

NATROAD RESPONSE TO THE 'SAFE RATES, SAFE ROADS' DIRECTIONS PAPER

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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. Road safety is a primary concern for all road transport operators and NatRoad generally supports measures aimed at building on the incremental improvements in crash rates evident in Australia since 1960.

While NatRoad acknowledges the link between remuneration and driving practices, our members are not convinced that current payment methods are impeding continued improvements in crash risk or that the proposals outlined in the 'safe rates' directions paper will lead to a significant improvement in road safety.

Current trends project that the future of the Australian road transport sector is for more freight, to be moved more safely, at lower rates. The proposal for government intervention in the freight market will serve only to jeopardise this bright future by increasing costs and reducing productivity across the Australian economy.

Crash rates for heavy vehicles are already falling faster than for light vehicles and the overall decline in fatality rates appears to be accelerating. Given that NSW RTA statistics indicate that the heavy vehicle driver is at fault in only 31% of fatal crashes involving a heavy vehicle, it cannot be expected that changes in driver remuneration will have any bearing on the remaining 69% of fatal heavy vehicle crashes.

Claims that performance based payment systems are currently resulting in an elevated crash risk or acting as an impediment to reducing crash rates are not supported by Australian statistical evidence. There is no difference in crash rates between employee drivers and owner-drivers and the rate of fatal crashes involving articulated vehicles (generally using CPK rates) is falling faster than for either rigid vehicles or all other vehicles combined.

While the NTC considers that the current regulatory approach to speed, fatigue, drug use and vehicle standards is insufficient, BITRE Information Sheet 39 '*Effectiveness of Measures to Reduce the Road Fatality Rates*' concludes that the combined impact of direct regulatory measures in the transport sector has been "truly tremendous". The 2010 road toll stands at just 10 per cent of 1960 levels in real terms.

NatRoad considers that the 'safe rates' proposal will have a range of negative impacts across the transport sector. Increased transport costs will need to be borne across the Australian economy as an increase in the cost of production and a resulting decrease in relative international competitiveness. More specifically, the proposal is likely to:

- cause marginal freight to become uneconomic;
- increase costs for all industries in which there is a transport component;
- reduce profit margins for road transport operators, increasing pressure to 'cut corners' to maintain viability;
- add pressure for superior payments to be reduced to the minimum rate;
- distort the market in favour of employee drivers or alternative forms of transport;
- diminish business independence for owner-drivers;
- increase the regulatory burden;
- unfairly disadvantage regional areas; and
- bestow unions an unwelcome oversight role in otherwise independent businesses.

For many drivers, increasing payment rates will act to increase, rather than decrease, the incentive to work longer hours. Higher remuneration also decreases the relative attractiveness of leisure time because the opportunity cost associated with not working becomes greater.

The ability to coordinate regulatory responses across all levels of government is one of the most fundamental and attractive features of the proposed National Heavy Vehicle Regulator (NHVR). NatRoad does not support the proposal that a 'safe rates' tribunal (or similar) should be the single decision-maker on safety issues in the road transport industry. If a new remuneration tribunal forms a view concerning a particular safety matter, the tribunal should make a representation to the NHVR as would any other stakeholder.

While sceptical that a general increase in driver payments will result in a general improvement in on-road safety, NatRoad acknowledges the NTC's finding that there is a link between driver remuneration and on-road safety and also that some sub-contractors have difficulty in recouping costs.

In considering these matters in unison, NatRoad concludes that there may be some merit in taking a cautious approach that does not result in economy wide impacts that cannot be undone if safety improvements do not become evident. Such an approach entails a limited, and targeted, response to the highest priority issues rather than a simplistic proposal to increase all driver payments.

After consulting with the trucking industry, NatRoad considers that the most pressing issue concerning safety and remuneration in the transport sector relates to demurrage, or non-payment for time spent waiting to load or unload. A mandatory demurrage payment would consist of two components:

- A driver payment calculated on the base hourly rate contained in the *Road Transport and Distribution Award 2010*; and
- An additional loading to cover the standing costs of the vehicle.

Chain of responsibility arrangements would require distribution centres to make demurrage payments after a specified waiting period has been exceeded. The demurrage proposal is preferable to the establishment of a broader 'safe rate' for the following reasons:

- The proposal targets a particular problematic segment of the transport system and would not necessarily result in a broad distortion of the market;
- The application of a demurrage charge has productivity benefits for the economy because it would also represent an incentive for distribution centres to reduce waiting times, allowing trucks (and their drivers) to more quickly get back on the road and engaged in productive activities;
- A demurrage rate would be relatively easy to determine for different truck types because the vehicle and driver would not be performing an on-road freight task for which costs may otherwise be variable (e.g. load type, road type, number of stops, fuel use, average speed etc). Essentially, the only costs involved relate to wages and standing costs;
- The payment can be universally applicable for all trucks regardless of ownership status (i.e. employee, owner-driver, large company);
- The system can be used as a test case to determine whether or not remuneration can be used as a lever to improve on-road safety; and
- The system can be easily unwound if found not to result in safety improvements.

In accordance with NatRoad's broader views on the proposed 'safe rates' tribunal, it is proposed that:

- The system will be established within Fair Work Australia;
- Applications may only be made by parties to an affected contract in dispute;
- All parties may be represented by third parties (including unions or legal counsel);
- Decisions are binding; and
- Applications may be heard at low or no cost.

However, before imposing any costly new regulatory scheme it is imperative that any forecast safety improvements are qualified, quantified and costed against increased wage costs, productivity losses and decreased movement of marginal freight that will almost certainly occur if a 'safe rate' was established. NatRoad expects that the costs and benefits will be included in a public regulatory impact statement published and debated well before any proposed initiative commences.

It is also vital that any new system is reviewed after a specified period to determine whether or not the stated aims have been met. In the context of the current proposal, success must necessarily be measured by a significant reduction in crash and/or fatality rates for heavy vehicles, over and above the reductions that are already expected to occur.

Any new system must include a contingency plan for the initiative to be unwound if significant safety improvements are not apparent. The initial design of the system must therefore allow for the possibility of reversal or phasing out at a later date.

1.0 Introduction

NatRoad appreciates the opportunity to respond to the Directions Paper “*Safe Rates, Safe Roads*” released by Senator the Hon Jacinta Collins, Parliamentary Secretary for School Education and Workplace Relations, 26 November 2010.

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 Road Safety

Road safety is a primary concern for all road transport operators. Road trauma impacts directly on truck drivers, their families, other road users and the wider community. Discussions on road safety are often emotive and it is impossible to identify a level of on-road trauma that would be ‘acceptable’ to the Australian community.

Any death or injury is one death or injury too many.

Road accidents also damage trucks and vital road infrastructure leading to consequential economic losses for owners, transport businesses and the community.

A level of transport trauma has historically been tolerated by the Australian community because of the convenience of rapid people movement and the improvements in general population health and survival rates that are brought about through the efficient transfer of food, clothing, medicines and building materials between population centres. However, the vast distances between major population centres and a relatively low tax base prevent Australia from developing the road network to the same degree as more populous nations. It is sadly ironic that the very same characteristics that cause Australia to be so reliant on long haul road transport also make our roads more dangerous.

While a zero fatality rate is unrealistic in the short term, NatRoad supports measures aimed at building on the incremental improvements in crash rates evident in Australia since 1960. It has long been known that factors such as speed, fatigue, drug use and poor vehicle condition affect the rate of vehicle crashes and NatRoad strongly supports the sensible regulation of driver practices (including chain of responsibility requirements) in these areas.

3.0 Driver Remuneration and Road Safety

3.1 Is there a Link?

NatRoad acknowledges the findings of the 2008 National Transport Commission (NTC) Report, *Safe Payments: Addressing the Underlying Causes of Unsafe Practices in the Road Transport Industry*, that current payment rates and methods create an incentive for unsafe on-road behaviours. However, our members have not been wholly convinced of the merits of the links suggested by the findings.

The 2008 NTC report states that:

- *“While it cannot be shown that low rates of pay and methods of payments directly cause truck crashes, a point argued by several submissions, it can be shown that low rates of pay and performance based systems do create an incentive for, or encourage, other on-road behaviours which lead to poor safety outcomes.”*

While the NTC has cited a relatively large volume of information supporting the existence of a link between remuneration and driving practices, whether or not supposed incentives translate into an increased crash risk remains unclear. Despite the apparent association, it is difficult to determine whether it is the pursuit of financial reward that leads to poor business practice (including poor on-road behaviours) or poor business practice that leads to financial difficulty.

In the context of the directions paper, the key question arises, 'will increasing rates of payment or removing performance based payment systems reduce heavy vehicle crash rates in Australia?'

3.2 Will the Establishment of a General 'Safe Rate' Improve Road Safety?

NatRoad has examined the arguments put forward by the NTC in seeking to establish whether or not generally increasing rates of payment or removing performance based payment systems will reduce truck crash rates in Australia.

There is a glaring absence of reliable examples demonstrating that higher rates of pay have actually improved on-road safety and nowhere in any of the evidence produced by the NTC is there an estimate of the number of crashes that would be prevented, or lives saved, that would result from a given increase in driver payments in Australia. At this stage the safe rates proposal is essentially a theoretical argument, the application of which would serve to increase transport costs in the pursuit of uncertain and unquantified safety outcomes.

In the absence of a regulatory impact statement it is useful to examine whether or not there is evidence to support the assumption that current remuneration methods are translating into an increased crash risk.

3.2.1 The Statistical Backdrop

The NTC has argued that heavy vehicles are over represented in crash fatalities as compared with other vehicles. While this may be the case, this situation may simply arise as a result of successful attempts to reduce crash rates for other vehicles against which heavy vehicles are compared. Transport safety has been a major focus of the Australian Government for over 40 years and success in one area (e.g. private passenger vehicles) should not necessarily be taken as a failure in another, particularly given the fundamental differences in vehicle types and transport tasks undertaken.

Another factor that must be considered is the method of measurement. Comparisons based on the proportions of registrations or kilometres travelled do not take into account the relative reduction in the overall number of trucks on the road through the use of larger more productive vehicles. Fatalities per vehicle will appear higher than if fatalities were measured on a billion tonne kilometre basis.

Alternative comparisons may also lead to different conclusions. For instance, the 2006 NTC Report '*Twice the Task – A Review of Australia's Freight Transport Task*', prepared by Sinclair Knight Merz notes that:

- *“Involvement of freight vehicles in collisions, injuries and fatalities has fallen faster than the involvement of light vehicles in Australia, considered relative to exposure indicators such as vehicle kilometres travelled.”*

As stated in the directions paper, general road-crash death rates have significantly decreased, falling from 20.1 per 100,000 people in 1950 to 6.6 people per 100,000 people in 2009. The BITRE¹ reports that road deaths in 2010 decreased by 8.2% to the lowest level since 1949, indicating that the decline is accelerating. OECD² figures demonstrate that Australia is not unique in having experienced a significant ongoing decline in road-crash death rates, signifying that broader factors are at play (i.e. not relating to driver payments in Australia), likely relating to changing attitudes towards speed, fatigue, drug use and vehicle standards.

According to BITRE online statistics³, the total number of fatalities involving articulated vehicles has decreased by an average of 3.0 per cent annually between 1989 to 2009, while the overall rate for all vehicles has declined by just 2.2 per cent annually over the same period. While it would appear that the number of fatalities is relatively stable for rigid trucks, the dataset is limited, with specific data only becoming available in 2002 and it is difficult to draw firm conclusions given the variability apparent within this data set. NatRoad would caution against the use of small, obviously variable, datasets in drawing conclusions about crash rates, as has been done in the Safe Rates paper that concludes that rigid truck accident rates increased by 9.4% in the three years to 2009.

At the same time as fatal accidents for articulated vehicles have been decreasing, Australia’s freight task has grown by around 7.4% each year between 1972 and 2007. Against the backdrop of this increase, it is likely that the real rate of fatal crashes is declining much more rapidly than is evident in raw figures and that real rates are also likely to be in decline for rigid vehicles.

Given that fatal accidents involving heavy vehicles have declined over the same period in which freight rates have decreased, NatRoad questions whether or not the regulation of freight rates is necessarily the best way to ensure that fatality rates continue their projected decline. Adding weight to this sentiment, it is clear that the current regulatory approach to reducing the road fatality rate in Australia has been extraordinarily effective. The November 2010 BITRE Information Sheet 39 “*Effectiveness of Measures to Reduce the Road Fatality Rates*” concludes that:

¹ BITRE. *Road Deaths Australia, December 2010.*

² <http://stats.oecd.org/index.aspx>

³ http://www.infrastructure.gov.au/roads/safety/road_fatality_statistics/fatal_road_crash_database.aspx

- *“.....seatbelts, random breath testing and speed cameras were effective in significantly reducing road fatality rates. The overall effect of the three countermeasures was truly tremendous. The absolute number of fatalities per quarter in Australia in 2010 was less than 40 per cent of the number per quarter in the late 1960s. This was in the face of traffic growing by a factor of more than three and a half times. Thus the fatality rate has fallen to about 1/10 of its value in the late 1960s. Another way of saying this, is that the absolute number of road deaths per quarter would be 10 times the current value, if these successful countermeasures had not been put in place.”*

3.2.2 Evidence Against a Resulting Change in On-Road Behaviour

NatRoad considers that there is little evidence that the establishment of a ‘safe rate’ will result in a significant change in on-road behaviour. In reviewing available information, NatRoad notes the following:

- NSW RTA statistics⁴ indicate that the heavy vehicle driver is at fault in only 31% of fatal crashes involving a heavy vehicle. It cannot be expected that driver remuneration will have any bearing on the remaining 69% of fatal heavy vehicle crashes.
- Despite the NTC’s arguments that economic pressures associated with meeting capital overheads results in an additional incentive for owner-drivers to engage in unsafe on-road behaviour, Professor Quinlan’s 2001⁵ survey found that there was very little difference in the proportion of owner-drivers, small fleet drivers and large fleet drivers involved in a crash over the preceding five years in NSW. Similar research undertaken by Williamson, Feyer, Friswell and Sadural in 2001⁶ indicted that crash rates were similar for all driver categories, although slightly higher for employee drivers at large firms.
- There have been accusations of selection bias⁷ in the data used to support Belzer’s 2002 conclusion that higher pay rates are associated with safer on-road behaviours. Taken in conjunction with supporting information presented in the 2008 NTC report,

⁴ NSW RTA Presentation on ‘Heavy Truck Crash Analysis Data’, November 2010.

⁵ Quinlan, M (2001), Report of Inquiry into Safety in the Long Haul Trucking Industry, A report commissioned and prepared for the Motor Accidents Association of NSW.

⁶ Williamson, A, Feyer, A, Friswell, R and Sadural, S (2001), Driver fatigue: A survey of Professional Long Distance Heavy Vehicle Drivers in Australia, report prepared for the National Road Transport Commission.

⁷ ACIL Tasman (2003) Freight Rates and Safety Performance in the Road Freight Industry.

an alternative conclusion could be that larger, more profitable and professional transport businesses are able to invest more heavily in both driver remuneration and company based safety initiatives (hence the possible association between remuneration levels and safety outcomes). Further, NatRoad considers it highly unlikely that a 10% increase in driver remuneration would result in a 36% reduction in crash risk. This implies that a 30% increase in remuneration would eliminate all heavy vehicle crashes which is particularly hard to believe given that the proposal would have no effect on the 69% of fatal crashes for which the driver of the heavy vehicle involved is not responsible.

- While the 2008 NTC report⁸ concludes that the NSW Chapter 6 system (which has a capacity to set minimum rates for short haul drivers) has not affected the level of competition among short haul drivers in that State, the NTC has made no effort to investigate whether or not the existence of minimum rates has led to an improvement in safety outcomes for affected drivers. It might be expected that both observations could be made if the data was in fact of sufficient rigour to support the assertion that there has been no effect on competition.
- Anecdotal driver comments cited in the 2008 NTC report, many associated with the Transport Workers Union, have suggested that increased remuneration would lead to improved on-road behaviour. Recent consultation with NatRoad members suggests that there is in reality a polarised opinion on this issue. While some drivers support the TWU position, there are as many others who believe that the establishment of a safe rate will not change driver behaviour. Many hold that drivers will simply continue to engage in current practices, albeit for higher remuneration, because other factors such as high levels of competition, long contracting chains, poor bargaining positions and employer demands will remain the same. It has also been suggested that in some cases, drivers will increase the amount of driving undertaken because higher remuneration will simply increase the attractiveness of doing so.
- Establishing a safe rate will not remove the supposed economic incentive to break the law. Basic economic theory advocates that higher rewards will generally increase, rather than decrease, the incentive to work. Increased remuneration for work undertaken will also decrease the relative attractiveness of leisure time because the opportunity cost associated with not working becomes greater.

⁸ National Transport Commission Report (2008), Safe Payments: Addressing the Underlying Causes of Unsafe Practices in the Road Transport Industry.

Given the points outlined above, NatRoad remains sceptical that the establishment of a general 'safe rate' will result in any observable improvement in on road safety in excess of that already projected to occur under the current regulatory regime.

4.0 Performance Based Payments and Road Safety

NatRoad notes the NTC's comments that incentive based payment systems are one of the factors that motivate drivers to engage in unsafe on-road behaviours. It is perhaps useful to examine the current use of incentive based payment systems in conjunction with crash statistics.

There are two road transport awards that cover the majority of employee truck drivers:

- *Road Transport (Long Distance Operations) Award 2010*; and
- *Road Transport and Distribution Award 2010*.

The Road Transport (Long Distance Operations) Award 2010 allows for either a 'cents per kilometre' rate (CPK) or an hourly driving rate. The Road Transport and Distribution Award 2010 provides for an hourly rate only.

NatRoad understands that, in general, it is fair to say that:

- Most long distance employee drivers operate articulated vehicles and are paid a CPK rate under the Road Transport (Long Distance Operations) Award 2010;
- Most short distance employee drivers operate rigid vehicles and are paid an hourly rate under the Road Transport and Distribution Award 2010; and
- Owner-drivers are paid by a variety of mechanisms (including per load, weight, volume or distance) but are most commonly paid a CPK or load rate.

If the use of performance-based payment systems such as a CPK rate reduced on-road safety, it would be expected that crash rates would be higher for owner-drivers and for employee drivers on CPK rates.

However, as outlined in the preceding section, there is no difference in crash rates for employee drivers and owner-drivers and the rate of fatal crashes involving articulated vehicles (generally using CPK rates) is falling faster than for either rigid vehicles or all other vehicles combined.

NatRoad considers that while performance based payment systems are by their very nature designed to promote transport efficiency and productivity, safety statistics do not support the claim that performance based payment systems are currently resulting in an elevated crash risk or acting as an impediment to reducing crash rates.

5.0 The Financial Impact of a General ‘Safe Rate’

The primary impacts of establishing a safe rate will be to impose:

- a general increase in labour costs in the transport sector; and
- an additional regulatory burden associated with operating and enforcing the new regulatory system.

The financial impacts will however be different for employee drivers, owner-drivers, road transport businesses and the economy, each of which are examined below.

5.1 Transport Costs and Freight Rates

Before considering the financial impacts of the ‘safe rate’ proposal it is necessary to first examine the relationship between transport costs and freight rates.

As it is not proposed to regulate freight rates directly, freight rates will continue to be set by the market’s willingness to pay for transport services.

There are differing levels of competition in the marketplace. There is higher downward pressure on freight rates for generic freight on high volume routes. Freight rates may be sustained at higher levels on specialist or lower volume routes.

The directions paper states that real freight rates have generally been in decline for the past 30 years, but that there has been a real increase of 9 per cent over the past seven years – attributable to increases in diesel fuel prices. This situation suggests that competition between large and small operators has now reached the point where real freight rates can only be decreased in response to productivity improvements and increases in costs such as fuel become readily apparent in the freight rate.

NatRoad understands that current contracting arrangements for transport services often include a fuel surcharge which can be varied in response to fuel price movements. Other cost elements remain fixed for the duration of the contract. The widespread use of this arrangement indicates that customers recognise the low margins in the freight sector and are willing to pay for fuel price movements, but are generally unwilling to bear the risk of changes in other cost components, including labour costs.

5.2 Employee Drivers

It is the stated aim of the 'safe rate' proposal to increase the minimum rate of pay for employee drivers. However, in order for safety outcomes to be achieved, it would appear that there is an implicit assumption that drivers will choose to work less, or at least reduce their productivity level (i.e. reduce the distances they drive or the number of trips made), while maintaining their current income level.

NatRoad considers that this assumption is fundamentally flawed and that it is most likely that employee drivers will either:

- continue to engage in current practices, albeit for higher remuneration, because other factors such as high levels of competition, long contracting chains, poor bargaining positions and employer demands will remain the same; or
- increase the amount of driving undertaken because higher remuneration will simply increase the attractiveness of doing so.

The effect of establishing a 'safe rate' will therefore be to increase the total annual remuneration for employee drivers.

5.3 Owner-Drivers

NatRoad is aware that there are some owner-drivers who are struggling to understand their cost structures and feel pressured to accept work at rates that may be unsustainable. NatRoad considers that this issue is more directly related to driver education, information transparency and market positioning than safety matters which are already strictly regulated.

As outlined previously it is unlikely that the market will be willing to bear a sharp increase in freight rates and it is therefore probable that the imposition of a 'safe rate' will cause marginal freight to become uneconomic leading to the structure of the freight market to be distorted in favour of employee drivers or alternative forms of transport.

There are many examples that illustrate the unintended impacts of establishing a mandatory minimum freight rate for owner-drivers. For instance, contract determinations in the NSW quarry industry that established minimum rates for sub-contractors were at first greeted with great fanfare by some drivers but later recognised as the cause of the gradual displacement of sub-contractors by company operated fleets (e.g. Boral).

Of particular concern to many drivers is the potential for a 'safe rate' to become the standard rate for all freight movements. In many cases, the application of a 'safe rate' will represent a significant decrease in the rates currently paid to drivers who have secured superior rates as part of regular contract negotiations. Many consignors will immediately question why they should offer more than the standard 'safe rate' when tendering contracts to the market.

Overall, NatRoad considers that the net financial impact of the 'safe rates' proposal for owner-drivers will be negative due to:

- a reduction in work availability as marginal freight becomes uneconomic;
- loss of flexibility to accept backloads or other ad hoc arrangements that are important for maintaining customer relationships and for dealing with freight imbalances between major population centres;
- diminishing business independence;
- an increase in the overall regulatory burden;
- greater oversight by interested unions (resulting in a higher probability of direct penalties or costs associated with defending adverse claims); and
- the clear potential for superior payments to be reduced to the minimum rate.

In addition, it is most likely that a 'safe rates' system will be largely unenforceable due to the myriad of complicated or ad hoc contracting arrangements used throughout the industry. The problems with enforcing legally required minimum payments are identified at page 35 of the 2008 NTC report.

5.4 Road Transport Operators

Transport companies operate in a highly competitive environment that requires moving large volumes of freight at very low profit margins. Small to medium operators are generally unable to influence the market freight rate and any increase in costs must be internalised as a lower profit margin. This has been the experience with recent increases in registration and fuel excise charges.

The imposition of a 'safe rate' will directly impact on these transport operators by increasing employee labour costs as well as the cost of utilising sub-contractor services. Given the strong likelihood that a general increase in labour costs will not be able to be passed on to customers, the financial impact of the 'safe rates' proposal will be negative.

In the context of the stated aim of the 'safe rates' proposal, a reduction in the profitability (or indeed viability) of transport companies is a disturbing outcome. Transport companies are ultimately responsible for fundamental safety issues including truck maintenance, scheduling, loading and route selection. Any shift in the remuneration ratio between operators and employee drivers will also represent a shift in the supposed incentives for unsafe behaviours. Adding financial pressure to transport operators will increase the incentive for these companies to cut costs in other areas in order to maintain a reasonable profit margin that ensures the ongoing viability of the business.

5.5 Economy Wide Impacts

The transport sector is of critical importance to the Australian economy. The 2005 Productivity Commission Review of National Competition Policy Reforms (2005) makes the point that:

- *“Given Australia’s size and distance from major overseas markets, an efficient and cost-effective freight transport system is particularly important to the competitiveness of Australia’s manufacturers and exporters, and ensuring consumers benefit from the lowest possible prices. A cost-effective and efficient freight transport system can also help to ameliorate the consequences of market fragmentation, which can arise because of the wide dispersion of Australia’s population centres”.*

Almost all goods sold within, or exported from Australia, have a transport cost component. This includes food, building materials, manufactured goods, industrial inputs and manufactured goods. In general, goods are produced or assembled in industrial areas away from major markets.

Driver wages are a key component of the cost of moving goods by road transport within Australia. A sharp increase in labour costs will either:

- lead to higher freight rates;
- reduce the profitability of transport companies;
- distort freight movements;
- distort the 'employee driver : owner-driver' ratio;
- reduce efficiency (and therefore productivity) as drivers reduce their hours worked or distances travelled for a given level of remuneration; or

- result in some combination of the above outcomes being exhibited as the market comes to a new equilibrium.

Whatever the outcome, increased transport costs will need to be borne by the Australian economy as an increase in the cost of production and a resulting decrease in relative international competitiveness. Perhaps the most acute impacts will however be felt in regional Australia where a significant number of transport companies are located and where the tyranny of distance from major manufacturing centres or ports is most severe.

Productivity growth has been sluggish in Australia since 2000 and at just 1.1% it is increasing at only half the rate of the preceding decade. At the same time, underlying wages growth has been rising at three to four times the rate of productivity growth – a level that, in the longer term, is unsustainable.

Productivity is important for many reasons, primarily because it is the primary mechanism for funding increased wages and supporting improvements in Australia's GDP. Treasury's 2010 Intergenerational Report states that:

- *“Productivity is the key to higher economic growth in the face of an ageing population. Policies that support higher productivity, including investments in nation building infrastructure and skills and education, will raise economic growth, improve living standards and enhance Australia's capacity to fund the fiscal pressures of an ageing population”.*

The 'safe rates' proposal does not support higher productivity. In fact, the 'safe rates' proposal represents a departure from the traditional approach of linking awards to the C10 classification of the Metal Industry Award and determining minimum wage increases based upon improvements in productivity of employee and the profitability of employers. The most recent annual wage determination by Fair Work Australia in 2010 lifted minimum wages in all modern awards by \$26 per week, just \$1 short of union claims. The decision was made in dollar, rather than percentage terms, to ensure that a larger proportion of the benefit was attributed to the lowest paid workers.

Given the lack of definitive evidence proving that a 'safe rate' will necessarily result in a quantifiable safety improvement, the imposition of a 'safe rate' in the transport industry represents a dangerous precedent with implications for all industries and therefore Australian productivity in general. The successful application of a 'safe rate' would no doubt signal the commencement of a broader union campaign for similar arrangements in other industries where safety is a concern including mining, construction and agriculture.

6.0 A Single Safety Authority

In July 2009, The Council of Australian Governments agreed to establish a National Heavy Vehicle Regulator (NHVR) to consolidate and administer a range of regulations for vehicles above 4.5 gross tonnes including those relating to registration, charges, standards, mass, loading, compliance, enforcement and safety.

NatRoad supports the move toward national regulation of the heavy vehicle sector and estimates that the establishment of a National Heavy Vehicle Regulator has the potential to result in an economic benefit to the Australian economy of approximately \$1.7 billion in present value terms.

NatRoad is concerned that all of the models proposed in the 'safe rates' directions paper establish a tribunal that will be the single decision-maker on pay/payment methodologies and safety in the road transport industry. The directions paper flags that a specialist tribunal may, for example, form the view that improving safety in a particular sector may mean reducing the maximum driving hours.

The ability to coordinate regulatory responses across all levels of government is one of the most fundamental and attractive features of the proposed NHVR. Establishing a new tribunal with primary responsibility for all safety matters in the transport sector would be a major departure from the COAG agreement and would undermine the NHVR before it has even been established, currently scheduled for 2013.

NatRoad considers that, if a 'safe rates' tribunal (or similar) is established, the powers of the tribunal should be limited to pay and conditions matters only as is currently the purview of Fair Work Australia in administering the awards system. If the tribunal forms a view concerning a particular safety matter, the tribunal should make a representation to the NHVR as would any other stakeholder. The NHVR will have the capacity to review all proposals and consult broadly with industry and affected governments before coming to a decision on an appropriate course of action.

NatRoad does not support the proposal that a 'safe rates' tribunal (or similar) should be the single decision-maker on safety issues in the road transport industry.

7.0 Consequences of Rejecting the Proposal

Given the likely opposition of significant segments of the transport industry to the 'safe rates' proposal, it is useful to consider the consequences of rejection.

In the absence of the proposed regulatory intervention:

- The total freight task in Australia will continue to increase by around 7.4% annually;
- Road accident fatality rates will continue to improve in raw terms by around 3.0% annually for heavy vehicles and around 2.2% for all vehicles (These figures are significantly larger in real terms after taking into account the increasing freight task);
- Freight rates will remain highly competitive and may continue to decline in real terms due to the use of performance based payment methods, industry consolidation, improvements in communication technologies, improvements in road and port infrastructure, and the increased use of high productivity vehicles.

Productivity and safety improvements are vital for supporting Australia's economic and social development as well as maintaining a competitive position in rapidly globalising markets. In the absence of the 'safe rate' proposal, it is projected that the Australian transport industry will move more freight, more safely and more cheaply. NatRoad considers that this projection represents the continuation of an Australian success story with benefits for all sectors of the economy and in no way creates an impetus for the proposed regulatory intervention.

8.0 Alternatives

8.1 Mandatory Demurrage Payments

While sceptical that a general increase in driver payments will result in a general improvement in on-road safety, NatRoad acknowledges the NTC's finding that there is a link between driver remuneration and on-road safety and also that some sub-contractors have difficulty in recouping costs.

In considering these matters in unison, NatRoad concludes that there may be some merit in taking a cautious approach that does not result in economy wide impacts that cannot be undone if safety improvements do not become evident. Such an approach entails a limited, and targeted, response to the highest priority issues rather than a simplistic proposal to increase all driver payments.

After consulting with the trucking industry, NatRoad considers that the most pressing issue concerning safety and remuneration in the transport industry relates to demurrage, or non-payment for time spent waiting to load or unload.

While a minority of operators are successful in negotiating some level of demurrage payment, there is a general concern across the industry that distribution centres (in particular) regularly require drivers to wait significant periods before having an opportunity to use loading or unloading facilities. As has been noted in recent media reports, drivers are sometimes required to wait up to 10 hours. Depending upon the waiting facilities provided by the distribution centre, drivers are mostly unpaid for and unable to claim the waiting time as an official rest break – having consequential implications for earning capacity and fatigue management.

In the context of the assumptions underpinning the 'safe rates' directions paper, the loss of 10 hours driving time may result in an incentive for affected drivers to 'make up for lost time' by driving additional hours, speeding or contravening mandatory fatigue management systems.

NatRoad suggests that mandating the payment of demurrage to all drivers is a reasonable alternative to the 'safe rates' proposal for the following reasons:

- The demurrage proposal applies only to a particular problematic segment of the transport system and would not necessarily result in a broad distortion of the market;
- The application of a demurrage charge has productivity benefits for the economy because it would also represent an incentive for distribution centres to reduce waiting times, allowing trucks (and their drivers) to more quickly get back on the road and engaged in productive activities;
- A demurrage rate would be relatively easy to determine for different truck types because the vehicle and driver would not be performing an on-road freight task for which costs may otherwise be variable (e.g. load type, road type, number of stops, fuel use, average speed etc). Essentially, the only costs involved relate to wages and standing costs;
- The payment can be universally applicable for all trucks regardless of ownership status (i.e. employee, owner-driver, large company);
- The system can be used as a test case to determine whether or not remuneration can be used as a lever to improve on-road safety; and
- The system can be easily unwound if found not to result in safety improvements.

8.2 How would a Mandatory Demurrage Rate Work?

Mandatory demurrage payments could be enshrined within current awards for employee drivers. The arrangements proposed to establish a 'safe rate' for owner-drivers could also be used to establish a mandatory demurrage rate for sub-contractors.

The demurrage payment would consist of two components:

- A driver payment calculated on the base hourly rate contained in the *Road Transport and Distribution Award 2010*; and
- An additional loading to cover the standing costs of the vehicle.

The vehicle loading could be expressed as a percentage of the driver payment given that the award already caters for different vehicle combination types. In this manner, it is possible to maintain a linkage with current annual minimum wage determinations undertaken by Fair Work Australia and avoid the need for a separate tribunal to make an additional determination.

The demurrage payment should be supported by chain of responsibility requirements that would require distribution centres to make the demurrage payments after a specified waiting period has been exceeded. If the payment was mandatory, it is likely that delivery contracts could specify the requirement for the payment in a similar fashion as fuel surcharges are currently applied.

One of the benefits of the proposal for a mandatory demurrage payment is that it will not be necessary to define 'owner-driver' for the purpose of the payment. In practice, the payment will be made to the transport company with the wages component then distributed to an employee driver (if applicable). Owner-drivers would receive both components.

If this proposal is further explored, it will be necessary to address several other issues such as:

- the definition of demurrage;
- the definition of distribution centre;
- the minimum time after which demurrage will be paid;
- chain of responsibility arrangements to ensure that payments are extracted from and distributed to the appropriate entities;
- delineating driver time spent waiting from time spent resting;
- transitional arrangements; and
- establishing a review mechanism.

NatRoad would be pleased to make further contributions on these outstanding issues in due course.

It will be important that the mandatory demurrage payment system is supported by a low cost dispute resolution system. In accordance with NatRoad's broader views on the proposed 'safe rates' tribunal, it is proposed that:

- The system will be established within Fair Work Australia;
- Applications may only be made by parties to an affected contract in dispute;
- All parties may be represented by third parties (including unions or legal counsel);
- Decisions are binding; and
- Applications may be heard at low or no cost.

9.0 Impact Analysis and Review Mechanisms

9.1 Regulatory Impact Statement

Before imposing a costly new regulatory scheme it is imperative that any forecast safety improvements are qualified, quantified and costed against increased wage costs, productivity losses and decreased movement of marginal freight that will almost certainly occur if a 'safe rate' was established. NatRoad expects that, if the proposal is to proceed, the costs and benefits will be included in a public regulatory impact statement published and debated well before any proposed initiative commences.

9.2 Review Mechanism

If any new regulatory scheme is established in response to the 'safe rates' direction paper, it is vital that the system is reviewed after a specified period to determine whether or not the stated aims have been met.

In the context of the current proposal, success must necessarily be measured by a significant reduction in crash and/or fatality rates for heavy vehicles, over and above the reductions that are already expected to occur.

NatRoad strongly asserts that any new system must incorporate a legislated review requirement that includes agreed terms of reference. Among other things, the terms of reference must mandate:

- the minimum period after which a review must be undertaken;
- specific safety targets measured in terms of an expected reduction in crash and fatality rates for a given increase in driver payments;
- an agreed methodology for separating and identifying real outcomes against a background of falling crash and fatality rates; and
- a reporting framework for specifying whether or not targets have been met.

In addition to an agreed review methodology, any new system must include a contingency plan for the initiative to be unwound if significant safety improvements are not apparent. The initial design of the system must therefore allow for the possibility of reversal or phasing out at a later date.

10.0 Conclusion

NatRoad is not convinced that current payment methods are impeding continued improvements in crash risk or that the proposals outlined in the 'safe rates' directions paper will lead to a significant improvement in road safety.

The 'safe rates' proposal will almost certainly have a range of negative impacts across the transport sector and broader Australian economy.

NatRoad does not support the proposal that a 'safe rates' tribunal (or similar) should be the single decision-maker on safety issues in the road transport industry. This should be the role of the proposed National Heavy Vehicle Regulator.

While sceptical of a broader 'safe rate', NatRoad considers that there may be some merit in mandating the payment of demurrage, including chain of responsibility arrangements. This alternative proposal would address the most pressing remuneration issue in the industry and can also act as a test case to examine the potential for remuneration to leverage improved safety outcomes in an Australian context.

NatRoad expects that the costs and benefits of any new remuneration proposal will be included in a public regulatory impact statement published and debated well before any proposed initiative commences. It is also vital that any new system is reviewed after a specified period to determine whether or not the stated aims have been met.