



REVIEW OF THE AUSTRALIAN GOVERNMENT'S COMPETITIVE NEUTRALITY POLICY

AUSTRALIAN TRUCKING ASSOCIATION SUBMISSION 28 APRIL 2017

1. About the Australian Trucking Association

The Australian Trucking Association (ATA) is the peak body representing trucking operators. Its members include state and sector associations, some of Australia's major logistics companies and businesses with leading expertise in truck technology. Through its members, the ATA represents many thousands of trucking businesses, ranging from owner drivers to large fleets.

2. Recommendations

Recommendation 1

Competitive neutrality should be applied to the National Heavy Vehicle Accreditation Scheme, which as a government business should not enjoy competitive advantages that are not available to private sector competitors.

Recommendation 2

The Australian Government's competitive neutrality policy should be applied to government businesses that fall under the jurisdiction of intergovernmental agreements and COAG councils.

Recommendation 3

The Australian Government should amend s 14(4)(b) of the *Interstate Road Transport Regulations 1986* to enable the responsible federal minister to approve TruckSafe as a maintenance management compliance assurance scheme for vehicles registered under the Federal Interstate Registration Scheme.

Recommendation 4

The Australian Government should press for the competitive advantages available to businesses in the National Heavy Vehicle Accreditation Scheme under state and territory legislation and regulations to be made available to private sector competitors, including TruckSafe.

Recommendation 5

The Australian Government should work with the other Heavy Vehicle National Law jurisdictions to require the National Heavy Vehicle Regulator to amend the Performance Based Standards scheme operating conditions to include TruckSafe accreditation as an alternative to the National Heavy Vehicle Accreditation Scheme.

Recommendation 6

The \$10 million threshold for determining if a government business activity is significant should be adjusted to a principle-based approach that includes consideration of the size of the business, the size of the market and the impact on competition.

Recommendation 7

The competitive neutrality policy should seek to minimise the impact of government businesses competing against small business with competitive advantages as a result of public ownership.

3. Competitive neutrality

As outlined in the Australian Government's consultation paper, competitive neutrality (CN) requires that government business activities should not enjoy any net competitive advantages simply by virtue of public sector ownership. This is to ensure market competition drives efficient production by the lowest cost business.¹

Governments committed to implement competitive neutrality regimes in the 1995 *Competition Principles Agreement*, which was enhanced by the 2006 *Competition Infrastructure Reform Agreement*.

In 2013 the Australian Government announced an independent Competition Policy Review, also referred to as the Harper Review. Both the final report and Government response to the Competition Policy Review were released in 2015. The review included a recommendation, supported by the Australian Government, to review competitive neutrality policies.²

On 9 December 2016, first ministers signed a new *Intergovernmental Agreement on Competition and Productivity Enhancing Reforms*. The agreement reaffirmed a commitment to competitive neutrality and clause 9(f) of the agreement states that:

Government business activities that compete with private providers, whether for-profit or not-for-profit, should comply with competitive neutrality principles to ensure they do not enjoy a net competitive advantage simply as a result of government ownership.³

4. National Heavy Vehicle Accreditation Scheme

The National Heavy Vehicle Regulator (NHVR) administers the National Heavy Vehicle Accreditation Scheme (NHTAS). Under this scheme, truck operators can access regulatory concessions that reduce the cost of doing business. These can include extra mass, exemptions from inspection requirements and longer working hours for drivers.

At the same time, the ATA runs the TruckSafe safety accreditation scheme. Businesses accredited under TruckSafe cannot access the regulatory concessions available under NHTAS, even though TruckSafe has stronger standards in some areas.

Because NHTAS accreditation is virtually a pre-requisite for doing business in some sectors of the industry, trucking operators are withdrawing from TruckSafe, even though they acknowledge that this will reduce their safety.

¹ Australian Government, [Review of the Commonwealth Government's Competitive Neutrality Policy Consultation Paper](#), March 2017, 1.

² Australian Government, [Australian Government Response to the Competition Policy Review](#), November 2015, 15.

³ Council of Australian Governments, [Intergovernmental Agreement on Competition and Productivity Enhancing Reforms](#), December 2016, 3.

5. TruckSafe

In operation since 1996, TruckSafe was established prior to the NHVAS.

Businesses accredited under TruckSafe are required to meet five key standards. Livestock transporters are also required to comply with a sixth standard, which comprises the strongest animal welfare rules in Australia.

TruckSafe members are audited regularly by independent, qualified auditors. Ten of the twelve auditors are based in regional Australia.

TruckSafe has assisted more than 820 businesses since it was first established. It currently accredits some 18,400 on road applications.

TruckSafe introduced upgraded standards from 1 January 2017 and operators are now being audited against them. Under the new standards:

- operators must develop, implement and maintain procedures to ensure that all speed limiters work correctly
- personnel involved in TruckSafe must have refresher training every three years, including a practical driving verification for drivers
- operators must regularly review their MDLR, speed and fatigue procedures using a system based on ISO31000.

6. The need to apply competitive neutrality

NHVAS is a government business activity, despite the NHVR's claim that it is regulatory. NHVAS competes with TruckSafe and the Australian Logistics Council (ALC) industry codes. But it does enjoy a net competitive advantage: the regulatory concessions that are available only to NHVAS accredited businesses.

There is no public interest to restricting these concessions to NHVAS. In fact, the restrictions could potentially have adverse safety consequences, because operators are leaving TruckSafe with its strong safety standards.

The NHVAS is in breach of the 2016 *Intergovernmental Agreement on Competition and Productivity-Enhancing Reforms*, and specifically clause 9(f), as already mentioned.

Even if the claim that the NHVAS is regulatory was to be accepted, it is still in breach of the agreement. Clause 9(b) states:

Regulatory frameworks and government policies binding the public or private sectors should not unnecessarily restrict the competition.

The NHVAS also fails to establish the separation of interests between policy, regulation and service provision as outlined in clause 9(d):

The model for government provision or procurement of goods and services should separate the interests of policy (including funding), regulation and service provision and where practical encourage a diversity of providers.

If NHVAS is regulatory in nature, as the NHVR claims, then it is seeking to deliver a regulatory outcome through service provision in competition with private sector entities, and whilst enjoying a clear competitive advantage that is not available to private sector entities.

Otherwise as an obviously identifiable government business, the NHVAS enjoys a competitive advantage by the nature of its government ownership and in conflict with the principle of competitive neutrality.

The ATA considers that applying a competitive neutrality arrangement to NHVAS would:

- enable more trucking businesses to remain in TruckSafe and comply with its higher standards, and
- ultimately improve the quality of NHVAS, because it would need to attract members based on the quality of its standards and auditing, rather than the availability of regulatory concessions.

Recommendation 1

Competitive neutrality should be applied to the National Heavy Vehicle Accreditation Scheme, which as a government business should not enjoy competitive advantages that are not available to private sector competitors.

7. Intergovernmental agreements

Due to the nature of Australia's federal system of government and the split of responsibilities between the Commonwealth and the states and territories, policy work and reform on a number of issues of national significance is progressed through the Council of Australian Governments (COAG).

COAG is supported by eight inter-jurisdictional, ministerial level councils. This includes the Transport and Infrastructure Council, consisting of Transport Ministers and chaired by the Commonwealth Transport Minister.

The NHVR was initiated by the *Intergovernmental Agreement on Heavy Vehicle Regulatory Reform*, agreed by first ministers on 19 August 2011. The agreement also set out the process for developing a co-operative national law, and the *Heavy Vehicle National Law* (HVNL) commenced operation in the Australian Capital Territory, New South Wales, Queensland, South Australia, Tasmania, and Victoria on 10 February 2014.

As the HVNL is hosted by the Queensland Parliament, the NHVR is not a Commonwealth agency. Heavy vehicle reform and policy is one of the growing number of issues and reform agendas to be governed through COAG and intergovernmental agreements. The increasing work of COAG councils raises the issue of who is responsible for the application of competitive neutrality to policy areas covered by an intergovernmental agreement.

Where the Australian Government is a party to an intergovernmental agreement, there is a strong argument that the Australian Government has a responsibility to see that these policies and reforms are not excluded from the application of competitive neutrality. As the only jurisdiction that can provide national leadership and a standard that is nationally consistent, the Australian Government's competitive neutrality policy should apply to intergovernmental agreements.

Adding to its responsibility with regard to heavy vehicles, the Australian Government is the chair of the COAG council which must approve any changes to the HVNL.

Recommendation 2

The Australian Government's Competitive Neutrality Policy should be applied to government businesses that fall under the jurisdiction of intergovernmental agreements and COAG councils.

8. Applying competitive neutrality to the NHVAS

The competitive advantages available to the NHVAS are contained within a number of different modules and areas of accreditation, and these are created by a range of legislation and regulations.

Of particular significance to TruckSafe are the competitive advantages available to NHVAS accredited operators under the NHVAS maintenance module. These are not available to TruckSafe accredited operators.

The TruckSafe maintenance standards are substantially the same as the NHVAS standards, but have the following additional requirements:

- TruckSafe maintenance standard B.10 requires operators to develop, implement and maintain procedures to ensure all truck speed limiters work correctly. NHVAS does not include this requirement.
- TruckSafe maintenance standard B.4 requires operators to assess the roadworthiness of their vehicles each year. These assessments are not required under NHVAS.

In addition to the differences between the TruckSafe and NHVAS maintenance standards, TruckSafe has additional features that make it more rigorous than NHVAS:

- TruckSafe is an all-in system. Operators in TruckSafe must comply with all five of its mandatory standards and must include all their vehicles in their TruckSafe system. Operators in NHVAS can pick and choose from the NHVAS modules and can choose to nominate only some of their vehicles under NHVAS maintenance.

In its review of the national heavy vehicle roadworthiness system, the NTC noted that:

A number of aspects of TruckSafe offer opportunities for improvements to the NHVAS. The TruckSafe requirement for “In one – In all” is a particular strength that requires its members to make a comprehensive commitment to bringing a systematic approach to a broad range of business operations that may be relevant to safety.⁴

- The TruckSafe on-road compliance module requires operators to review their safety and compliance risks using a system based on ISO31000. NHVAS does not include this requirement.
- Under NHVAS, operators can select their own external auditor from those approved by the NHVR. TruckSafe assigns auditors to operators and reviews their audit reports

⁴ NTC, [Heavy vehicle roadworthiness review phase 2 - Integrity review of the national heavy vehicle roadworthiness system](#), August 2014. 65.

in detail. The TruckSafe approach continues to be more rigorous than NHVAS, despite the changes to the government scheme in 2015.⁵

- The TruckSafe Industry Accreditation Council (TIAC), an independent expert panel, reviews and approves applications for accreditation, reviews and approves audit reports undertaken of operator's systems, and reviews and makes recommendations to the TruckSafe Board for the improvement of the TruckSafe standards and audit methodologies. This approach is consistent with international best practice.⁶

The advantages available to NHVAS provide exemptions from vehicle inspections in Queensland and New South Wales, and for vehicles registered under the Federal Interstate Registration Scheme (FIRS).

The competitive advantage for NHVAS vehicles registered under FIRS is of particular relevance for the Australian Government, as it is governed by federal legislation. The *Interstate Road Transport Regulations 1986* sets out under s 14(4):

- (4) For paragraph (2)(a), the Minister may approve a maintenance management compliance assurance scheme that:
- (a) ensures that a person's motor vehicles or trailers are maintained in a safe and roadworthy condition that complies with these regulations, and
 - (b) has a procedure to be followed if the scheme is breached, including provision for penalties.

The problematic wording in this section is the requirement that the scheme includes penalties for non-compliance.

Private sector schemes, such as TruckSafe, are not able to impose the legal penalties for non-compliance with accreditation available to the NHVR under Chapter eight of the HVNL.

TruckSafe can impose sanctions of its own, including a triggered audit, an alteration to accreditation conditions, or the termination of accreditation. TIAC also has the ability to refer a suspended or terminated operator to the road transport authorities for further investigation.

In practice, these sanctions have proved as effective as the formal penalties for breaching accreditation available under the HVNL and its superseded state legislation.

Accordingly, the Australian Government should amend s 14(4)(b) of the *Interstate Road Transport Regulations 1986* to enable the responsible federal minister to approve TruckSafe as a maintenance management compliance assurance scheme for FIRS vehicles.

Additionally, where the NHVAS enjoys competitive advantages as a result of state legislation and regulations, the Australian Government should press for competitive neutrality to be applied.

This should extend to the approval of vehicles under the performance based standards (PBS) scheme which also delivers competitive advantage to the NHVAS. The PBS scheme is designed to allow innovative and optimised vehicle design to provide industry with higher productivity and safety.

Approvals of new vehicles under the PBS scheme are granted by the NHVR against standards and vehicle assessment rules. In providing approval, the NHVR may also require

⁵ NHVR, [NHVAS review](#) (website page), viewed 19 April 2017.

⁶ AS/NZS ISO/IEC 17021.1:2015 Conformity assessment - Requirements for bodies providing audit and certification of management systems, s 5.2.1, 7.

that a vehicle meets operating requirements, including on how a vehicle is managed, used or maintained.

These conditions require the vehicle to meet particular NHVAS requirements and modules, including:

- Mass management module for vehicles with triaxles requesting higher mass limits and vehicles requesting concessional mass limits.
- Maintenance management module for vehicles with components that might require specific routine maintenance.⁷

The NHVR should amend the PBS scheme operating conditions to include TruckSafe accreditation as an alternative to the NHVAS, with specific regard to operating conditions that require PBS vehicles to be in the NHVAS maintenance module. The NHVR should not restrict competition in accreditation and bind operators to utilise its own business in order to access productivity improvements under the PBS scheme.

Recommendation 3

The Australian Government should amend s 14(4)(b) of the *Interstate Road Transport Regulations 1986* to enable the responsible federal minister to approve TruckSafe as a maintenance management compliance assurance scheme for vehicles registered under the Federal Interstate Registration Scheme.

Recommendation 4

The Australian Government should press for the competitive advantages available to businesses in the National Heavy Vehicle Accreditation Scheme under state and territory legislation and regulations to be made available to private sector competitors, including TruckSafe.

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The Australian Government should work with the other Heavy Vehicle National Law jurisdictions to require the National Heavy Vehicle Regulator to amend the Performance Based Standards scheme operating conditions to include TruckSafe accreditation as an alternative to the National Heavy Vehicle Accreditation Scheme.

9. Is the business activity ‘significant’?

The consultation paper asks if the \$10 million threshold for determining if a business activity is significant should be retained or adjusted. The paper refers to several state jurisdiction policies: some base their assessment not on an arbitrary threshold but instead consider factors such as the size of the business and the size of the market, its influence on the market, the effect of poor performance, the influence on competition, and whether the activity earns a substantial part of its operating revenue from user charges.⁸

With the experience of operating TruckSafe, **the ATA would recommend a shift from an arbitrary threshold to a principle-based test**. The turnover of the NHVAS, which the ATA estimates to be below the \$10 million threshold, does not ultimately change its impact on the market and on its competitors. The competitive advantages available to the NHVAS are encouraging trucking operators to shift from TruckSafe to the NHVAS, having a significant impact on TruckSafe as a private sector business that was established prior to the NHVAS.

⁷ National Heavy Vehicle Regulator, [Operating Conditions of Performance-Based Standards \(PBS\) for vehicles](#), 2013.

⁸ Australian Government, [Review of the Commonwealth Government’s Competitive Neutrality Policy Consultation Paper](#), March 2017, 9, 10.

It is also critical that the Australian Government's competitive neutrality policy recognises the importance of small businesses to the Australian economy and community.

The Government has a number of policy measures aimed at supporting small business and recognising their contribution to the economy, including the establishment of the Australian Small Business and Family Enterprise Ombudsman and the Government's enterprise tax plan. It is well recognised that small business is critical to the economy and the community, and as such, the competitive neutrality policy should not ignore the impact on small businesses of having to compete with government businesses that have an in-built competitive advantage by virtue of their public ownership.

Small businesses are less likely to have the ability to compete with a government business that has a competitive advantage, and failure to acknowledge this and apply competitive neutrality based on a principle based test risks creating market sectors that are dominated by government businesses with no incentive to drive efficient production or improve performance.

Recommendation 6

The \$10 million threshold for determining if a government business activity is significant should be adjusted to a principle-based approach that includes consideration of the size of the business, the size of the market and the impact on competition.

Recommendation 7

The competitive neutrality policy should seek to minimise the impact of government businesses competing against small business with competitive advantages as a result of public ownership.