

2 April 2009

Mr G Corrigan MP  
Chair  
Parliamentary Joint Standing Committee on Road Safety (Staysafe)  
Parliament of New South Wales  
Macquarie St  
Sydney NSW 2000

Dear Mr Corrigan

### **Inquiry into Heavy Vehicle Safety**

We appreciate the opportunity to make this submission to your Committee's Inquiry into Heavy Vehicle Safety

#### *Background*

NatRoad Ltd recently merged memberships with the Australian Road Train Association. NatRoad Ltd will remain as the company name, however our trading name will now be The National Road Transport Operators Association, incorporating Australian Road Train Association. Our 1300 member companies operate throughout Australia from remote areas utilising road trains through to intra and interstate semi trailer and rigid truck applications, with members ranging in size from owner drivers through to multinational logistics providers, including grain carriers.

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.

#### *Summary*

In summary, we believe that:

1. To improve safety, compliance and understanding, there should only be a single regime of heavy vehicle fatigue safety laws in NSW. This is provided by the National Transport Commission's (NTC) model bill for national Heavy Vehicle Driver Fatigue legislation, which in the main, has been implemented across Australia.

#### **Foundation Partners and Partners**



#### **NatRoad Supporters**

HWL Ebsworth Lawyers – MTData – Transport Industry Superannuation Fund  
Member of Australian Trucking Association

2. The NTC's model bill for national Heavy Vehicle Driver Fatigue legislation, incorporates the fundamental core principles of national reform ie a general duty to manage fatigue, core hours requirements, implementation of a chain of responsibility and have in place an absolute level of liability with a reasonable steps defence. Safe driving plans, drugs and alcohol policies and chain of responsibility stipulations are addressed in the model provisions.
3. The existing approach to heavy vehicle driver fatigue in NSW is by means of three separate and inconsistent regulatory instruments with the inevitable result of confusion through burdensome, unnecessary and extensive "red tape".

#### *Submission*

In relation to the Inquiry's Terms of Reference, we provide the following comments:

**a) the adequacy of implementation of the NSW Occupational Health and Safety Amendment (Long Distance Truck Driver Fatigue) Regulation 2005 and the Transport Industry - Mutual Responsibility for Road Safety (State) Award , particularly in relation to heavy vehicle driver fatigue management and safe driving plans;**

Our view is that *The Occupational Health and Safety Amendment (Long Distance Truck Driver Fatigue) Regulation 2005* was implemented well for the trucking industry. Our experience was of co-operation from the WorkCover Authority with a genuine effort to provide good information and engage with industry.

As a result we have found that this regulation is relatively well understood, and has been enforced pragmatically.

Unfortunately, the same cannot be said about the *The Transport Industry - Mutual Responsibility for Road Safety (State) Award and Contract Determination*. The award has been characterised by poor implementation and a lack of information.

There has been no real effort by any state authority to explain the award to industry. This has promoted a lack of understanding about the award.

In short, there is significant industry resentment of the award.

**b) the integration of NSW OH&S and industrial relations legislation governing heavy vehicles to ensure consistency and conformity with that applying in other States, as part of the national reform agenda;**

The simple answer to this term of reference is that there is a total lack of integration.

The trucking industry in NSW is in the unenviable position of having to deal with three regimes of compliance. These are:

1. *The Occupational Health and Safety Amendment (Long Distance Truck Driver Fatigue) Regulation 2005*
2. *The Transport Industry - Mutual Responsibility for Road Safety (State) Award and Contract Determination*
3. The NTC's model bill for national Heavy Vehicle Driver Fatigue legislation. implemented in the main in NSW as *the Road Transport (General) Amendment (Heavy Vehicle Driver Fatigue and Speeding Compliance) Regulation 2008*.

The difficulties with this situation can be demonstrated by comparing some provisions.

1. **Parties liable under Chain of Responsibility ( Concept for other parties in supply chain to be held responsible for driving breaches eg consignors of freight )**

<p><i>a. The Occupational Health and Safety Amendment (Long Distance Truck Driver Fatigue) Regulation 2005</i></p>	<p><i>b. The Transport Industry - Mutual Responsibility for Road Safety (State) Award and Contract Determination</i></p>	<p><i>c. Road Transport (General) Amendment (Heavy Vehicle Driver Fatigue and Speeding Compliance) Regulation 2008:</i></p>
<p><u>Consignor</u>: Person from whom a consignment of freight is to be delivered being a person who carries on business of which substantial part is a prescribed business. Not included if employ less than 200 people</p> <p><u>Consignee</u>: Person to whom a consignment of freight is to be delivered being a person who carries on business of which substantial part is a prescribed business Not included if employ less than 200 people</p> <p><u>Employer</u></p> <p><u>Head Carrier</u>: Carrier other than self employed carrier</p>	<p><u>Consignor</u> is a transport operator who enters into a transport contract with another transport operator to carry freight for the consignor. The consignor may also be under a contractual obligation to carry the same freight.</p> <p>This is a unique definition of consignor.</p>	<p><u>Consignor</u> of goods means:</p> <p>(a) a person who, with that person’s authority, is named or otherwise identified as the consignor of the goods in the transport documentation relating to the transport of the goods by road, or</p> <p>(b) a person who engages an operator of a vehicle or combination, either directly or indirectly or through an agent or other intermediary, to transport the goods by road, or</p> <p>(c) a person who has possession of, or control over, the goods immediately before the goods are transported by road, or</p> <p>(d) a person who loads a vehicle with the goods, for transport by road, at a place where goods in bulk are stored or temporarily held and that is usually unattended (except by ...drivers etc)</p> <p><u>Consignee</u> of goods means:</p> <p>(a) a person who, with that person’s authority, is named or otherwise identified as the intended consignee of the goods in the transport documentation relating to the transport of the goods by road, or</p> <p>(b) a person who actually receives the goods after completion of their transport by road, but does not include a person who merely unloads the goods.</p> <p><u>Employer</u> means a person who engages someone else to drive a regulated heavy vehicle under a contract of employment, apprenticeship or training.</p> <p><u>Loader</u> has the same meaning as in ..... the Act.</p> <p><u>Loading Manager</u> means a person who:</p> <p>(a) manages, or is responsible for the operation of, premises at which usually on a business day at least 5 regulated heavy vehicles are loaded with goods for transport, or have goods that the vehicles have transported unloaded, or</p> <p>(b) directly or indirectly supervises, manages or controls the loading or unloading of regulated heavy vehicles at such premises.</p> <p><u>Operator</u>, in relation to a regulated heavy vehicle, means a person who is responsible for controlling or directing the operations of:</p> <p>(a) in the case of a vehicle (including a vehicle in a combination)—the vehicle, or</p> <p>(b) in the case of a combination—the towing vehicle in the combination, but does not include a person merely because the person:</p> <p>(c) owns the vehicle or combination, or</p> <p>(d) drives the vehicle or combination, or</p> <p>(e) maintains, or arranges for the maintenance of, the vehicle or combination, or</p> <p>(f) arranges for the registration of the vehicle.</p> <p><u>Prime Contractor</u> means a person who engages someone else to drive a regulated heavy vehicle under a contract for services.</p> <p><u>Scheduler</u> means a person who:</p> <p>(a) schedules a driver’s work or rest time, or</p> <p>(b) schedules the transport of passengers or goods by road.</p>

		<p><u>Unloader</u> of goods means a person who:</p> <p>(a) unloads from a vehicle or combination goods that have been transported by road, or</p> <p>(b) unloads from a vehicle or combination a freight container (whether or not containing goods) that has been transported by road, or</p> <p>(c) without limiting the above, unloads from a freight container that is on a vehicle or combination goods that have been transported by road, or</p> <p>(d) supervises an activity mentioned in paragraph (a), (b) or (c), or</p> <p>(e) manages or controls an activity mentioned in paragraph (a), (b), (c) or (d)....</p>
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It can be seen that the latter regulation has an extensive listing of parties liable and their definitions are extensive.

(Drivers also have duty not to drive when fatigued)

## 2. Driving Plans (Pre trip plans on behalf of drivers aimed at addressing fatigue)

<i>a. The Occupational Health and Safety Amendment (Long Distance Truck Driver Fatigue) Regulation 2005</i>	<i>b. The Transport Industry - Mutual Responsibility for Road Safety (State) Award and Contract Determination</i>	<i>c. Road Transport (General) Amendment (Heavy Vehicle Driver Fatigue and Speeding Compliance) Regulation 2008:</i>
<p>Incorporated in driver fatigue management ie A driver fatigue management plan prepared under this clause 81D (4) must address each of the following matters to the extent to which they may affect driver fatigue:</p> <p>(a) trip schedules and driver rosters, taking into account the following:</p> <p>(i) times required to perform tasks safely,</p> <p>(ii) times actually taken to perform tasks,</p> <p>(iii) rest periods required to recover from the fatigue effects of work,</p> <p>(iv) the cumulative effects of fatigue over more than one day,</p> <p>(v) the effect of the time of day or night on fatigue,</p> <p>(b) management practices, including the following:</p> <p>(i) methods for assessing the suitability of drivers,</p> <p>(ii) systems for reporting hazards and incidents,</p> <p>(iii) systems for monitoring driver’s health and safety,</p> <p>(c) work environment and amenities,</p> <p>(d) training and information about fatigue that is provided to drivers,</p> <p>(e) loading and unloading schedules, practices and systems, including</p>	<p>3.1 A transport operator must prepare a safe driving plan in relation to any work performed by its contract carriers pursuant to a long haul transport contract to which the transport operator is a party.</p> <p>3.2 A safe driving plan must:</p> <p>(i) identify the name and address of the relevant transport operator, and of the consignor or head consignor party to the relevant long haul transport contract;</p> <p>(ii) identify the period in which work is required to be performed under the long haul transport contract to which the safe driving plan applies;</p> <p>(iii) identify the relevant pick up and delivery locations;</p> <p>(iv) demonstrate how the work to be performed is to be remunerated in accordance with any applicable industrial instrument;</p> <p>(v) identify the remuneration method chosen (having regard to the health and safety of relevant contract carriers, and the rate;</p> <p>(vi) identify the system(s) by which the effect of the chosen method of remuneration on driver fatigue may be monitored and measured;</p> <p>(vii) identify the means by which the</p>	<p>Details are not prescribed, but there is a general duty to prevent driving while the driver is impaired by fatigue.</p> <p>There are prescribed options for fatigue management which are:</p> <p><u>Standard Hours:</u> Basic work and rest limits –No more work than 12 hours daily</p> <p><u>Basic Fatigue Management (BFM):</u> NHVAS accredited, and BFM offers more flexible hours and ability to work shifts of up to 14 hours daily. BFM operators have a greater say in when they can work and rest provided the risks of working longer hours and night shifts are properly managed</p> <p><u>Advanced Fatigue Management (AFM):</u> NHVAS accredited, and AFM offers more flexible hours than Standard Hours or BFM in return for the operator demonstrating greater accountability for managing fatigue risks. Rather than prescribing work and rest hours, AFM takes a risk management approach with an outer limit of 15 hours daily.</p>

queuing practices and systems,	<p>amount of hours and work to be performed by contract carriers is to be limited in order to prevent driver fatigue occurring and excessive hours being worked, and the means by which such limitations are to be enforced;</p> <p>(viii) set out how the work is to be performed and rest breaks taken in a manner consistent with the Regulation and any provisions of any applicable industrial instrument concerning hours of work, limitations upon hours of work, meal breaks, rest breaks, crib breaks and like matters;</p> <p>(ix) identify the means by which the transport operator will ensure that any persons performing the work will be doing so free of drugs and alcohol (which shall include but not be limited to the transport operators drug and alcohol policy implemented in accordance with clause 7 of this Contract Determination);</p>	
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Again, different requirements between laws apply.

**3. General Duty to address Fatigue (Stipulated in laws as methods for fatigue management compliance)**

<i>a. The Occupational Health and Safety Amendment (Long Distance Truck Driver Fatigue) Regulation 2005</i>	<i>b. The Transport Industry - Mutual Responsibility for Road Safety (State) Award and Contract Determination</i>	<i>c. Road Transport (General) Amendment (Heavy Vehicle Driver Fatigue and Speeding Compliance) Regulation 2008:</i>
<p><b>81B Duty to assess and manage fatigue of drivers</b></p> <p>(1) An employer must not cause or permit any of its employees to transport freight long distance unless:</p> <p>(a) the employer has assessed the risk of harm from fatigue to the employee's health or safety in doing so, and</p> <p>(b) to the extent to which the employer's activities contribute to that risk:</p> <p>(i) the employer has eliminated the risk, or</p>	<p>No specific duty. Provisions for Safe driving plan, Bluecard (training by licensed provider) &amp; Drug &amp; Alcohol Policy (only counselling etc with voluntary disclosure)</p>	<p><b>Driver's duty to avoid driver fatigue</b></p> <p>A person must not drive a regulated heavy vehicle on a road or road related area while he or she is impaired by fatigue.</p> <p><b>And for Parties in the Chain of Responsibility ie</b></p> <p>(a) the employer of the driver of the vehicle,</p> <p>(b) the prime contractor of the driver,</p> <p>(c) the operator of the vehicle,</p> <p>(d) the scheduler of goods or passengers for transport by the vehicle, and the scheduler of its driver,</p> <p>(e) the consignor of goods for transport by the vehicle,</p> <p>(f) the consignee of goods for transport by the vehicle,</p> <p>(g) the loading manager of goods for transport by the vehicle,</p> <p>(h) the loader of goods on to the vehicle,</p> <p>(i) the unloader of goods from the vehicle.</p>

<p>(ii) if elimination of the risk is not reasonably practicable, the employer has controlled the risk.</p> <p>(2) A head carrier /consignor/consignee must not enter into a contract with a self-employed carrier under which the self-employed carrier undertakes to transport freight long distance unless:</p> <p>(a) ... has assessed the risk of harm from fatigue to the health or safety of any driver who transports freight long distance under the contract, and</p> <p>(b) to the extent to which the .. activities contribute to that risk:</p> <p>(i) ... has eliminated the risk, or</p> <p>(ii) if elimination of the risk is not reasonably practicable, the head carrier has controlled the risk.</p> <p>A consignor or consignee must not enter a contract with a head carrier for the transport of freight long distance unless the consignor or consignee has satisfied itself on reasonable grounds:</p> <p>(a) that any delivery timetable is reasonable as regards the fatigue of any driver transporting freight long distance under the contract, taking into account industry knowledge of a reasonable time for the making of such a trip (including loading, unloading and queuing times), and</p> <p>(b) that each driver who will transport freight long distance under the contract is covered by a driver fatigue management plan....</p>		<p>A party in the chain of responsibility in relation to a regulated heavy vehicle must take all reasonable steps to ensure that a person does not drive the vehicle on a road or road related area while the person is impaired by fatigue.</p> <p><b>&amp; for the majority of these parties:</b></p> <p>.... must take all reasonable steps to ensure that a driver’s schedule for driving the vehicle will not cause, by act or omission, the driver:</p> <p>(a) to drive on a road or road related area while impaired by fatigue, or</p> <p>(b) to drive while in breach of his or her work and rest hours option, or</p> <p>(c) to drive in breach of another law in order to avoid driving while impaired by fatigue or while in breach of his or her work and rest hours option.</p> <p>(1) A driver is <b>impaired by fatigue</b> if the driver’s ability to drive a vehicle safely is affected by fatigue.</p> <p>(2) When deciding whether a driver was impaired by fatigue, a court may take into account anything it considers is relevant, including (but not limited to) the following:</p> <p>(a) any relevant cause of fatigue or sign of fatigue that was evident, and the degree to which it may indicate that the driver was impaired by fatigue,</p> <p>(b) any behaviour of the driver that may have resulted from being impaired by fatigue,</p> <p><b>Note.</b> Examples:</p> <ul style="list-style-type: none"> <li>• the circumstances of any incident, crash or near miss</li> <li>• poor driving judgement</li> <li>• inattentive driving (eg drifting into other lanes or not changing gears smoothly)....</li> </ul>
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Clearly latter regulation has multiple provisions for fatigue management

#### 4. Offences & Reasonable Steps Defence

<p><i>a. The Occupational Health and Safety Amendment (Long Distance Truck Driver Fatigue) Regulation 2005</i></p>	<p><i>b. The Transport Industry - Mutual Responsibility for Road Safety (State) Award and Contract Determination</i></p>	<p><i>c. Road Transport (General) Amendment (Heavy Vehicle Driver Fatigue and Speeding Compliance) Regulation 2008:</i></p>
<p>Tied to penalty levels in OH&amp; S Legislation</p>	<p>Not stipulated, but disputes procedure, then conciliation, arbitration by Commission</p>	<p>Penalties prescribed and also tiers for offences: minor, substantial, severe &amp; critical risks, with breaches of driving hours eg minor risk for driving under excess of 45 mins for standard hours.</p> <p>Also a <u>reasonable steps defence</u> ie If a provision of this Part states that a person has the benefit of the <b>reasonable steps defence</b> for an offence, it is a defence to the offence for the person to prove that:</p> <p>(a) the person did not know, and could not reasonably be expected to have known, of the contravention concerned, and</p> <p>(b) either:</p> <p>(i) the person had taken all reasonable steps to prevent the contravention concerned, or</p> <p>(ii) the person could not reasonably be expected to have taken any steps to prevent the contravention concerned.</p>

Again, inconsistent procedures exist.

This snapshot illustrates only some of the differences existing between legal provisions, and the inherent difficulties they can cause. We can provide other examples if required.

In short, only the Road Transport (General) Amendment (Heavy Vehicle Driver Fatigue and Speeding Compliance) Regulation 2008 incorporates a major and comprehensive fatigue management regime.

After extensive feedback from members, we believe that there is no need for this regulatory complexity, and driver fatigue in NSW should be governed only by the NTC's model bill for national Heavy Vehicle Driver Fatigue legislation.

As an independent statutory body financed by all governments, the NTC develops and submits reform recommendations to the Australian Transport Council (ATC) of federal, state and territory Transport Ministers for approval, as occurred with the model bill for national Heavy Vehicle Driver Fatigue legislation.

We should mention that our members' experience of the Award and Contract Determination has been of a compliance burden that is not warranted. Also, it does not achieve any enhancement of safety beyond the measures in the NTC's model bill for national Heavy Vehicle Driver Fatigue legislation.

In fact, it only detracts from the NTC's model bill, and adds a confusing additional system of compliance.

In particular:

-The Award requires employers and contactors to publish employee and contractor remuneration on publicly available Safe Driving Plans. This is an invasion of an employee's right to privacy;

-The Award requires compulsory union involvement. Employees and employers no longer have a choice;

- Unions can enter and enforce the Award and Contract Determination at any related place of business, including consignors of freight, with just 24 hours notice. A union may apply and receive up to 50% of the revenues received from any prosecution;

- All employees must be "Bluecard Trained". Bluecard is a private business supported by and with close links to the Transport Workers Union. This is anti competitive, and denies any recognition of alternative nationally recognised training. The industry has in place training that far exceeds that derived from Bluecard; and

- Prohibition of employer disciplinary action in respect of drug or alcohol usage.

- The Award includes a complex arrangement of responsibilities for consignors, contractors, employers and employees to develop and enforce trip specific driving plans, already addressed under OH&S Law

In contrast, we believe that the NTC's model bill for national Heavy Vehicle Driver Fatigue legislation provides a robust and comprehensive fatigue regime, which has undergone major stakeholder consultation and is accepted and mandated through the Australian Transport Council. We reiterate that safe driving plans, drugs and alcohol policies and chain of responsibility stipulations are addressed in the model provisions.

We reiterate that the NTC's model bill addresses training, persons who must comply, has no stipulation for particular training providers, as in using the Bluecard requirement in the Award and Contract Determination. This mandatory requirement ensures there is no scope for choice of the best training in the circumstances.

For background, we should also mention that recently:

1. We have provided a report by Strategic Advisors, Castalia, to the Australian Government in response to a Consultation Regulatory Impact Statement supporting an option of a uniform set of heavy vehicle laws administered by a single national regulator.
2. We have participated in industry discussions with the NSW Minister for Roads, Mr Daley about improvements to the 2008 Fatigue Regulations.

**c) the adequacy of the Government's provision of infrastructure to support the implementation of heavy vehicle driver fatigue management and safe driving plans in NSW;**

NatRoad has previously submitted to the NSW Government that the harsh reality is that today, heavy vehicle drivers too often cannot comply with their regulatory obligations to obtain timely and quality rest as a result of two whole of government responsibilities:

1. Inadequate provision of road side rest areas; and

2. Road Rule 200 preventing heavy vehicles from stopping for greater than one hour in built up areas, including industrially and commercially zoned areas.

This is a critical issue requiring immediate and national attention, given that no matter what safe driving plans are in place to often it is either illegal or physically impossible to stop a heavy vehicle safely in compliance with fatigue obligations on most freight routes, including within built up areas such as most major cities.

The evidence we have received from our members all over the country is also supported by a recently released audit report, *Audit of Rest Areas against National Guidelines* conducted by Austroads and managed by the National Transport Commission.

The audit was commissioned based on data collected by NatRoad for the purposes of verifying this information from our members. The audit assessed rest areas along 12,700 km of mostly AusLink freight routes. The results were not surprising in the least bit for NatRoad or our members. The analysis found that **none of the audited routes fully met the spacing recommendations of the National Guidelines**. Sixty per cent of the audited routes had substantial deficiencies in the frequency or provision of rest opportunities.

The audit also found that major rest areas were under-provided in all jurisdictions, except Victoria. Queensland and Northern Territory findings showed that any rest opportunities for heavy vehicle drivers were scarce.

The audit also identified specific deficiencies in rest areas on many highways. In addition, nearly three-quarters of rest areas on the audited routes were not duplicated correctly on the other side of the road (except for Tasmania). This results in heavy vehicle drivers accessing rest areas via right turns, U-turns or by parking the vehicle on one side and crossing on foot – all considered high risk activities in high speed environments.

Of course, as the audit primarily covered AusLink routes, there are many other examples of rest area deficiencies known to NatRoad. In fact, NatRoad previously estimated when considering the fatigue regulation proposals, that there was a national shortage of about 22,000 rest areas.

The audit's recommendations included the development of an empirical parking supply model for rest areas and evaluation of the likely impacts of the proposed changes to the *Road Transport Reform (Driving Hours) Regulations* on the demand for frequency and category of rest areas should also be carried out.

NatRoad has urged the NSW Government to also consider strategies to:

- Re-enlist the help of key towns along major highways in providing facilities for trucks. Historically, towns used to support truckies but recent moves to ban trucks from built up areas have made the fatigue management crisis worse as well as in effect locking drivers out of using shopping and rest facilities in these towns.
- Embrace the importance of providing changeover and breakdown points for trucks. Changeover points can be a great aid to reducing driver fatigue and getting people to their home port. Breakdown points need to be safe and efficient and for our members, particularly in places where road train routes cease.
- Address the design of any basic shade/rain protection or other facilities at rest areas. We had reports that where these facilities are provided, they often don't work well

NatRoad identified and recommended the following routes as priorities for rest area funding in NSW:

- Princes Hwy south of Kiama to the Victorian border
- Missing links (lack of capacity) on the Newell Hwy
- Hume Highway (lack of capacity) and requires inclusion of rest areas during upgrade.
- Pacific Hwy (lack of capacity)
- New England Hwy
- Gwydir Hwy between Grafton and Moree
- Barrier Hwy from Narromine to Cobar
- F3 into and out of Sydney
- Pilliga State Forest southbound on the Newell
- M7 in Sydney
- M4 and Great Western Hwy through to Lithgow
- Mid Western Hwy Lithgow through to South Australian Border

Of particular priority NatRoad suggested that the focus be on increasing capacity on the major freight trunk routes of the Newell, Pacific, Hume and New England, and building rest areas on the Princes Hwy.

**d) responses to heavy vehicle driver fatigue management and safe driving plans in other jurisdictions, further proposals and any other related matters.**

As mentioned above, the NTC's model bill for National Heavy Vehicle legislation has generally been implemented in NSW. It has also been implemented in the main in Victoria, South Australia and Queensland. It is also expected to be introduced in Tasmania and the Northern Territory.

Although there are some minor problems with interpretation of the law by authorities which has resulted in examples of poor enforcement, as there is only one set of laws in other jurisdictions, there is no confusion of definitions and responsibilities as occurs under the complex regime in NSW.

Please contact me if you would like to discuss this letter or would like any further information. Also, NatRoad representatives are available to appear at the Committee's hearings.

Yours faithfully



Bernard Belacic  
CEO