary source of competition now emanates from overseas economies, many of whom are not burdened by multiple layers of overlapping Federal, State, Territory and local regulation.

The modern reality is that road transport is a borderless industry at the core of the Australian economy. Almost everything we produce, consume or export has a freight component. With the freight task growing by more than 7% each year, it is imperative that we are able to increase the safety and productivity of our existing fleet and infrastructure while reducing costs at the same time.

If we want to compete effectively as a nation, we must remove the inter-jurisdictional regulatory inconsistencies that add unnecessary cost and red tape to doing business in Australia. With some notable exceptions, such as the proposals for Higher Mass Limits (as outlined in section 7.8), it appears that national laws, administered by a single NHVR, are the best way to achieve this outcome in Australia.

Australian road transport operators are highly cognisant of the need for national regulatory reform. In a 2011 NatRoad survey, operators nominated the establishment of a NHVR as the highest priority issue for the road transport industry. The most important issues for the NHVR were identified as:

1. Improving consistency in regulation and enforcement across jurisdictions;
2. Decreasing the overall compliance / regulatory burden; and
3. Reining in individual State bureaucracies and police.

Arguably, the proposed NHVR and HVNL will progress all of these priorities. NatRoad remains supportive of national regulation 'in principle', subject to acceptable resolution of the issues raised in this submission.

5.0 RIS Structure and Methodology

5.1 General

There are several concurrent processes underway affecting the finalisation of HVNL to be considered by the Australian Transport Council in August 2011. For example:

- There are matters that remain under the consideration of the expert panel (and it is only interim recommendations that are included in the RIS);
- The issue of counting hours for fatigue management is under separate consideration;
- Penalties for each offence are not included in the draft HVNL (a policy proposal paper will be released by September 2011);
- Registration charging reform is under separate consideration;
- There is scant information available about the funding and resourcing of the proposed NHVR; and
- Model agreements for engaging state and territory service providers are not available.

It is disappointing that industry is not able to consider a full package of reform prior to the ATC vote and is therefore unable to have a holistic appreciation of the package. It is unlikely that industry will be privy to the final recommendations made to the ATC by the NTC and, given the tight timeframes for finalisation, it is unclear whether industry feedback provided as part of the RIS process will be adequately considered by the expert panel.

The arrangements for funding and resourcing of the NHVR, along with the scope and content of the service agreements established between the NHVR and the States and Territories are of exceptional importance. NatRoad believes it is critical that key industry associations such as NatRoad be consulted on such pivotal arrangements that will essentially determine the structure, functionality and strength of the NHVR.

5.2 Combined Impact Analysis

The recent history of regulatory impact analysis in the road transport sector has been to massively overestimate and under deliver on the benefits of proposed regulatory reform, for example:

- The 1996 Heavy Vehicle Registration RIS estimated benefits in the order of \$14.24m from simplified transfers (but only part of this benefit was realised because most states did not take up the recommendations);

- The 1998 RIS for HML estimated a net benefit of around \$476m. Recent estimates outlined in the 2011 RIS indicate that only around 10% of HML-complaint fleets are regularly benefiting from HML mass increases.
- The 2006 RIS on AFM estimated a take up rate of 11,300 drivers in 5,500 fleets realising an annual net benefit of \$143m (when in fact there have been only 21 approvals); and
- NatRoad members have indicated that proposals for easier network access for approved PBS vehicles have not materialised. The 2011 HVNL RIS indicates that in October 2009, just 55% of approved PBS vehicles were granted network access (although it is acknowledged that this figure has improved to 70% by February 2010).

Against this background it is difficult for many operators to accept the estimated gain outlined in the HVNL RIS of \$12.4 billion over 20 years in net present value terms. It is easy to be sceptical when the 2011 HVNL RIS estimates that continuation of the status quo for HML will result in a \$1.75 billion gain.

It appears that the mathematical model used to undertake the combined impact analysis is a 'top down' model that relies in large part on estimates from previous RIS (such as those outlined above). There also appears to be a critical reliance on some high level assumptions that, if modified, would have an enormous impact on the final estimations.

For example, while the proportional impact of productivity gains in the transport sector on GDP is most likely correct [i.e. 5% productivity = 0.2% GDP (or \$2.6b)], the 5% figure appears to have been chosen rather arbitrarily from a range of between 2% - 16% identified by the Productivity Commission (PC) in the *Road and Rail Freight Infrastructure Pricing Inquiry Report 2006*. In addition, the PC report has a broader focus than the HVNL RIS and it is a critical assumption that productivity gains would necessarily be equally split between the three identified reform areas i.e. that 33% of the total gain will be attributable to reducing regulatory fragmentation and improving the appropriateness of regulation.

While NatRoad is hesitant to accept the \$12.4 billion figure as anything more than one possible outcome, it is probably fair to assume that the line items contained in Table 4 of the RIS (Indicative Gains from a Single National Approach to Regulation) are proportionally linked to one another and that the relative net benefit of each item would remain constant if the macro assumptions were to be changed.

Putting aside the headline estimated net benefit, NatRoad interprets the findings as follows:

- There are likely to be significant benefits in establishing national regulation for heavy vehicles;
- Improving access arrangements accounts for more than 50% of the estimated benefit and this item deserves priority consideration;
- HML, Fatigue and IAP are also highly significant issues for consideration; and
- Gains will predominately be delivered via productivity increases and decreased compliance costs which will accrue to industry.

6.0 Transitional and Operational Costs of the Regulator

The RIS estimates that total development and implementation costs for the NHVR will be around \$84 million with ongoing costs of around \$171 million per year.

If the NHVR is to make a real difference in reducing red tape and improving the operation of the industry, several hundred full time staff will be required, backed up by solid IT platforms, contracted expertise and outsourced compliance and enforcement officers.

NatRoad members are somewhat apprehensive about the ongoing funding arrangements for the NHVR. This sentiment is rooted in concern about whether or not the regulator will become a ninth regulator or will substantially replace the roles of current regulators.

Fundamentally, the establishment of the NHVR is a cooperative effort between all states and territories rather than a federal initiative. As such, the responsibility for funding the ongoing operation of the NHVR should rest predominately with the states and territories involved. If the NHVR operates as intended, there should be significant administrative savings arising at the state and territory level as result of current services being provided more efficiently.

However, a well resourced NHVR has the potential to carry out an expanded range of important functions that are currently not undertaken. For example, the NHVR should:

- Greatly improve the enforcement of chain of responsibility provisions;
- Develop and maintain network access databases;
- Create a single portal for services to be provided to operators;
- Improve national mapping; and
- Play a greater role in developing and coordinating safety initiatives.

As the establishment of consistent national heavy vehicle laws administered by a national regulator is clearly in the national interest, there is an obligation on the Federal Government to contribute towards the successful implementation of the initiative. In particular, the Federal Government should favourably consider providing seed capital for transitional costs such as the development of compatible IT platforms, obtaining suitable premises and other capital items required for the commencement of operations.

It is appropriate for the States and Territories to at least maintain their current level of funding to allow any efficiency dividend to be directed towards expanding the range of activities that the regulator may undertake.

Other funds required for expanded operation of the NHVR will need to be included as part of the cost recovery model. However, NatRoad cautions that greatly increasing the overall level of fees and charges levied on the road transport industry would undermine support for the initiative and reflect poorly on the ability of Australian governments to introduce regulatory reform that simultaneously benefits industry, governments and the community.

7.0 Medium Impact Variation Analysis

7.1 Custom Plates

Proposal

It is proposed that existing jurisdictional arrangements for the sale of plates continue, subject to NHVR approval for assigning these plates to a heavy vehicle. The NHVR will record in the register of heavy vehicles details of the custom plates used on heavy vehicles. The NHVR would also operate as the registrar for standard heavy vehicle plates.

NatRoad Position

NatRoad supports the continued availability of custom plates for heavy vehicles. It is fitting for the NHVR to maintain a register of custom plates used on heavy vehicles if the current State and Territory-based arrangements for the production and sale of custom plates is to be continued.

7.2 Regulating Driver Fatigue Through OH&S Law

Proposal

The expert panel recommended retaining driver fatigue within transport law.

NatRoad Position

The primary aim of establishing national law is to reduce the red-tape burden by enshrining greater regulatory consistency. While NatRoad accepts that driver fatigue correctly belongs within transport law (while remaining consistent with generally applicable OH&S law), the point must be made that the recommended approach does not advance the unification of fatigue regulation or accreditation schemes.

From an operators' perspective, the preferred outcome is that a national system of driver fatigue law be developed, underpinned by a single national accreditation system e.g. NHVAS (or at least nationally consistent accreditation systems that achieve the same outcomes in the same circumstances e.g. TruckSafe).

Other RIS proposals relating to spray suppression and AFM are also of relevance in this regard. Removal of the requirement for spray suppression and the development of an AFM system that is more acceptable to WA and NT may go some of the way to reducing the barriers to national uniformity.

In addition, NatRoad notes that COAG agreed in 2008 to harmonise OH&S law in Australia and that consultations on model legislation undertaken by Safe Work Australia closed on 4 April 2011. National uniformity of OH&S law would further strengthen the case for national uniformity of driver fatigue legislation and NatRoad recommends that the NTC (or the NHVR depending upon convergent timeframes) keep open the prospect of a single national system for driver fatigue that includes WA and NT.

7.3 Short Rest Defence under Standard Hours Fatigue Management

Proposal

The expert panel recommends that the provision be retained in the national law.

NatRoad Position

The 2008 report *Audit of Rest Areas against National Guidelines* conducted by Austroads and managed by the National Transport Commission demonstrated that there are insufficient rest areas on all AusLink freight routes and that none of the audited routes fully met the spacing recommendations of the National Guidelines. Shortages are especially acute in New South Wales, Western Australia, South Australia, Tasmania and the Australian Capital Territory. There are many other examples of deficiencies known to NatRoad that fall outside of AusLink routes and NatRoad estimates that there is a national shortage of about 22,000 rest areas.

On this basis, NatRoad supports the extension of the defence all to jurisdictions under national law.

In some cases however, a rest area may merely be full or unavailable for another reason (e.g. access blocked, boggy ground etc) and NatRoad asserts that the defence must also apply in these circumstances. In addition, the short rest defence should also be available for drivers who are within 30 minutes of their home base to avoid the need to sleep in the cab when home facilities are otherwise available. In all cases, the defence must be available at the roadside rather than requiring a driver to mount a defence in court.

NatRoad recommends that the NHVR develop national guidelines in consultation with industry on the use of a short-rest provision so that drivers and inspectors have a common understanding of proper application. The guidelines must clarify the circumstances in which it is acceptable to use the short-rest provision as well as ensuring the burden of evidence for drivers using the provision is not unreasonable.

7.4 Split Rest Defence under BFM

Proposal

The expert panel recommends that the provision be retained in the national law.

NatRoad Position

One of the common criticisms of all current fatigue systems is that lack of flexibility can act to encourage operators to drive when they are tired - because to do otherwise would affect the subsequent timing of required rest breaks and jeopardise the total amount of driving time available to complete a trip.

The split rest defence under BFM allows greater flexibility for drivers to manage their own personal rest requirements, even though this comes at an effective cost of one hour of driving time within a 24hr period.

NatRoad supports the national application of this provision but believes that it is in the interests of safety to make the provision an 'as of right' so that that drivers can better manage their fatigue regime while also improving their access to better quality rest areas.

7.5 Work Diary

Proposal

The expert panel supports a national limit of 100km as provided in the model legislation.

NatRoad Position

In the spirit of enshrining greater national consistency, NatRoad supports the model law.

7.6 Reasonable Steps Defence to Prevent Driving while Fatigued

Proposal

The panel recommends retaining the model law in the national law.

NatRoad Position

NatRoad supports retaining the model law in the national law.

While acknowledging the NSW position (to seek greater certainty in fatigue management by imposing positive obligations), NatRoad concurs with the view of the panel that such an approach would restrict the ways that fatigue can be managed. The reasonable steps defence maintains maximum flexibility.

7.7 Three Strikes Policy

Proposal

The expert panel recommends that the 'three strikes' policy not be included in the national law.

NatRoad Position

NatRoad supports the recommendation that the 'three strikes' policy not be included in the national law.

While NatRoad was originally supportive of the policy as a means of establishing a link between the operational control of vehicle owners (i.e. the maintenance of speed limiters) and the ability of drivers to exceed 100km per hour, the application of the policy in NSW to offences occurring in areas with posted speed limits of less than 100km per hour has seen this support eroded. Clearly, speed limiters are not effective in preventing speeding in these areas and it is not appropriate to jeopardise the business viability of an operator through applying penalties in respect of offences outside of the realm of the operator's control.

Speed limiters are also less effective in controlling the speed of vehicles running off long declines. NatRoad is aware of some instances in which an operator has been penalised because a driver has incorrectly relied on the speed limiter and not used regular methods to control the speed of a vehicle in these circumstances. The actions of an individual driver should not automatically translate into a penalty for the operator.

NatRoad agrees that chain of responsibility obligations arguably achieve the same outcomes and can be applied on a more nationally consistent basis than a policy supported by a single jurisdiction only.

However, NatRoad recommends that the chain of responsibility should extend to the NHVR as a 'responsibility entity', and as such, compel the regulator to advise transport operators of offences committed by drivers of their vehicle (i.e. if the offending driver is not the owner of the vehicle, the issuing authority should be compelled to advise the operator that the vehicle has been involved in the offence). Ideally, notice would be dispatched to operators within one working day of the alleged breach or sooner via email.

It is in the public interest that safety issues should override privacy considerations that may concurrently apply, and it is reasonable that as a person licensed to drive a heavy vehicle should be subject to reasonable disclosures concerning their driving behaviour on public roads. The ability of operators to take reasonable steps to address recidivist behaviour is otherwise limited.

7.8 HML for Eligible Vehicles

Proposal

Retention of the model law is recommended, recognising that jurisdictions will introduce variations to effectively maintain the status quo.

NatRoad Position

NatRoad supports retaining the model law in the national law but is disappointed with the inability of the jurisdictions to reach national agreement on this important component of the legislation.

The current proposal will effectively amount to a continuation of the status quo. Given that there is no net regulatory change, NatRoad is highly sceptical that there will be a \$1.75 billion net financial benefit attributable to HML as identified in the RIS scenario.

The NTC has stated that the extent of jurisdictional derogations can be expected to reduce over time, yet it is also possible that some jurisdictions might consider HML to be an internal infrastructure matter that should remain 'outside of national control' in perpetuity. History suggests a high likelihood of such an outcome.

NatRoad members have serious concerns about the current proposal. Many consider that the NTC's inability to gain national consensus on HML demonstrates the inherent flaws in pursuing a 'nationally consistent' rather than a truly national approach and may be the tip of an iceberg that ultimately sinks the initiative and consigns the NHVR to being a 9th regulator which is itself hamstrung by inter-jurisdictional inconsistencies. Failure on HML will sow the seeds of doubt in many minds within the road transport industry.

While NatRoad does not want to see the loss of local productivity variations in any move towards national consistency on HML, there is no reason why jurisdictions should not be able to agree on minimum parameters that can be nationally applicable. One alternative would be for all jurisdictions to adopt the model law but provide for individual network access arrangements such as the case for B double, B triples and single trailer combinations.

It appears that non-agreement to minimum HML parameters will also impact in other important areas. What will this mean for the requirements to carry notices and permits if HML is variable in each jurisdiction? Will the NHVR have the power to remove IAP as a HML access condition in NSW? Will the NHVR have sufficient grounds to ask a road authority to overturn a decision of a road manager if inappropriate conditions are proposed for a HML application?

Industry has invested a great deal in road friendly suspension and accreditation without realising the benefits of HML. The engineering analysis of road friendly suspension demonstrates that higher mass can be carried on each axle group without an increase in road wear. Any jurisdiction that deviates from the model law that allows HML with road friendly suspension should be made to justify the deviation and commit to addressing the reasons for justification in a reasonable timeframe (e.g. 3 years) to allow HML access.

The NTC should recommend that any jurisdiction that enacts such variations should also include a maximum 3 year sunset clause to require each government to periodically re-address the issue until such time as national consistency is achieved.

7.9 Registering Codes of Practice

Proposal

Retaining the model law in the national law is recommended.

NatRoad Position

NatRoad supports retaining the model law in the national law.

Official recognition of codes of practice has potential benefits for the road transport industry. Codes may include best practice guidelines, give clearer guidance on specific regulatory matters and adherence to a code can be prima facie evidence that 'reasonable steps' have been undertaken by an operator. Codes can also be modified over time to reflect changes that occur within an industry and may be embraced more fully by operators who, if involved in the development of the code, feel a sense of ownership and participation rather than a sense of over regulation and oppression.

Codes can also be a lower cost but effective regulatory tool for governments, particularly when seeking to lift the performance of an industry beyond the minimum requirements of legislation.

The opposition of some jurisdictions to the accreditation of codes appears to demonstrate a reluctance to move away from a draconian 'command and control' approach involving 'minimum requirements' and 'maximum penalties'. While such an approach may have a place in regulating a small minority of operators who set out to break the law, a successful code of practice has the potential to recognize good operators (who inadvertently make mistakes) and provide for dispensation of penalties that could otherwise jeopardize business viability without improving public safety. A key element of any successful code would be that it could translate into a 'road side' defense to avoid the need to defend a prosecution in court.

While NatRoad is unaware of a current code of practice with wide application in the general road transport sector, NatRoad is interested in the prospect of working with both industry and regulators to further investigate the scope and potential for a generally applicable code to be developed.

In order to assist industry to develop acceptable codes and to provide the NHVR with a framework for the assessment and accreditation of proposed codes, it will be necessary for the NHVR to develop and publish guidelines that outline minimum requirements (e.g. auditing) in consultation with industry. NatRoad recommends that the HVNL stipulate the broad aims of codes of practice (such as improving regulatory compliance, improving public confidence, or assisting industry to lift performance beyond minimum regulatory requirements) to effectively establish the terms of reference under which the NHVR guidelines would be developed.

7.10 Regulation of Pilot and Escort Vehicle Drivers

Proposal

The proposal involves the development of a nationally consistent approach to the requirements for pilots and escorts. In the meantime, it is proposed to improve mutual recognition and establish bilateral arrangements for police and authorised officers.

NatRoad Position

NatRoad supports the development of a nationally consistent regime for pilots and escorts. Given that the NHVR will be the central body responsible for issuing the conditions that require the use of pilots and escorts, it follows that the NHVR will need to develop a suitable risk framework that can be applied nationally. If risks are to be addressed on a nationally consistent basis, a common understanding of the skills, training, accreditation and legal authority that is required of pilots and escorts will be required. Ultimately, pilots and escorts with the same attributes should be accredited to the same level.

The proposal for interim mutual recognition of pilots and escorts is supported by NatRoad. In particular, NatRoad members have strongly supported the proposal for bilateral arrangements for police and authorised offers from an originating jurisdiction to be able to complete a full trip without the requirement for a changeover when crossing the border. Members have stated that changeovers are particularly difficult to organise and can often result in vehicles becoming grounded on the border for several hours while waiting for a replacement pilot or escort to arrive.

7.11 Driver Licence Sanctions for Mass, Dimension and Load Restraint Breaches

Proposal

The expert panel recommends that the HVNL be modified to remove licence sanctions.

NatRoad Position

NatRoad agrees with the intent of the model laws not to permit court discretion to apply licence sanctions for compliance and enforcement offences, with the exception of severe mass dimension loading (MDL) breach.

While understanding the logic of removing the provision from the HVNL (given that a decision has been taken not to include driver licence matters in the national law at this time) it is also the case that there is no guarantee that driver licensing will subsequently be included in the HVNL or that provisions relating to driver licensing will be addressed.

On this basis, NatRoad recommends that the provisions of the model law are included in the HVNL until such time as they can be transferred into new and specific heavy vehicle licensing law.

7.12 Vehicle Registration Sanctions for Mass, Dimension and Load Restraint Breaches

Proposal

The panel recommends retaining the model law in the national law.

NatRoad Position

In line with the position outlined at 7.11 above, NatRoad supports retaining the model law in the national law. NatRoad also acknowledges the important role of chain of responsibility ensuring other parties that influence an outcome on the road are also held to account.

7.13 Special-purpose Trailers

Proposal

That the national law recognises special purpose trailers.

NatRoad Position

NatRoad supports an arrangement in which the NHVR can issue permits for OSOM special purpose trailers. Enshrining the Victorian definition of special purpose trailer in the national law appears to be a workable solution that will provide improved legal certainty while also establishing a mechanism for these vehicles to be towed on the road network.

7.14 Treatment of Silage Trailers

Proposal

That the national law recognises special purpose trailers.

NatRoad Position

One of the primary aims of heavy vehicle registration law is to restrict dangerous vehicles from accessing the road network. Broad exemptions from registration requirements prevent road authorities from issuing permits with attached conditions that would improve safety levels when such vehicles are travelling on public roads.

The nature of the particular problem raised in the RIS relates only to silage trailers. However, the proposed solution is broad in nature and has the potential to allow a range of load carrying agricultural vehicles to travel on public roads without paying road user and access charges. This may create an incentive to operate such vehicles in a manner equivalent to that of a truck or other vehicle that attracts these charges.

While NatRoad has no issue with the transfer of these vehicles from farm to farm over short distances, issues of equity arise if load carrying vehicles are allowed to travel longer distances, particularly if the destination is not part of an agricultural property that is not contiguous. For example, these vehicles might be used to pick up or deliver produce from unrelated properties or commercial entities.

NatRoad recommends that the different types of load carrying agricultural implements that are exempt under the HVNL should be specifically listed with limits placed on the movement of such vehicles, similarly to that contained in HVNL s22 which restricts movement of vehicles to travelling between two parcels of land used for primary production with a distance of not more than 500m via the most direct route.

7.15 Obligations to Carry Accreditation Documents

Proposal

It is recommended that the HVNL requires operators to take 'all reasonable steps' to ensure that drivers are carrying their accreditation documents.

NatRoad Position

NatRoad considers that the 'reasonable steps' provision is preferable to the current strict liability approach.

However, NatRoad's general position on the carrying of documentation is that requirements should be reduced or removed altogether where possible. In the age of technology in which regulators are increasingly requiring real time tracking of heavy vehicles (IAP) and posting notices and alerts online in the belief on the understanding that this is sufficient for ensuring that vital information is available to all drivers (including those actually on the road at the time), it seems reasonable that enforcement officers should also be able to access copies of all permits, notices and accreditation documents (including lists of accredited drivers) at the roadside.

NatRoad considers that establishing a real time interface between enforcement officers and NHVR databases is of critical importance and recommends that new investment be directed to this endeavour. Ideally, officers would have a 2-way communication conduit that could also facilitate the notification of vehicle owners about alleged driver offences as suggested at section 7.7.

7.16 Driver not Required to Carry Documents

Proposal

That national law require Class 1 vehicle drivers operating under a permit to carry the permit, and for it to be an offence to fail to do so.

That the national law require Class 1 vehicle drivers operating under a notice to be subject to more general conditions for a particular route, and as such may not necessarily be required to carry a copy of the Class 1 notice.

NatRoad Position

While NatRoad would prefer all documentation requirements to be reduced or removed, the requirement to carry a permit (either physically or electronically) is understandable given that permits are more unique and variable than notices and that it may be unreasonable for inspectors to have knowledge of all individual permits on issue.

NatRoad supports the proposal that drivers operating under a Class 1 notice would not necessarily be required to carry a notice given that the general nature of the notices should result in operators, drivers and inspectors being familiar with notice terms. While not addressed in the RIS, NatRoad understands that this provision will also apply to Class 3 notices.

One item of concern however is that there remains potential for the conditions attached to a particular notice to require that the notice be carried. Such a provision would of course undermine the intent of the proposal and, if inspectors were to apply ongoing pressure in this regard, might even become exercised regularly.

NatRoad understands that there is a logical progression from a permit, to a notice, to a regulatory provision that allows certain conduct. In effect, notices are created to avoid the need to issue a large number of generally identical permits, while notices may eventually become regulation if issued in perpetuity with unchanging conditions. NatRoad recommends that, if the threshold from permit to notice is crossed (i.e. there is widespread and common use of the arrangement), then the requirement to carry the documentation should be removed.

In circumstances where a driver is required to carry a notice or a permit, the HVNL must allow a driver to carry the document in an accessible electronic form (e.g. a scanned PDF) to reduce the need to carry a large amount of paperwork in the cab.

7.17 Returning Seized Goods

Proposal

It is recommended that the HVNL require the return of seized goods when they are no longer required as evidence or otherwise as part of an investigation.

NatRoad Position

NatRoad supports the inclusion of a provision to return seized goods when they are no longer required as evidence or otherwise as part of an investigation.

NatRoad does not however support the associated provision at s483 (2) (a) that requires the return of a thing at the end of 2 years after a seizure. Depending upon the nature of the item, seizure may have a significant detrimental impact on the operation of a business before any decision has been made concerning the innocence or guilt of an operator. While NatRoad understands that it may take some time to decide whether or not a particular case should proceed, the holding of an item for 2 years is nonetheless excessive and NatRoad recommends that this limit should be reduced to no more than 6 months.

NatRoad also recommends that a new provision be included in the HVNL which establishes a threshold test for determining the circumstances in which items may be seized. In this regard, it will be necessary for the NHVR to consult with industry to develop guidelines for the use of operators and enforcement officers to ensure that the thresholds are well understood. Generally, authorised officers should not have powers to seize items in connection with minor breaches.

7.18 Restorations of Vehicles, Combinations or Premises

Proposal

That the national law give the property owner the right to compensation for property damaged through the 'unreasonable exercise of enforcement powers'.

NatRoad Position

NatRoad supports the proposal that a person suffering a loss through the 'unreasonable exercise of enforcement powers' may elect to receive monetary compensation rather than to have the goods repaired. A proposed provision is not yet included in the draft HVNL and NatRoad is not in a position to comment on the detail of this proposal at this stage which should include:

- Agreed methods for calculating the monetary value of a loss (including any consequential loss arising from business disruption);
- Timeframes for the payment of monetary compensation; and
- Mechanisms for resolving disputes concerning agreed values.

7.19 Places where Powers can be Exercised

Proposal

Pending further advice as to the value delivered by the variation, the expert panel recommends that the variation not be included in the national law.

NatRoad Position

NatRoad supports the retention of the model law provision in the HVNL. It is not appropriate for inspectors to be empowered to pursue vehicles 'seen on a public road' onto private property as is the case in NSW. Such a power would be inconsistent with other provisions limiting the power of officers to enter private property.

7.20 Detaining a Vehicle

Proposal

The expert panel recommends that the model law be retained in the national law and that the variation be excluded.

NatRoad Position

NatRoad supports the RIS proposal that inspectors may stop a vehicle until such time as a breach is rectified.

The NSW variation which gives authorised officers complete discretion to ‘detain’ a vehicle on ‘suspicion’ is unreasonable and has the potential to unfairly impact on transport operations - particularly in cases where breaches are not found or unreasonable requirements for post rectification inspections are imposed. Suspected breaches must be articulated to drivers as soon as possible and vehicles must be free to leave as soon as breaches are rectified.

7.21 Intelligent Access Program (IAP) Record Retention

Proposal

That the model law be retained to manage the risk of valuable information being destroyed.

NatRoad Position

While IAP data is sensitive information that should not be held indefinitely, this information is of course also useful information for monitoring compliance and enforcement purposes. A level of certainty is required by all parties concerning the collection, retention and destruction of IAP data.

In the interests of certainty and consistency, NatRoad supports the retention of the model law that requires the destruction of sensitive IAP data after one year. The NSW technicality allowing data to be destroyed anytime within 12 months from collection is not supported.

7.22 Administration Fees

Proposal

That the regulator reviews, determines and publishes administration fees, applying cost-recovery principles.

NatRoad Position

NatRoad supports the application of cost recovery principles in the determination of administration fees for services such as issuing exemptions or permits.

While NatRoad agrees that the application of administration fees is not of sufficient importance to require an annual RIS or be part of the business of the ATC, more information concerning the actual mechanisms for determining fees is required before NatRoad can support the proposal that this function should be an internal responsibility of the NHVR.

NatRoad recommends that the NTC develop an issues paper canvassing options that might be used by the NHVR to annually determine administration fees, including consideration of:

- Methodologies for initially calculating and subsequently reviewing fees;
- Indexing methodologies (e.g. annually v 3 year rolling average & mechanisms to ensure that indexing does not exceed actual cost increases for NHVR);
- Policies concerning cross-subsidy of service types;
- Policies for national consistency of fees;
- Any linkages with service agreements in each State and Territory;
- Use of funds collected within the NHVR (i.e. will they be quarantined, consolidated or distributed/held by service providers);
- Providing reasonable notice of fee increases; and
- Ongoing consultation with industry.

8.0 High Impact Variation Analysis

8.1 Decision Making Frameworks

Proposal

That a new decision-making framework be developed.

NatRoad Position

NatRoad supports 'in principle' the development of a new decision-making framework to improve the co-ordination of decisions that require input from multiple authorities including the NHVR, Commonwealth, states, territories and local councils.

While a particular framework is not recommended by the RIS, broad guidance is provided concerning options, frameworks, key components and processes.

The RIS estimates that the largest potential gains under a single national approach to regulation will arise from improvements in access arrangements for restricted vehicles (\$7bn). Thus, while also important in many other areas including registration, accreditation, PBS, HML and OSOM, the decision making framework for considering RAV applications is of obvious critical importance.

NatRoad members are particularly supportive of the establishment of a single contact point for all regulatory services, including access applications. This proposal will significantly reduce the complexity of identifying relevant authorities and coordinating multiple applications for a single access route.

Our members are also supportive of the NHVR promptly liaising with all jurisdictions concerned and making a final determination before issuing a decision to an applicant. NatRoad welcomes the proposal to provide reasons to all unsuccessful applicants and to provide avenues to seek review of decisions. This is consistent with contemporary administrative decision-making and will facilitate a process through which applicants may refine and re-submit applications potentially leading to improved access outcomes. The provision of reasons will also have two additional benefits:

1. Applicants who are aware of the reasons for a decision are more likely to be satisfied with the outcomes and less likely to seek a review; and
2. Applicants will be better equipped to exercise an option to seek a review should they believe it is warranted.

It is important that applicants are able to track the status of applications via a web-portal or telephone request and discussions with NTC representatives indicates that this will be catered for in the proposal. NatRoad understands that the NHVR will record the results of all access applications and periodically publish information that can assist peak stakeholders such as industry bodies and governments to identify access 'hot spots' with a view to taking action to address access impediments. Over time, it is likely that significant benefits could be delivered through targeted infrastructure improvements pursued on the basis of such information.

While NatRoad is supportive of the NHVR assuming the role of decision-maker on all matters pertaining to a vehicle (e.g. safety), some concern remains about the ongoing role of road authorities and road managers on considerations relating to infrastructure and amenity and their ability to refuse applications or unilaterally impose conditions. Many NatRoad members hold that the most promising option for promoting consistency, improving decision-making timeframes and improving access outcomes would be to centralise all decision making authority within the NHVR. In particular, NatRoad considers that there is potential for enormous productivity benefits if the NHVR was able to take effective control of 'last mile' access applications.

Given the inescapable nexus between jurisdictional sovereignty, road funding arrangements and the choice of legislative arrangement (i.e. nationally consistent state and territory legislation as opposed to commonwealth legislation), NatRoad recognises that road authorities and managers will retain a significant role in the decision-making process under the proposed arrangements.

The proposal for the NHVR to develop and issue Ministerially approved evaluative tools including decision-making guidelines has some merit for promoting consistent outcomes, however, the non-binding nature of the guidelines and the lack of certainty about whether or not guidelines will actually be made does little to address the underlying problem of manifold authority. NatRoad recommends that guidelines be developed in consultation with industry to cover all aspects of the decision making process and that these guidelines be binding on all road authorities and road managers.

NatRoad is pleased that options for applicants to seek a review of decisions will be available and that the NHVR may ask the road authority to review (and possibly overturn) a decision of a road manager. It will be important to ensure that review rights extend only to applicants and not to third parties (e.g. competitors) who may seek to interfere with or perpetually extend the decision-making process to gain a commercial advantage.

It is disappointing that the decisions of road managers and road authorities will not be open to external review as are the decisions of the NHVR. Taken with the concerns outlined above (relating to persistent manifold jurisdictional authority and the non-binding nature of decision-making guidelines), NatRoad considers that road managers and road authorities will essentially remain unaccountable for the decisions for which they are responsible.

This is unacceptable in a progressive and open society and is out of kilter with modern expectations of fair and transparent governance. NatRoad strongly recommends that all decisions be open to independent, external review and that the terms of reference for any such review include the consideration of any relevant evaluative tools developed by the NHVR.

NatRoad members have voiced concerns about the ambiguity of notices and permits issued under current arrangements (e.g. current notices might require a driver to notify police before crossing a bridge but the police will interpret this as requiring an escort of the entire journey). If the NHVR is to become the single issuer of notices and permits, NatRoad recommends that both industry and police jurisdictions are included in future consultations to develop nationally acceptable authorisation documents to ensure that there is a common understanding by all parties about the meaning of the usual inclusions.

Our members have also raised other issues concerning the information required to be supplied for some types of applications (e.g. proposed PBS routes can be too specific) and the non-compliance exposure of operators travelling under permits when diverted onto unfamiliar routes during emergencies. NatRoad recommends that these matters should form part of general consultations on the development of permits and notices systems to be used by the NHVR.

The creation of a one-stop-shop will mean that the NHVR will receive an extraordinarily high number of applications on a wide range of regulatory matters. NatRoad is concerned that unless the NHVR is adequately resourced, the regulator will become a bottleneck and decision-making timeframes will blow out to unacceptable levels. If this occurs, and decision-making outcomes are not also improved, the NHVR will essentially become a ninth and unwelcome layer of bureaucracy burdening the industry with delay and additional costs.

To enable industry to consider whether or not resourcing issues have been adequately dealt with, NatRoad recommends that the NHVR Project Office publish further consultation paper outlining the proposed structure and resourcing of the NHVR, including the proposed relationships with state and territory service providers prior to the passage of the HVNL in Queensland.

8.2 Advanced Fatigue Management

Proposal

The expert panel has recommended an overhaul of the Advanced Fatigue Management System.

NatRoad Position

NatRoad acknowledges the importance of fatigue management in crash risk reduction and supports the proposal to overhaul the AFM system. In light of the observed application and approval rates, it is clear that the current system is neither attractive to operators nor widely used as a risk prevention tool.

In recent consultations, NatRoad members have observed that:

- The current AFM system is too complicated, too restrictive, too narrow and there are too many minor offences;
- Enforcement officers often do not understand the differences in standard, BFM and AFM – fewer ‘tiers’ would reduce complexity;
- AFM incorrectly focuses on ‘work hours’ rather than ‘rest hours’;
- applications for AFM accreditation are currently too costly for smaller operators;
- Fatigue restrictions can impact greatly on fleet productivity without significant safety benefits;
- Regulators appear to assume that all applicants are seeking to work to the outer limits as often as possible rather than seeking flexibility in their operations - cultural change is required within the regulator; and
- The requirement to go to a national advisory board is onerous and should be abolished.

NatRoad notes that operators in the eastern states generally have a positive view of the Western Australian fatigue regime and many believe that any overhaul of AFM should include an examination of the potential to incorporate aspects of the WA system. There is also a prevailing view that the whole fatigue system (including standard, BFM and AFM) is riddled with problems and the NTC should not be tinkering at the edges with AFM, but rather should commence a broad review with the aim of establishing one fatigue regime that enables all operators to address any specific risks associated with longer driving times (up to a predetermined limit). Such a course of action may also pave the way for the establishment of a truly national fatigue regime.

One of the primary criticisms of current fatigue systems relates to an inherent lack of flexibility. The fundamental concern is that, while fatigue management systems are aimed at improving safety, this lack of flexibility often forces drivers to drive when they are tired - because to do otherwise would jeopardise the available driving time/breaks for the remainder of that day. If a driver feels drowsy they should be able to stop for a break without penalty. While NatRoad acknowledges the proposed extension of split-rest and short-rest defences, these do not go far enough and at a minimum should be 'as of right' allowances.

Lack of flexibility on one day can also cause knock-on effects for the following day or even for the rest of a counting period. When drivers are loaded late on a particular day (e.g. delayed until 4pm) this will effectively require a long haul driver to drive between 12am and 6am and they will not be able to recommence duty until 4pm the following day. Some type of reset mechanism is required to give drivers enough flexibility to accept loads at their usual time the following day so that a few hours delay on one particular day does not result in several days of unusual rest patterns.

Another general criticism of the fatigue regime relates to the fundamental assumption that underpins system design: that accident risk increases with time behind the wheel. The 2011 *Major Accident Investigation Report* published by the National Truck Accident Research Centre demonstrates that heavy vehicle crashes are most likely occur in the early outward bound stages of a journey. This suggests that fitness for duty is perhaps of greater influence in fatigue related accidents than the overall length of time behind the wheel.

AFM has been reviewed three times since 1994 and each time approved operators have been subject to AFM changes made for largely bureaucratic reasons. This latest proposal to review AFM should not be another backwards step and should under no circumstances disadvantage those operators who are already approved under the system. These businesses have already made a significant investment in gaining and maintaining an AFM approval and it is appropriate to afford a level of certainty concerning this investment.

NatRoad recommends that any review of current fatigue management systems should more heavily involve industry than has been the case in the past. It is important to involve a broad cross-section of the road transport industry, not just large operators who will have a different point of view to smaller, less flexible (and more numerous) operators. NatRoad would welcome an invitation to be involved in any overhaul of the fatigue regime.

NatRoad recommends that responsibility for all accreditation matters should rest with the NHVR.

8.3 Spray Suppression

Proposal

On the basis of available evidence, excluding the requirement for spray suppression devices from the national law is recommended.

NatRoad Position

NatRoad members have mixed views on the effectiveness of current spray suppression devices. A minority of members consider that these devices are somewhat effective at reducing spray levels, with some citing reasonable effectiveness on particular combinations such as two dogs.

The vast majority of NatRoad members concur with the research findings that spray suppression devices are ineffective when used on B-doubles. In addition, many have reported that the devices create other problems such as increasing wheel temperature, clogging up when used on unsealed roads or interfering with load restraint (particularly on low loader trailers).

On balance, NatRoad supports the proposal to exclude the requirement for spray suppression devices from the national law.

The development of a new standard for reducing vehicle spray carries risks that future requirements may be even more onerous than the current requirements. NatRoad recommends that industry must have close involvement in the development of any new standard.

8.4 Vehicle Inspections

Proposal

The expert panel has signalled a need for further research into a national heavy vehicle inspection system. In the interim, existing state based inspection regimes will continue. The expert panel has suggested that mutual recognition of inspection regimes may apply.

NatRoad Position

NatRoad supports the proposal for mutual recognition of existing state based inspection regimes. Ultimately, it is preferable that inspection standards, methods and requirements are harmonised and NatRoad supports further research in this endeavour.

NatRoad understands that the genesis of current state based inspection laws is rooted in a basic and common requirement that all vehicles be inspected upon first registration. Other periodic or random inspection requirements have been added by regulators over time in the often misguided belief that there is a strong relationship between the length of time between inspections and road safety. The research outlined in the RIS has determined that this supposed link is weak at best.

Periodic inspections create an incentive to have a vehicle roadworthy at a particular time and do not necessarily result in vehicles remaining roadworthy over the intervening period. Accreditation schemes such as TruckSafe include requirements for routine maintenance inspections and NatRoad asserts that accredited vehicles should be exempt from other types of scheduled inspections. In line with the view of the ATA, a compliance audit should be triggered if accredited vehicles are found to be defective at a roadside inspection and accreditation should also be seen as prima facie evidence of reasonable steps taken to prevent vehicle defects.

Given that improved road safety is a primary and universal concern for operators, governments and the community, roadside inspection regimes should be random and focussed on known safety issues.

8.5 Transfer of Ownership

Proposal

The RIS proposes that both the buyer and the seller must notify the regulator of a transfer in vehicle ownership.

NatRoad Position

The key issue for NatRoad is the possibility of fines unfairly accruing to a seller if the buyer has not notified the regulator of the transfer of ownership. NatRoad supports the proposal that both the buyer and the seller must notify the regulator of a transfer in vehicle ownership.

8.6 Restricted Access Vehicle Permits

Proposal

That the national law allows any person to apply for a vehicle permit.

NatRoad Position

NatRoad supports the proposal that any person or company should be able to apply for a vehicle permit.

There are several benefits to this proposal. Firstly, a consigner or consignee may apply for a permit in advance of a particular job and then engage an operator at short notice to complete the task rather than requiring the operator to apply and then wait until a permit has been approved. Secondly, if the permit does not specify a particular vehicle registration or VIN, an operator can have flexibility in vehicle supply or an alternative operator can be used by the permit holder if needed. Thirdly, permits will not need to be reapplied for or reissued in the circumstances above saving time and administrative expense.

8.7 Unpaid Fines

Proposal

That the national law recognise that state and territory laws may result in registration sanctions for unpaid fines that do not relate to the operation of the vehicle.

NatRoad Position

NatRoad is firmly opposed to the application of registration sanctions in respect of non-transport related matters.

Vehicle registrations are a necessary part of operating a transport business and it is unreasonable that an operator's livelihood should be jeopardised by a registration sanction that is not connected with the operation of the business. This is not common practice in other industries or professions and the community would not expect that, for instance, a medical practitioner would be de-registered for non-payment of a rates notice.

If the NHVR is to be the central body responsible for issuing registrations, then the NHVR should also be the only body able to impose sanctions against registrations. It is fitting and proper for the national law to stipulate the powers of the NHVR to impose such sanctions and the circumstances in which they can be imposed. NatRoad asserts that these circumstances should be restricted to matters of direct relevance to road transport, namely breaches of the HVNL, driver licensing or jurisdictional road rules (including parking).

8.8 New Offence – Removal of Defect Notice Label

Proposal

That a new offence of removing or defacing a defect notice be introduced in the national law.

NatRoad Position

It is important for operators to be informed of the issuance of a defect notice on their vehicles as soon as possible. NatRoad supports the national application of the current Victorian offence for removing or defacing a defect notice.

8.9 New Offence - Sanctions for Non-Compliance with the NHVAS

Proposal

That the range of penalties for NHVAS noncompliance be extended beyond suspension or cancellation of accreditation.

NatRoad Position

NatRoad opposes the introduction of new penalties for noncompliance with the NHVAS.

Consultation with NatRoad members has indicated that the prospect of suspension or cancellation of an accreditation is the best incentive to maintain compliance with NHVAS. In line with the original design of the scheme, being a member of NHVAS should be a means of promoting compliance with underlying legislation and should not expose operators to additional penalties.

NatRoad is concerned that the application of new fines will simply result in the application of harsher penalties without improving compliance levels. Operators are already concerned about the unreasonable application of large fines for administrative errors in other parts of road transport legislation and new fines under NHVAS will only exacerbate these concerns.

NatRoad is unaware of any NHVAS member that has been suspended or cancelled under the scheme, suggesting that minor breaches are quickly rectified to the satisfaction of regulators under current arrangements. If non-compliance is detected on the roadside, this should trigger an investigative audit. Members report that NHVAS auditors are generally reasonable in their approach to investigations and for this reason are generally not received with trepidation.

The mandatory application of NHVAS, coupled with new monetary penalties for non-compliance, would signal the evolution of the accreditation scheme into a formal licensing regime. NatRoad contends that a specific RIS would be required for this course of action that considers a broad range of issues including the relationship between NHVAS and other accreditation schemes such as TruckSafe.

8.10 New Offence - IAP Service Provider Obligations

Proposal

That a new offence of an IAP service provider refusing access to an auditor be introduced in the national law.

NatRoad Position

Given that IAP records can translate into an offence for an operator, it is preferable that independent third parties should be allowed access to the records of IAP providers for the purposes of verifying information.

On this basis, NatRoad supports the new offence of an IAP service provider refusing access to an auditor.

9.0 Other Issues

9.1 The Role of Service Providers

The mechanism and terms under which states, territories, councils or private entities will become service providers for the NHVR are not sufficiently clear. On the face of it, entities will be engaged by the NHVR to deliver particular services, for a determined fee, under a service agreement.

At the outset, it is likely that the service providers will be the current state and territory road authorities as they will have a natural monopoly in most instances being owners of the road infrastructure including that required for compliance and enforcement activities (e.g. heavy vehicle weigh stations). As NatRoad understands it, these entities must become 'authorised' by the NHVR to enforce the laws in a particular jurisdiction. In contrast however, police will remain empowered to enforce the laws as is currently the case.

In recent consultations, NatRoad members have voiced concern about the level of consistency in the interpretation and application of current road transport laws both between and within each jurisdiction. There are many sub-sections with each state and territory road regulator and police services and many of these have evolved quite distinct attitudes and cultures. In some cases, there can be different outcomes for road operators on different days depending upon the individuals involved in a particular compliance matter.

In order to improve the consistency of decision making, compliance and enforcement, NatRoad recommends that all service agreements entered into by the NHVR should require specific training to be undertaken by authorised officers in the interpretation and application of the HVNL. In addition, authorised officers should be required to participate in exchange programs wherein they are placed interstate for short period of time so that there is greater sharing of views and ideas among service providers.

Given that police remain outside of the HVNL, the mechanisms outlined above will not ensure that police services are acting consistency. NatRoad is aware that there are already some significant issues concerning the ability of road agencies to mandate that police undertake certain practices such as methods for counting hours in a work diary or for measuring over-width protrusions.

To promote equitable enforcement practices, NatRoad recommends that police should also be brought under the HVNL (even if this means consequential modifications to other legislation) and made subject to the same service agreements and training requirements proposed for other service providers. Further, NatRoad recommends that the NHVR be empowered to review, and if necessary withdraw, any infringement issued by any authorised officer – including police.

9.2 Powers for Search and Seizure

NatRoad understands that police services have raised concerns about certain provisions of the HVNL relating to powers of search and seizure. It has been asserted that the provision at s453(6)(a) effectively prevents authorised officers from searching personal possessions found in a heavy vehicle and seizing relevant evidence. For example, the officer may not search a backpack in respect of which it is claimed is for personal use only (e.g. contains a change of clothes).

NatRoad does not support legislation that would allow an authorised officer to infringe an individual's right to privacy and personal security by way of a general power to search personal possessions at any time and for any reason. However, it would seem reasonable to NatRoad that an authorised officer should be able to search personal possessions if there are reasonable grounds to suspect that evidence of an offence will be found. If this course of action is taken, it may be necessary to include some limitations around that which constitutes reasonable grounds for the purposes of the HVNL. NatRoad would be pleased to be involved in any further consultation on this matter.

The suggestion above must be taken in the context that many drivers spend more time in the truck cabin than they do inside their own homes. Any violation of this personal space can be highly resented and it is essential that inspecting officer show due respect when carrying out functions under the HVNL.

The search powers outlined in the HVNL do not expressly require officers to 'show respect' and NatRoad suggests that consideration ought to be given to including such a provision. To this end, requiring officers to 'leave things in the condition in which they were found', rather than leaving personal possessions strewn across a road siding, would be a good start. NatRoad would welcome further consultation on this important issue.

9.3 Breaking of Seals During a Vehicle Inspection

Some consigners use security seals on trailers containing sensitive materials to guard against theft or tampering during transit. There is of course an expectation that seals will remain intact upon delivery of the trailer.

In some cases, an authorised officer (e.g. a police officer) will break a consigner's seal to inspect a trailer for compliance purposes or if it is suspected that the vehicle has been involved in a regulatory breach. NatRoad understands that seals may hinder authorised inspection and there is a justifiable need to break seals in some circumstances.

The breaking of seals in transit will often lead to a dispute arising between the driver and the consigner / receiver. Under current laws, there is no requirement for an authorised inspector to either replace a seal or provide documentation to the driver that can be used as evidence that a seal was broken as part of an authorised inspection.

NatRoad recommends that a new provision be included in Chapter 9 (Enforcement) of the HVNL that compels an authorised officer to either:

- replace a trailer seal (with an official seal) and also provide written advice confirming the new seal identification numbers; or
- provide documentation to the driver stating that a seal was broken as part of an authorised inspection.

9.4 Future of FIRS

The establishment of a NHVR with responsibility for national heavy vehicle registrations brings into question whether or not the Federal Interstate Registration Scheme (FIRS) will be continued. Under current arrangements, stamp duty is not payable in respect of vehicles registered under FIRS, whereas this charge applies when transferring into a state or territory registration scheme (or if ownership is transferred under a state or territory scheme).

NatRoad is concerned that if FIRS is abolished, a significant liability will accrue in respect of vehicles that must transfer into the national registration scheme operated by the NHVR. The potential cost impact on interstate road transport businesses is massive. Trucks are expensive capital items operating on low margins and even low rates of stamp duty represent a significant business cost, especially when multiplied across an entire fleet of vehicles.

NatRoad asserts that FIRS registered vehicles will not receive any additional benefit from transferring into an alternative national registration scheme and should not be subject to a cost for being forced to do so. NatRoad recommends that mechanisms are established to ensure that any forced transfers of registrations required under new registration arrangements do not disadvantage affected operators.

There are several ways that a 'no-disadvantage' outcome may be achieved. Firstly, stamp duties should be waived for any FIRS registered vehicle required to transfer into any registration scheme operated by the NHVR.

The stamp duty rates levied by states and territories in respect of registration transfers must be reviewed by the NHVR with a view to ensuring an equitable outcome for all registrants under a national scheme. Ideally, stamp duties should be abolished. If this cannot be achieved, stamp duty rates on registration transfers should be standardised across the country to ensure that differential registration costs do not apply under a national registration scheme.

NatRoad would welcome involvement in further discussions on this important matter, including broader considerations about the application of stamp duty (or other state and territory based charges) for vehicle registrations or transfers under a national registration scheme.

9.5 Moving Court Appearances

The application of nationally consistent, rather than truly national HVNL, results in the continued operation of existing state and territory provisions concerning the prosecution of alleged regulatory breaches.

Under current arrangements, defendants must have their case heard in a local court within the jurisdiction in which the offence occurred, unless a guilty plea is entered. This requirement acts as a significant barrier to the carriage of justice because in many instances because the cost associated with attending a court hearing in a located far from an operator's home base may outweigh any potential penalties that may apply. Thus, it is far cheaper and easier for drivers to pay a proposed fine (or accept another type of penalty) rather than defend an onerous or inappropriate charge.

NatRoad recommends that a person charged under the HVNL should be free to move a court appearance to a local court closest to their home base. This should certainly be allowable within a particular jurisdiction and provided that the legislation establishing the offence is identical in defendant's home jurisdiction and the jurisdiction in which the offence is alleged to have occurred this should also be allowable between jurisdictions.

9.6 Uniformity, Complexity and Reasonable Penalties

The establishment of one consistent set of HVNL will reduce regulatory complexity for inter-state road transport operators. However, moving to one set of rules will not necessarily address the complexity 'within' the final set of laws.

Many intrastate and interstate operators alike remain concerned by the overall level of regulatory complexity that currently exists 'within' each jurisdiction as well as the inappropriate application of large penalties for administrative errors that do not have a direct impact on safety. For example, the rules relating to fatigue are difficult to understand (even for enforcement officers), contain numerous offences related to administrative errors (such as filling in work diaries) and even minor breaches can attract large fines that impact on a driver's ability to make a decent living.

NatRoad believes that establishing a HVNL is just one step towards enshrining fairer and more effective heavy vehicle law. The current process does not aim to reform the model heavy vehicle laws beyond removing inter-jurisdictional inconsistencies and ongoing work will be required to improve the final HVNL.

It is imperative that the NHVR publishes improved guidance material to assist operators and enforcement officers in the interpretation and application of the laws. Current materials (e.g. load restraint guides) are complex and ultimately recommend that operators obtain their own engineering advice. A less punitive approach coupled with a greater focus on education is more likely to lead to greater compliance and improved safety outcomes for operators and the community.

NatRoad recommends that a new risk-based approach be explored for minor administrative breaches. Such offences that do not impact directly on safety should result in an 'improvement notice' or 'warning letter' or attract only minor penalties of not more than \$100. It is appropriate that current penalties continue to apply for major safety risks and deceptive or misleading conduct.

9.7 Review, Maintenance and Further Consultation

After careful consideration of the RIS, HVNL and the associated issues raised within this submission, NatRoad has some reservations about the proposed process for finalisation of the legislation and consideration by the Australian Transport Council (ATC) in August 2011. To address these reservations, NatRoad recommends that:

- The NTC conduct further urgent consultations with industry to address the issues raised as part of the consultation on the 2011 RIS prior to consideration of final HVNL by the ATC;
- Exposure draft legislation is released for comment prior to passage in Queensland;
- A committee is established to monitor the implementation and operation of the HVNL that includes a formal role for industry;
- A process is established to review the HVNL, not more than 2 years after passage in Queensland.

10.0 Conclusion

NatRoad continues to support the implementation of nationally consistent laws administered by a NHVR.

NatRoad agrees that the move towards national regulation will have significant net benefits for road transport operators, government and the community in the order of billions of dollars. This outcome is of course highly dependent on the passage of nationally consistent legislation in all jurisdictions and adequate resourcing of the regulator.

NatRoad is generally supportive of the 'high' and 'medium' impact variations outlined in the 2011RIS but holds some significant concerns about key proposals. In particular, there are major challenges facing the proposals for HML, fatigue and decision-making frameworks.

The NHVR should do more than simply replace the role of state and territory heavy vehicle regulators. There are many important functions that will require increased resourcing such as chain of responsibility enforcement, information management, access management & facilitation, industry collaboration, education, national mapping, coordination of safety initiatives and service interfaces.

In this regard, there are some vitally important issues relating to funding arrangements and the structure of NHVR that have not been sufficiently addressed in the RIS. If the NHVR is to make a real difference in reducing red tape and improving the operation of the industry, several hundred full time staff will be required, backed up by solid IT platforms, contracted expertise and outsourced compliance and enforcement officers. Further industry consultation is required in this area.

The establishment of national laws is just one step on the road to regulatory reform in the road transport sector. The current process does not aim to reform the model heavy vehicle laws beyond removing inter-jurisdictional inconsistencies. Ongoing work will be required to reduce regulatory complexity within the HVNL and to redress the inherent punitive approach that undervalues positive encouragement and overvalues harsh sanctions for inadvertent administrative errors.

Ultimately, the success of the initiative will hinge on securing the ongoing support of industry, governments, regulators and the community. With tight timeframes scheduled for commencement, urgent follow up consultation will be required to resolve all of the outstanding issues to the satisfaction of all stakeholders.

It is against this background that NatRoad sounds a note of caution. It will not be acceptable for the NHVR to become a 9th regulator that is itself hamstrung by persistent national inconsistencies. NatRoad calls on all Australian governments to adhere to the spirit of the original COAG agreement to establish nationally consistent heavy vehicle laws administered by an independent authority with the vision, 'teeth' and **resources** to tackle today's problems as well as the problems that will undoubtedly arise in the future.