



NATIONAL TRANSPORT REGULATORY REFORM: DRAFT REPORT

PRODUCTIVITY COMMISSION

AUSTRALIAN TRUCKING ASSOCIATION SUBMISSION

29 JANUARY 2020

1. About the Australian Trucking Association

The Australian Trucking Association and its member associations collectively represent 50,000 businesses and 200,000 people in the Australian trucking industry. Together we are committed to safety, professionalism and viability.

2. Structure of this submission

In April 2019, the Australian Government referred to the Productivity Commission (PC) an inquiry into national transport regulatory reform.

The inquiry is into the impacts of the transport regulatory reforms agreed by the Council of Australian Governments (COAG) in 2008-09. This included the establishment of the Heavy Vehicle National Law (HVNL) and its administration by the National Heavy Vehicle Regulator (NHVR).

In May 2019, the PC released an issues paper. The ATA made a submission in June 2019.

The PC released its draft report on 12 November 2019. This submission responds to the draft report; the table on page 2 sets out its structure. Seven appendices are included, with appendix G reconciling the draft PC recommendations with the structure of the submission and the ATA's own recommendations.

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Appendix E	Assurance models (ATA submission to HVNL review)
Appendix F	2019 Australian Infrastructure Audit (ATA submission to Infrastructure Australia)
Appendix G	Reconciliation of the draft PC recommendations with this submission

3. Summary of ATA recommendations

Recommendation 1

The Australian and state and territory governments should implement the Productivity Commission's draft recommendations 9.2, 9.3 and 9.4 on extending the crash investigation role of the Australian Transport Safety Bureau to heavy vehicles.

Recommendation 2

The new HVNL should be restructured on a three-tiered basis, including enforceable orders and standards and improvements in corporate governance, oversight and accountability.

Recommendation 3

The Transport and Infrastructure Council should commit to reducing derogations from the HVNL as part of the current HVNL review process.

Recommendation 4

The Productivity Commission should amend draft recommendation 4.1 to:

- A. Not recommend a third HVNL review
- B. Recommend that New South Wales, as the jurisdiction with 25 of the 70 HVNL derogations, take responsibility for reducing derogations
- C. Consistent with best practice regulation, recommend that the Transport and Infrastructure Council require a regulation impact assessment of all derogations from the new HVNL.

Recommendation 5

The Transport and Infrastructure Council should amend the HVNL to provide regulated businesses with two fatigue management options:

- A. a new, performance-based framework
- B. a simplified system of prescriptive fatigue rules.

Recommendation 6

The prescriptive list of chain of responsibility parties in the HVNL should be replaced by a non-exhaustive list of examples showing that online freight matching platforms are, to the extent that they have influence or control over the freight task, subject to the duties under Chapter 1A of the Law.

Recommendation 7

The HVNL should be amended so that:

- the NHVR regulates, but does not provide, certification services for trucking businesses.
- businesses in certification schemes are deemed to comply with their safety duties under the law
- customers and other chain parties, including prime contractors, can rely on a trucking business's certification as evidence that the business is compliant with its safety duties
- certified businesses validated for alternative compliance have access to alternative compliance arrangements.

Recommendation 8

The Transport and Infrastructure Council should reform access approvals under the Heavy Vehicle National Law to include:

- Implementation of enforceable standards and orders on persons exercising powers under the HVNL, to deliver consistent access decisions
- External review of access decisions
- Acknowledging precedents in access decisions
- Extending the period and applicability of authorisation
- Enabling local government to delegate their access decision-making role
- Creation of a notification network to replace preapproved routes
- Improving OSOM and PBS access
- Improving farm gate / low volume access

Recommendation 9

The Transport and Infrastructure Council should:

- Transition the National Land Transport Network to a High Productivity Freight Vehicle network with a minimum as-of-right access for A-doubles
- Develop corridor and investment strategies to guide infrastructure upgrades for major freight routes. A strategy should be in place for each NLTN and major freight route by 2024
- Strategically plan and deliver urban access for high productivity freight vehicles, including links to logistics zones and freight routes.

Recommendation 10

The Productivity Commission should further assess the impact of increasing toll road and landside port charges on heavy vehicles and the lack of effective competitive and regulatory constraints on these charges.

Recommendation 11

The Transport and Infrastructure Council should implement independent regulation of heavy vehicle charges, including toll road and landside port charges.

Recommendation 12

The Productivity Commission should revise draft finding 10.2 and draft recommendation 10.2 in light of the industry's funding for the NHVR through the regulatory component of heavy vehicle charges.

Recommendation 13

The review of the heavy vehicle driver competency framework and licensing arrangements should be completed, and the results implemented as a priority.

Recommendation 14

The Transport and Infrastructure Council should ensure freight policy and regulation is mode neutral, with a priority on making all modes as safe, productive and innovative as possible. Decisions about choice of freight mode should be commercial decisions.

Recommendation 15

The Productivity Commission should assess state government targets for increasing the modal share of freight on rail against the need for government regulation to be mode neutral.

4. Independent safety investigation

The draft report makes some important recommendations on the investigation of heavy vehicle crashes. These are:

PC DRAFT RECOMMENDATION 9.2

The Australian Government should direct the Australian Transport Safety Bureau (ATSB) to undertake a defined, targeted trial of incident investigation for heavy vehicles, with adequate additional resourcing for the task. Subject to the successful outcome of the trial, the Government should amend the Transport Safety Investigation Act 2003 to confirm investigation of incidents involving heavy vehicles as a function of the ATSB.

PC DRAFT RECOMMENDATION 9.3

The Australian and State and Territory Governments should:

- formalise the role of the Australian Transport Safety Bureau to investigate all serious incidents involving domestic commercial vessels, and agree a funding model to support this role
- agree to a funding model to enable the Australian Transport Safety Bureau to adequately carry out its established role in the investigation of rail safety incidents.

PC DRAFT RECOMMENDATION 9.4

The remit of the Australian Transport Safety Bureau should be extended to include any incident where autonomous technologies at or above SAE level 3 autonomy may have been involved.

As a long-standing advocate for extending the role of the ATSB to heavy vehicles, the ATA strongly supports these recommendations.

Presently, road crashes are investigated by the police and the coronial system. While this system may meet the needs of the legal and insurance systems, it is not achieving the reduction in road crashes that governments should be seeking.

In contrast, the Australian Transport Safety Bureau (ATSB) conducts independent investigations of transport crashes and other safety occurrences in the aviation, marine and rail modes of transport. Lessons arising from ATSB investigations are used to reduce the risk of future accidents and incidents through the implementation of safety action by industry and the Government.

The ATSB also seeks to improve safety and public confidence in those transport modes by pursuing excellence in safety data and research and fostering safety awareness, in addition to independent investigation of accidents.

The ATSB is an independent statutory agency that is separated from transport regulators, policy makers and service providers. It is not a function of the ATSB to apportion blame or to provide a means for determining liability.

As stated by the ATSB, no blame does not mean no responsibility. It means that disciplinary action and criminal or liability assessment are not part of an ATSB safety investigation and should, if necessary, be progressed through separate parallel processes.

Introducing ATSB investigations of road crashes involving trucks would supplement, not replace, existing police and coronial investigations and would provide valuable insights and recommendations for improving safety.

That's why the ATA has long argued for the role of the ATSB to be extended to include crashes involving heavy vehicles and we welcome the relevant recommendations in the Productivity Commission's draft report.¹

Recommendation 1

The Australian and state and territory governments should implement the Productivity Commission's draft recommendations 9.2, 9.3 and 9.4 on extending the crash investigation role of the Australian Transport Safety Bureau to heavy vehicles.

5. Reforming the Heavy Vehicle National Law

Whilst the Heavy Vehicle National Law (HVNL) is subject to an ongoing review by the National Transport Commission (NTC), it is central to the National Transport Regulatory Reforms agreed by COAG.

The ATA has made a number of submissions to the NTC review, most of which were made after the submission process for the issues paper to the Commission's review of the national reforms.

These submissions to the HVNL review are included as appendices to this submission:

- A. A risk-based approach to regulating heavy vehicles
- B. Easy access to suitable routes
- C. Effective fatigue management
- D. Vehicle standards and safety
- E. Assurance models

Whilst this submission will draw from these HVNL review submissions, the detail remains in the separate submissions to the NTC issue papers.

¹ Productivity Commission, [National transport regulatory reform](#). Draft report, November 2019. 322.

Structure of the HVNL

The prescriptive nature of the HVNL has been noted by the Commission:

PC DRAFT FINDING 7.1

The prescriptive approach of the Heavy Vehicle National Law impedes the National Heavy Vehicle Regulator from administering the law consistently with the Council of Australian Governments' objectives. A more outcomes based approach to legislation and regulation would improve road safety, reduce the burden of compliance and administration, and increase the efficiency of road transport.

The National Transport Commission, which is reviewing the Heavy Vehicle National Law, is well placed to recommend improvements.

PC DRAFT RECOMMENDATION 7.1

The Australian Government should lead efforts through the Transport and Infrastructure Council to reform the Heavy Vehicle National Law. It should encourage State and Territory governments to remove prescriptive material from the legislation and to include an explicit mandate for the National Heavy Vehicle Regulator to take a risk based approach to its functions.

In the ATA submission on a risk-based approach to regulating heavy vehicles (Appendix A) and the ATA submission to the National Transport Regulatory Reform Issues Paper, the ATA recommended that the HVNL should be restructured into three tiers, including enforceable orders and standards and improvements in corporate governance, oversight and accountability.

The ATA stands by this recommendation. It is critical to a number of the issues with the HVNL that have been raised by the Commission.

Recommendation 2

The new HVNL should be restructured on a three-tiered basis, including enforceable orders and standards and improvements in corporate governance, oversight and accountability.

Derogations

The draft report has a focus on derogations from the HVNL:

When enacting the national laws, some jurisdictions have chosen to exclude, add to, or modify sections of the national law in their jurisdictions ('derogations'). Many derogations are administrative or technical in nature with limited practical effect. In some cases, derogations act to make the law more flexible and less prescriptive. However, in other cases, derogations are substantial and have significant effects on operators.²

² Productivity Commission, [National transport regulatory reform](#). Draft report, November 2019. 7.

The Commission also finds that there are more than 70 derogations from the HVNL, with 25 in New South Wales alone. Most derogations relate to enforcement provisions, such as periodic vehicle inspections.³

The ATA's submission to the HVNL review issues paper on vehicle standards (Appendix D) makes recommendations for reforming defect notices and inspection approaches under the HVNL.

The ATA previously raised in 2014 the need for an agreed, stable national approach to the assessment of heavy vehicle roadworthiness, including accreditation, inspection, interception and defect processes.⁴

This included the need for clear, nationally accepted criteria to be established for the purposes of declaring a vehicle roadworthy or not, and for issuing and clearing defect notices.

The ATA also called for consistent interpretation of the National Heavy Vehicle Inspection Manual by inspectors and authorised officers and for the role of accreditation through schemes such as TruckSafe to receive more support from governments.⁵

Unfortunately, the lived experience of the HVNL since the ATA's 2014 recommendations only reinforces the need for reform. Concerns raised by our members include inconsistent, poorly structured defect notices that do not always have an identified link to a significant safety issue.

The ATA submission on vehicle standards recommended that the new HVNL should deliver enforceable defect standards by incorporating the National Heavy Vehicle Inspection Manual and the NHVR's national risk-based inspection criteria and framework as legislative instruments under the three-tiered structure of the new HVNL. These manuals would need to be revised, with a formal consultation process, prior to being incorporated as enforceable standards.

This is another example of why the ATA's recommended three-tiered legislative approach for the new HVNL is necessary.

The ATA submission on vehicle standards to the HVNL review included the following case study:

Case Study: Inconsistent number plate positioning rules

A Queensland truck driver was fined \$673 and three demerit points for not having the vehicle number plate correctly fixed whilst driving in New South Wales. The relevant NSW law specifies that number plates need to be no more than 1.3m above ground level. Whilst the same law applies in Queensland, it does not apply to vehicles with a national heavy vehicle plate (so the vehicle was legal in Queensland but not in NSW).

The truck driver eventually had the matter dismissed through the courts, although had to plead guilty to enable that outcome. The driver was out of pocket \$10,000 for taking time off

³ Ibid, 7.

⁴ ATA, September 2014, [Submission on the Heavy Vehicle Roadworthiness Review – Phase 2 integrity review](#), 4.

⁵ Ibid, 4.

work to travel to NSW for the court appearance. The magistrate is reported to have stated the matter was “trivial rubbish.”⁶

On derogations, the Commission’s draft report found:

PC DRAFT FINDING 4.2

There are many derogations by jurisdictions to the national laws. There are over 70 derogations from the Heavy Vehicle National Law and over 80 derogations from the Rail Safety National Law. Some derogations create unnecessary costs and complexity for industry and regulators. These derogations are contrary to the objectives of the Council of Australian Government’s harmonisation reforms.

PC DRAFT RECOMMENDATION 4.1

The Transport Infrastructure Council should request that the National Transport Commission undertake a review of significant derogations from the Heavy Vehicle National Law and the Rail Safety National Law, with the aim of reducing regulatory inconsistency.

The Council of Australian Governments should commit to altering or removing derogations, or altering the national laws, to achieve best practice regulation.

Whilst the ATA supports the intent of draft recommendation 4.1, we are concerned that it would effectively launch a third review of the HVNL and national transport regulatory reforms (in addition to the NTC and Productivity Commission led reviews currently underway) before the new HVNL is even drafted and legislated.

Instead, the Transport and Infrastructure Council should commit to reducing derogations as part of the current HVNL review process.

The Commission has also stated that:

In determining whether to remove or retain a particular derogation, governments must consider whether the derogation in question reflects evidence-based best practice, and whether the value of the derogation is greater than any costs imposed upon industry.

And that:

Where State and Territory Governments insist on derogations to the national laws, they should be able to point to evidence supporting that derogation. This process is key, not only to ensure national consistency; it is also important for governments to ensure that the regulations operating in their jurisdictions remain relevant and effective.⁷

The ATA understands that as part of the NTC review of the HVNL, the new law will be subject to a regulation impact assessment. This represents a best practice approach to regulation.

However, there will be an inconsistency with the new laws (as there is with the current HVNL) where the national law is subject to an assessment of its costs and benefits, but derogations may not be subject to the same evidence-based approach.

⁶ Big Rigs News, 6 September 2019, Truckie fights ‘trivial’ penalty, 12.

⁷ Productivity Commission, [National transport regulatory reform](#). Draft report, November 2019. 117.

This oversight should be fixed, to reflect COAG's existing commitments to implementing best practice regulation.

Recommendation 3

The Transport and Infrastructure Council should commit to reducing derogations from the HVNL as part of the current HVNL review process.

Recommendation 4

The Productivity Commission should amend draft recommendation 4.1 to:

- A. Not recommend a third HVNL review
- B. Recommend that New South Wales, as the jurisdiction with 25 of the 70 HVNL derogations, take responsibility for reducing derogations
- C. Consistent with best practice regulation, recommend that the Transport and Infrastructure Council require a regulation impact assessment of all derogations from the new HVNL.

Fatigue

The Commission has recommended:

PC DRAFT RECOMMENDATION 5.2

The Council of Australian Governments should amend the Heavy Vehicle National Law to give the National Heavy Vehicle Regulator (NHVR) greater scope to provide concessions from prescribed aspects of fatigue management regulation, where the NHVR is satisfied that more effective systems of fatigue management are in place, such as technology enabled management systems, and/or accredited management systems.

Driver fatigue laws should continue to set outer limits on driving hours.

The ATA supports the intent of this recommendation and has made detailed recommendations in our submission to the HVNL review on effective fatigue management (Appendix C).

The existing fatigue provisions in the HVNL are overly prescriptive. The record keeping requirements are ludicrous; the penalties for trivial paperwork breaches are too high.

The ATA submission to the HVNL review proposes that the law should provide regulated businesses with two fatigue management options:

- a new, performance-based framework that would enable operators to manage fatigue as a risk rather than counting time, including by adopting new technology and proven fatigue management systems.

This framework would be backed by certification and auditing, which would be delivered by certification schemes regulated, but not run by, the NHVR.

Businesses and drivers working under the framework would not be subject to the prescriptive fatigue rules, including the requirement for drivers to maintain work diaries – a massive reduction in unnecessary regulatory paperwork.

- a simplified system of prescriptive fatigue rules, to support businesses whose size or risk profile did not warrant a more complex approach.

The new system would include simpler but more flexible time counting rules and a much simpler work diary. A 'substantial compliance' provision would ensure that drivers could not be charged for mistakes that had no fatigue implications.

The new system would bring 4.5-12 tonne trucks into the scope of the HVNL fatigue requirements.

Recommendation 5

The Transport and Infrastructure Council should amend the HVNL to provide regulated businesses with two fatigue management options:

- A. a new, performance-based framework
- B. a simplified system of prescriptive fatigue rules.

Extending the chain of responsibility concept

Following extensive lobbying by the ATA, chapter 1A of the HVNL came into force on 1 October 2018. It introduces WHS primary duty and executive officer due diligence concepts into the road transport law; those primary duties and obligations apply to all the listed businesses and individuals in what is called **the chain of responsibility**.⁸

The chain of responsibility concept recognises that trucking businesses and owner drivers are affected by the actions of their customers or prime contractors.

The ATA considers that the prescriptive list of parties in the chain of responsibility should be replaced with an expanded list of non-exhaustive examples. As the NTC pointed out in 2014, a fundamental problem with the prescriptive approach to CoR is that if a party or a party's responsibility cannot be identified or exactly described, the law will not recognise them in the chain.⁹

As specific examples:

- In its submission to the NTC on effluent and load restraint, ATA member association ALRTA noted that government policy makers could not agree on whether livestock effluent was already covered by the list of chain of responsibility parties, even though all jurisdictions agreed in principle that the matter should be covered by the HVNL.¹⁰

⁸ See HVNL s 5, definition of 'party in the chain of responsibility.'

⁹ NTC, [Chain of responsibility: duties review discussion paper](#). November 2014. 15

¹⁰ ALRTA, [Submission in response to NTC discussion paper: effluent and load restraint](#). July 2018, 10.

- The ATA has argued that online freight matching platforms are not adequately covered by the prescriptive list of parties. Our concern is all the greater because of the past conduct of online rideshare platforms and their use of gamification to encourage drivers to work longer.¹¹

In its submission to the Victorian on-demand workforce inquiry, ATA member association NatRoad argued that online freight platforms should be covered by the HVNL to the extent they have influence or control over the freight task. This would distinguish a platform that is a marketing service from one that participates in transport transactions.¹²

Recommendation 6

The prescriptive list of chain of responsibility parties in the HVNL should be replaced by a non-exhaustive list of examples showing that online freight matching platforms are, to the extent that they have influence or control over the freight task, subject to the duties under Chapter 1A of the Law.

Accreditation

The ATA runs the industry's safety certification program, TruckSafe. Businesses in TruckSafe are independently audited against higher standards than those required by law.

The NHVR also runs its own certification scheme, the National Heavy Vehicle Accreditation Scheme (NHVAS). Businesses in NHVAS have access to flexible fatigue management arrangements (BFM and AFM). In some states, trucks accredited under NHVAS do not have to undergo yearly registration inspections.

But the Trucksafe system is stronger and more robust than NHVAS.

TruckSafe has strengthened its accreditation standards repeatedly since it was established. In contrast, the NHVAS modules do not reflect the current provisions of the law.

NHVAS does not cover, for example:

- fatigue management under standard hours
- speed management
- speed limiter tampering
- mass management for vehicles operating at GML
- management of vehicle dimensions or
- load restraint.

NHVAS accreditation does not deliver compliance with the safety duties in Chapter 1A of the HVNL, with the extraordinary result that the NHVR is operating a scheme that does not meet the requirements of its own Law.

¹¹ Scheiber, N. "How Uber uses psychological tricks to push its drivers' buttons," in [New York Times interactive](#), 2 April 2017.

¹² NatRoad, [Submission to the inquiry into the Victorian on-demand workforce](#). February 2019. [15]-[17].

The TruckSafe audit process is notable for its robustness.

- TruckSafe assigns and pays its auditors, so there is no financial relationship between auditors and the companies they audit
- TruckSafe audits are reviewed by the independent Trucksafe Industry Accreditation Council (TIAC), which sits outside the TruckSafe management structure.

The Medlock review of heavy vehicle safety accreditation schemes noted in 2018 that operators who were accredited under both TruckSafe and NHVAS found the TruckSafe audits to be, at times, more rigorous.¹³

Because TruckSafe certified businesses do not have access to the alternative compliance arrangements, 90 per cent are also accredited under NHVAS – an unnecessary compliance burden that adds cost without improving safety. It also breaches governments' competition policy obligations.¹⁴

The ATA's submission about assurance models to the HVNL review¹⁵ proposes that the NHVR's role with respect to safety assurance should be changed so it:

- regulates certification scheme providers and auditors but does not run one itself
- approves certified operators to enter the alternative compliance system.

Approved certification schemes would be responsible for maintaining their own standards and business rules, as well as certifying operators against their standards.

Under the ATA's model:

- All businesses certified by an approved scheme would be deemed to comply with the safety duties under the HVNL.
- Customers and other chain parties, including prime contractors, would be able to rely on a trucking business's certification as evidence that the business was compliant with its safety duties and obligations. The customer would be able to focus on meeting its own obligations rather than second guessing the trucking operator's systems.
- Certified businesses validated by the NHVR would be able to access the alternative fatigue management regime discussed on page 11 of this submission.
- Certified and validated businesses would be exempt from yearly vehicle inspections in NSW, Queensland and South Australia.
- Certified and validated businesses could be subject to a lower level of roadside enforcement
- Certified and validated businesses would be pre-credentialed for the current NHVAS access arrangements and mass concessions.

¹³ Fellows Medlock and Associates. [Analysis of heavy vehicle safety accreditation schemes in Australia](#). Report prepared for the NHVR. February 2018, 50.

¹⁴ ATA, [Review of the Australian Government's competitive neutrality policy](#). April 2017. 3.

¹⁵ ATA, [Assurance models](#). Submission to the NTC. 23 October 2019.

Recommendation 7

The HVNL should be amended so that:

- the NHVR regulates, but does not provide, certification services for trucking businesses.
- businesses in certification schemes are deemed to comply with their safety duties under the law
- customers and other chain parties, including prime contractors, can rely on a trucking business's certification as evidence that the business is compliant with its safety duties
- certified businesses validated for alternative compliance have access to alternative compliance arrangements.

6. Road infrastructure and access

Road access approvals, especially for more productive heavy vehicles, are an area where the HVNL has not delivered the benefits that were originally projected.

The Commission has made the following findings and recommendations:

<p>PC DRAFT FINDING 6.1</p> <p>Constraints around local government investment capacity and engineering expertise are limiting the effectiveness of the heavy vehicle reforms by preventing adequate assessment and upgrading of bridge and road infrastructure.</p>
<p>PC DRAFT RECOMMENDATION 6.1</p> <p>Local governments should share engineering expertise and agree to consistent access arrangements for shared roads. The Australian Government should work with States and Territories to encourage this collaboration. States and Territories should report to the Council of Australian Governments in early 2020 on the status of this work.</p>
<p>PC DRAFT FINDING 6.2</p> <p>The complexity of the vehicle classifications has limited the progress of faster access approvals, through permits, pre approvals and notices.</p>
<p>PC DRAFT RECOMMENDATION 6.2</p> <p>The Australian Government should seek simpler heavy vehicle classifications through the National Transport Commission's review of the Heavy Vehicle National Law for the purposes of access decisions. Additionally, the National Heavy Vehicle Regulator should provide more detailed and effective guidelines to road managers.</p>
<p>PC DRAFT FINDING 6.4</p> <p>The productivity gains from the reforms so far are much less than expected, although there is scope in the future for greater improvements as Performance Based Standards vehicles become a larger proportion of the heavy vehicle fleet.</p>

PC DRAFT FINDING 6.5

There is scope to rapidly increase the number of gazetted routes, reducing the need for permit applications. In many cases, permit approvals are given as a matter of course for certain vehicle types; these approvals should be replaced with as of right access by gazette.

PC DRAFT RECOMMENDATION 6.4

The Council of Australian Governments should direct road managers (including the state road authorities) to work with the National Heavy Vehicle Regulator to rapidly expand key freight routes covered by notices and allowing as of right access for larger vehicle types. The focus of this work should include:

- expanding the networks available for heavy vehicles with performance characteristics equivalent to B doubles (including Performance Based Standards (PBS) level 2A and 2B B doubles) and type 1 and 2 road trains (including PBS equivalents)
- where there are classes of vehicles for which permit applications are almost universally approved, developing notices covering these vehicles
- meeting infrastructure requirements such as truck stops and logistics centres near major urban centres, allowing larger vehicles to be broken down into smaller units where required by urban road network constraints.

The ATA supports these recommendations and findings.

However, the ATA considers that a more comprehensive approach is needed to improve access and boost productivity. This should include reforms to:

- access decisions under the HVNL
- infrastructure investment decisions and the supply-side provision of roads
- implement independent regulation of infrastructure charging
- proactive strategic planning of more productive heavy vehicle access
- upgrading rural, regional and remote road infrastructure.

The ATA submission to the HVNL review on access recommends a number of reforms to access decisions, including:

- Implementation of enforceable standards and orders on persons exercising powers under the HVNL, to deliver consistent access decisions
- External review of access decisions
- Acknowledging precedents in access decisions
- Extending the period and applicability of authorisation
- Enabling local government to delegate their access decision-making role
- Creation of a notification network to replace preapproved routes
- Improving OSOM and PBS access
- Improving farm gate / low volume access.

More detail on these recommendations is available at Appendix B.

Ultimately reform needs to extend beyond the reach of the HVNL. The ATA's submission to Infrastructure Australia in response to the 2019 Australian Infrastructure Audit (Appendix F) made recommendations relating to:

- infrastructure investment decisions and the supply-side provision of roads
- implement independent regulation of infrastructure charging
- proactive strategic planning of more productive heavy vehicle access
- upgrading rural, regional and remote road infrastructure.

Infrastructure Australia highlighted a range of challenges for the freight network and provision of roads. These included poorly maintained roads, inconsistent and prescriptive regulation, poor planning and congestion, fragmented and inefficient road access regulations, and that uptake of High Productivity Freight Vehicles has been limited, despite their benefits.

The ATA has made a number of recommendations to address these issues, including:

- A. Transitioning the National Land Transport Network to a gazetted A-Double (at minimum) High Productivity Freight Vehicle network.
- B. Use of corridor and investment strategies to guide infrastructure upgrades. A strategy should be in place for each NLTN and major freight route by 2024.
- C. Ensuring future infrastructure investments adopt guidelines on minimum road safety standards, heavy vehicle rest areas and productivity focused projects.
- D. Strengthening business case assessment of proposed projects.
- E. Upgrading rural, regional and remote road infrastructure.
- F. Better integration of land use planning and heavy vehicle access planning.
- G. Targeted policies for addressing urban congestion.

More detail on these recommendations is at appendix F.

The ATA does recommend that the Commission considers the issue of independent regulation of infrastructure access charges more closely (appendix F, section 3).

There is a lack of a competitive or effective regulatory constraint on toll road and landside port charges on heavy vehicles.

Charges applied on heavy vehicles for toll road and landside port access have increased dramatically in recent years. These charges are above and beyond cost recovery.¹⁶

State governments, through lack of price regulation of privatised infrastructure assets, are effectively financing infrastructure programs through heavy vehicle access charges. These assets are effectively monopoly assets, with most new toll roads accompanied by truck bans on alternate routes. However, these unavoidable and increasing truck taxes have not been considered in the decision to increase heavy vehicle charges.

¹⁶ For further information see the [ATA submission to Infrastructure Australia on the 2019 Australian Infrastructure Audit](#), 15 November 2019.

Heavy vehicle tolls have a significant impact on trucking operators. Independent evidence to the Australian Senate reported that smaller trucking operators are less able to use their fleets (or single vehicle) to convert travel time savings to direct benefits for their companies. Smaller operators are also very sensitive to costs and road pricing.¹⁷

Toll Group has assessed the value for money proposition of some of these toll roads. An analysis of a Victorian based customer found that toll charges have doubled, increasing by half a million dollars since 2017. Despite this significant increase, travel time savings were either minimal to non-existent. Additionally, an assessment of 12 routes showed that fees had increased by 100 per cent and failed to delivered travel time savings, which actually increased by 1.3 per cent.¹⁸

Higher tolls cannot always be passed on to customers. A regional operator reports that it is difficult enough to get rate rises from customers to offset increasing wages and that they're unable to pass on toll road costs.¹⁹

Even larger operators cannot always pass these significant costs on. Toll Group advise that toll road charges cost them an annual \$15 million to \$20 million and due to the competitive nature of the industry that increases often have to be absorbed.²⁰

Industry does support investment in new road infrastructure, provided the charging regime is fair. As an example, the Queensland Trucking Association successfully advocated for the pricing of the new Toowoomba second range crossing to be based on a fair toll.²¹

On landside port charges, ACCC Chair Rod Sims has commented that infrastructure fees imposed by stevedores on transport companies have gone up a lot more than costs have gone up, and that apart from increasing profits it is unclear what rationale there is for the increased charges.²²

The increasing impacts of port access charges has contributed to both the Victorian and NSW Governments announcing inquiries into these issues. The Productivity Commission should liaise with both inquiries.

¹⁷ Thompson, Associate Professor Russell, Australian Senate, Operations of existing and proposed toll roads in Australia 3 August 2017 transcript, 11.

¹⁸ Toll Group, information provided to the ATA, 2019.

¹⁹ Information provided directly to the ATA, 2019.

²⁰ Toll Group, information provided to the ATA, 2019.

²¹ QTA, [Toowoomba Second Range Crossing Toll announced](#), 30 July 2019 media release.

²² Rod Sims as quoted by Ewin Hannan, [Spotlight on stevedores over hikes in charges](#), The Australian, 9 April 2018.

Recommendation 8

The Transport and Infrastructure Council should reform access approvals under the Heavy Vehicle National Law to include:

- Implementation of enforceable standards and orders on persons exercising powers under the HVNL, to deliver consistent access decisions
- External review of access decisions
- Acknowledging precedents in access decisions
- Extending the period and applicability of authorisation
- Enabling local government to delegate their access decision-making role
- Creation of a notification network to replace preapproved routes
- Improving OSOM and PBS access
- Improving farm gate / low volume access.

Recommendation 9

The Transport and Infrastructure Council should:

- Transition the National Land Transport Network to a High Productivity Freight Vehicle network with a minimum as-of-right access for A-doubles
- Develop corridor and investment strategies to guide infrastructure upgrades for major freight routes. A strategy should be in place for each NLTN and major freight route by 2024
- Strategically plan and deliver urban access for high productivity freight vehicles, including links to logistics zones and freight routes.

Recommendation 10

The Productivity Commission should further assess the impact of increasing toll road and landside port charges on heavy vehicles and the lack of effective competitive and regulatory constraints on these charges.

Recommendation 11

The Transport and Infrastructure Council should implement independent regulation of heavy vehicle charges, including toll road and landside port charges.

The Commission has also found that:

PC DRAFT FINDING 10.1

Some local governments are struggling to deliver timely heavy vehicle access assessments. While resourcing is important, more resources alone will not guarantee greater efficiency. Other factors including access to data and appropriate technical skills, and economies of scale in permit applications also contribute to greater efficiency.

PC DRAFT RECOMMENDATION 10.1

The Council of Australian Governments should provide support to ensure local government has the financial and technical capacity to deliver its role as asset manager for local roads. Transparency and accountability of performance should accompany any additional support, particularly with respect to processing times for access permits and the use of notices to gazette heavy vehicle routes.

This should be pursued in the context of broader changes under the Heavy Vehicle Road Reform agenda.

The ATA conditionally supports this recommendation.

Heavy Vehicle Road Reform is a key element of the reform agenda needed to deliver a better road network and boost productivity.

The Transport and Infrastructure Council agreed in November 2019 to high level principles which reflect longstanding ATA advocacy:

- National Service Level Standards (SLS) framework
- Review of expenditure
- Independent price regulation
- Hypothecation / dedicated road funding source.

The SLS will not initially apply to local roads, although eventual inclusion is a reform objective.

However, HVRR would only have the potential to provide support to local government to the extent that local roads are used by heavy vehicles. Broader approaches, such as reforms under Roads to Recovery, are likely to also be required.

7. NHVR operation and cost recovery

Cost recovery

In terms of funding the NHVR, the Commission has concluded:

PC DRAFT FINDING 10.2

There are different approaches to cost recovery in each of the three modes, from near full cost recovery in rail, to very limited cost recovery in heavy vehicles and maritime. The amount of government funding received by each national regulator reflects these arrangements.

PC DRAFT RECOMMENDATION 10.2

The national regulators (particularly the National Heavy Vehicle Regulator and the Australian Maritime Safety Authority) should move towards cost recovery arrangements in line with the Australian Government Cost Recovery Guidelines. Consistent arrangements across the three transport regulators will eliminate the risk of distorting intermodal choices.

The draft finding and recommendation are based on table 10.1, which asserts that the NHVR received \$152.9 million in government funding in 2017-18, compared to \$5 million from the industry in fees, fines and charges.

But the NHVR's 2017-18 annual report points out that \$144 million of this government funding was regulatory income, representing the regulatory component of heavy vehicle registration charges in the participating jurisdictions.²³ The details of the regulatory component of the charges are set out in the *Heavy Vehicle Charges Model Law*.²⁴

In its consultations on heavy vehicle charges for 2020-21, the NTC has pointed out that the charges are in fact too high, not too low. Its consultation report concludes that a reduction of around 1.3 per cent in the regulatory component in 2020-21 is required to recover the NHVR's approved budget of some \$156.4 million.²⁵

Recommendation 12

The Productivity Commission should revise draft finding 10.2 and draft recommendation 10.2 in light of the industry's funding for the NHVR through the regulatory component of heavy vehicle charges.

²³ National Heavy Vehicle Regulator, 2017-18 annual report. 50.

²⁴ [Heavy Vehicle Charges Model Law](#), s 4.

²⁵ NTC. Heavy vehicle charges consultation report. December 2019. 20.

Compliance costs

PC DRAFT FINDING 6.6

Data on the compliance costs for businesses for the three national regulators are not routinely collected, monitored and published.

PC DRAFT RECOMMENDATION 6.5

The National Heavy Vehicle Regulator, the Office of the National Rail Safety Regulator and the Australian Maritime Safety Authority should monitor the compliance and administrative costs created by the national regimes and report on the level and change in these costs in periodic (say 3 yearly) reporting. The first report should be published in 2020 to establish benchmark costs.

PC DRAFT FINDING 6.7

There is little evidence at this stage that compliance costs for businesses have fallen. Each regulator is pursuing changes that should help reduce costs in the future.

The ATA supports this recommendation, noting that reporting should be undertaken by the Office of Road Safety.

Service Level Agreements

The Commission also recommends:

PC DRAFT RECOMMENDATION 4.2

The national regulators should phase out Service Level Agreements (SLAs) with State and Territory agencies by absorbing these functions at the earliest opportunity.

Where there is a business case to use SLAs with third parties, those parties should act under the direction of the national regulators to ensure consistent decisions across jurisdictions.

The ATA supports this recommendation, noting that the ATA's recommended three-tiered legislative structure for the HVNL would establish enforceable standards on all persons exercising powers under the HVNL.

PC DRAFT RECOMMENDATION 7.2

The Transport and Infrastructure Council should agree to have all regulatory functions still held by participating jurisdictions transferred to the National Heavy Vehicle Regulator no later than 1 January 2022.

The ATA supports this recommendation.

PC DRAFT RECOMMENDATION 7.3

The Transport and Infrastructure Council should direct the National Heavy Vehicle Regulator to undertake the comprehensive collection and reporting of key safety risks and outcomes, similar to the Office of the National Rail Safety Regulator's annual Rail Safety Report.

The ATA supports this recommendation, provided it is integrated with the emerging role of the Office of Road Safety.

NHVR data management

PC DRAFT FINDING 6.3

The National Heavy Vehicle Regulator (NHVR) has a well developed information system that allows for effective management of its operational commitments. The NHVR is taking a strategic approach to the collection and use of data and this will allow it to target its activities better. It will also be able to drive broader policy change to improve productivity and safety.

PC DRAFT RECOMMENDATION 6.3

The National Heavy Vehicle Regulator should continue improving its data management processes, including how data are stored, integrated, analysed and reported.

The ATA supports this recommendation.

8. Sharing the road safely

The Commission reports:

PC DRAFT FINDING 5.2

Most multi vehicle fatal crashes involving a heavy vehicle are not the fault of the heavy vehicle driver — in 2017, the driver of the other vehicle was at fault 83 per cent of the time. For serious, non fatal, multi vehicle crashes involving a heavy vehicle, the heavy vehicle driver was at fault 65 per cent of the time (2017).

PC DRAFT RECOMMENDATION 5.1

State and Territory governments should seek to improve general road users' understanding of driving safely in the vicinity of heavy vehicles through education and enforcement measures.

The ATA strongly supports this recommendation.

NTI research shows that 83 per cent of the fatal multi-vehicle crashes involving trucks in its insured fleet are not the fault of the truck driver.²⁶

Despite this worrying figure, learning to share the road with trucks is not a significant consideration in Australian car driver education. ATA focus group research shows that young drivers recognise this gap in their driver education and want it fixed.

The ATA has run car driver education programs throughout our history. In November 2019, we launched our latest safety education program, developed with funding from the Australian Government and Australia Post and with the ongoing support of our Foundation Sponsors, BP, NTI and Volvo Trucks.

The new campaign and education trailer, SafeT360, is based on peer reviewed safety communication research.

It will contribute to future research and safety programs everywhere: it is designed so researchers can follow up on its effectiveness and develop initiatives aimed at its 16-25 year old target public.

SafeT360 uses virtual reality to deliver four critical road safety messages:

- Don't cut in front of trucks
- Don't overtake turning trucks
- Be aware of truck blind spots
- Don't be distracted by your mobile phone.

Figure 1 shows students at Karabar High School in Queanbeyan, NSW, experiencing SafeT360.

²⁶ NTI, [Major accident investigation report 2019: covering major accidents in 2017](#). 23

Figure 1: SafeT360 virtual reality driver education, November 2019



We regard safety education as a core part of our role. But governments need to do more as well.

9. Heavy vehicle driver skills and training

PC INFORMATION REQUEST 9.3

To what extent are heavy vehicle drivers receiving adequate on the job training, and informal guidance from more experienced to less experienced drivers?

If a more formal training system were to be devised, what would this look like, and should training requirements target the newly licensed or should it also include incumbent, experienced drivers?

The Austroads review of the heavy vehicle competency framework was released in May 2018.²⁷ The review confirmed that the current truck driver licensing system is inadequate.

For example, the review assessed the heavy rigid licensing unit (TLILIC2016) against ten safety risks that the review team identified. They found that the unit failed to address six out of the ten safety risks and only partly addressed the other four.

²⁷ Oswin, J and G Cotton. [Review of the national heavy vehicle driver competency framework](#). Austroads report AP-R564-18. May 2018.

In September 2019, Austroads announced that it is considering:

- strengthening the licence to drive units of competency
- developing standardised training and assessment material
- considering minimum supervised hours of experience as part of heavy vehicle licensing.²⁸

While the ATA welcomes this process, it shows that there has been no improvement in the truck driver licensing system since the committee's last road safety report.

Recommendation 13

The review of the heavy vehicle driver competency framework and licensing arrangements should be completed and the results implemented as a priority.

10. Intermodal efficiency and safety

The ATA's approach to intermodal freight efficiency and safety is that each mode should be as productive and safe as it can be. As such, the ATA specifically focuses our advocacy on the heavy vehicle sector.

However, the ATA notes that the rail sector has, through submissions to the National Transport Regulatory Reform inquiry, argued that shifting more of the freight task from road to rail could improve safety and reduce road congestion.²⁹

The Commission states in relation to these arguments:

At the outset, it should be recognised that the choice of mode is a commercial decision, and government regulation should be neutral. Businesses will select the mode which best meets their needs. As road and rail have different strengths, they are not perfect substitutes. Much of the freight load on major routes will not be contestable, and in many cases road and rail act as complementary modes of transport. Where competition is possible, the relatively agile nature of road transport means that rail will not be suitable for all freight tasks and will be less efficient when there is double and triple handling over relatively shorter distances. As such, it is difficult to estimate the degree of substitutability, particularly as it is not possible to assume that all freight traffic on a given highway could be replaced by rail (as trucks may enter and exit at various points).

The ATA strongly supports the Commission's response, especially its conclusion that a focus on safety and innovation across all modes of transport will be more effective, less costly, and lead to improved safety.³⁰

The Commission should consider to what extent do state government targets for increasing the freight modal share of rail conflict with this conclusion.

²⁸ Austroads. [Review of the national framework for heavy vehicle driver competency – phase 2](#). 9 September 2019.

²⁹ Productivity Commission, [National transport regulatory reform](#). Draft report, November 2019. 302.

³⁰ Ibid. 303.

In addition to improving safety, innovation and productivity across all modes, the ATA recommends that governments should ensure intermodal facilities, where freight changes modes, are strategically planned to address access, productivity and safety for all modes. As an example, intermodal rail freight facilities should have road access for High Productivity Freight Vehicles.

Recommendation 14

The Transport and Infrastructure Council should ensure freight policy and regulation is mode neutral, with a priority on making all modes as safe, productive and innovative as possible. Decisions about choice of freight mode should be commercial decisions.

Recommendation 15

The Productivity Commission should assess state government targets for increasing the modal share of freight on rail against the need for government regulation to be mode neutral.

11. Data and technology

Data and technology are raised by the Commission as part of the reform agenda for both transport safety and productivity.

Australian Design Rules and new technology

PC DRAFT RECOMMENDATION 8.1

The Australian Government should amend the Australian Design Rules and in service vehicle standards to allow for new transport technologies, including automated technologies, with proven productivity or safety benefits. The Australian Government should aim for national and international consistency of laws and standards where practicable, and accept safety devices adopted in other leading economies. The Council of Australian Governments should investigate whether a 'deemed to comply' approach would be practical for some technologies.

The ATA supports this recommendation. As recommended by the ATA submission in response to the Commission's issues paper, this should include mandating AEBS for new heavy vehicles.

Autonomous transport technologies

PC DRAFT RECOMMENDATION 8.3

The Australian Government should impose a general safety duty on all parties with a significant influence over the safe operation of autonomous transport technologies. The creation of a general safety duty should not preclude the use of prescriptive rules where the assessed risks are high.

The ATA supports this recommendation. The ATA has recommended a primary safety duty for automated driving systems in 2017 and 2018 submissions to the NTC.

National Freight Data Hub and telematics

PC DRAFT RECOMMENDATION 8.2

The Australian Government should co operate with stakeholders including Transport Certification Australia when developing the National Freight Data Hub. The Hub should include a regulatory framework for the collection, storage, analysis and access of transport data, including telematics data. This framework should specify the data access powers of regulators, enforcement agencies and accident investigation bodies, and should enable these bodies sufficient access to undertake their respective tasks, while protecting privacy and confidentiality.

PC DRAFT FINDING 9.1

While some of the potential benefits of logistics data are specific to the individual operator, there are larger, broader benefits from the collection and integration of data across many operators. These broader benefits risk being underprovided if data generation and sharing are not facilitated.

PC DRAFT RECOMMENDATION 9.1

Governments (and their agencies) and industry should consider how best to harness logistics and telematics data to improve incentive based safety regulation, with the aim of influencing behaviours that increase safety and productivity.

Governments and regulators should aim to facilitate the adoption of technologies by operators to generate and share data by:

- providing legal assurances about the acceptable use of such data
- clarifying the value proposition to individual operators of their participation in data sharing regimes.

It is important that governments prioritise reforms to improving legislative, regulatory and investment frameworks and do not expect data to solve all issues.

Whilst improvements in data can provide potential policy improvements, reform attention should not be diverted from other areas.

For example, improvements in data for infrastructure planning could deliver significant improvements, but not if the infrastructure investment framework is not first improved. The Commission has reported previously on the need to improve road infrastructure investment frameworks. The draft report notes that the selection of projects under current infrastructure

funding programs tends to favour local government areas with the capacity to make the strongest submissions, not necessarily where the projects would have the greatest value.³¹

The ATA has recommended that telematics projects should be opt-in, deidentified data that does not have a compliance function.

Fatigue, distraction and other supporting technology

An increasing number of trucking operators are implementing fatigue and distraction technology in their businesses. The safety benefits can be very high, as Toll Group's submission to the Senate inquiry on road transport shows.³²

The trucking industry supports the broadest implementation of fatigue, distraction and other supporting technology by 2025, providing the following conditions are met:

- the successful implementation of evolving fatigue and detection devices that have proven benefits and are implemented as part of a system to improve safety outcomes
- a further review and decision following the release of the HVNL review policy paper
- regulatory changes including legal and financial incentives for uptake to ensure adoption is low cost, or cost neutral, removing barriers for small operators to participate.

This position was agreed to by the ATA Council, which represents major transport operators, elected owner driver representatives, state and sector-based trucking associations and organisations who supply and support the industry. The ATA Council is the industry's peak representative body.

Intelligence Access Program

Any future telematics framework should not repeat the mistakes of IAP. Access should not be dependent on telematics, but telematics should instead be a tool for automating and speeding up the approval process.

Deloitte Access Economics report a number of challenges with the existing approach to IAP, including:

- Industry experience that IAP is too precise and stringent for its intended purpose
- Ongoing scope creep in the application of IAP by some road managers, contributing to significant distortions in the operation of IAP, increases in the number of non-compliance reports and additional data processing costs
- High costs of IAP for operators, reducing the incentive to use more productive vehicles
- Inconsistency in the application of IAP, leading to a highest common denominator compliance cost for operators.³³

³¹ Productivity Commission, [National transport regulatory reform](#). Draft report, November 2019. 343.

³² Toll Group, [Submission: Inquiry into the importance of a viable, safe, sustainable and efficient road transport industry](#). 8 November 2019. 18.

³³ Deloitte Access Economics, March 2019, [Economic benefits of improved regulation in the Australian trucking industry](#), 29, 30.

Ultimately IAP has failed – and it has illustrated that governments should not mandate a specific technological solution. The experience with IAP also illustrates that relying on telematics to enable better access will not, on its own, achieve the gains that are sometimes attached to it.

In contrast to IAP, previous work by the Bureau of Infrastructure, Transport and Regional Economics (BITRE) on telematics data from trucking operators operated on the following core principles:

- Data provision by industry is to be voluntary
- Data is not to be used for regulatory or enforcement purposes
- Confidentiality of firm and individual data protected
- Data is only available in a de-identified, aggregate form.³⁴

³⁴ For more information, see case study 3.3 and enduring questions 5.2a and 5.3a in Department of Infrastructure and Regional Development, September 2017, [National Infrastructure Data Collection and Dissemination Plan](#)



A RISK BASED APPROACH TO REGULATING HEAVY VEHICLES HVNL REVIEW ISSUES PAPER 1

AUSTRALIAN TRUCKING ASSOCIATION SUBMISSION 31 MAY 2019

1. About the Australian Trucking Association

The Australian Trucking Association is the peak body representing the 50,000 businesses and 200,000 people in the Australian trucking industry. Its members include state and sector associations, some of Australia's major logistics companies and businesses with leading expertise in truck technology.

2. Introduction

In March 2019, the National Transport Commission released its first issues paper for the Heavy Vehicle National Law review, *A risk-based approach to regulating heavy vehicles*.¹

This submission responds to the paper by setting out the ATA's overall vision for the new HVNL, before providing detailed responses to a number of its questions.

The submission does not respond to every question, but instead focuses on the key issues that need to be addressed at this stage of the review. The ATA will provide more detail about its vision for the law and the changes that are needed as the review continues.

The ATA developed this submission following detailed consultation with our members, as well as collaboration sessions at our national event for industry leaders, Trucking Australia 2019. These sessions brought trucking operators and drivers together to form a strong foundation for our submissions to the review.

The **Queensland Trucking Association** has asked that this submission be taken as its own.

3. The ATA's vision for the new HVNL

The Australian trucking industry is diverse. It ranges from businesses with one truck to international logistics chains; from livestock transporters that never leave rural areas to local delivery trucks that never leave the cities.

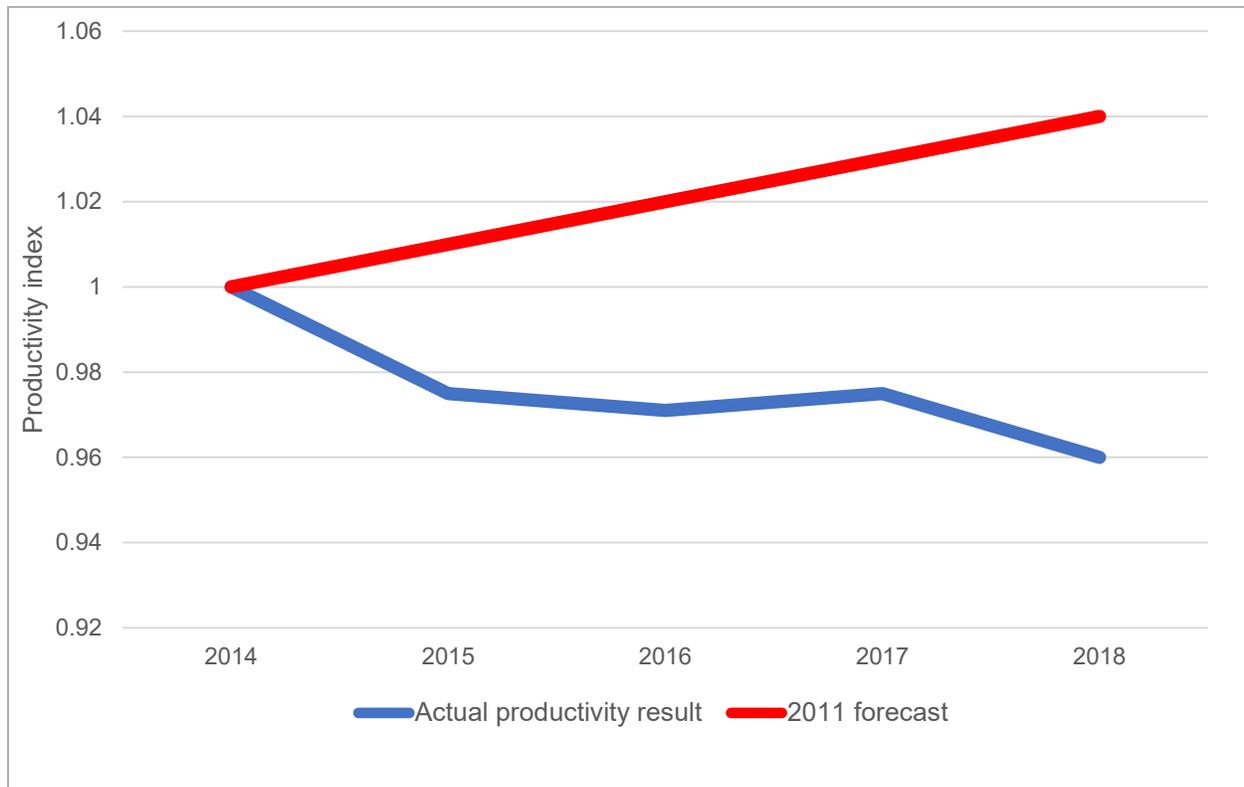
The issues paper points out that many smaller operators prefer prescriptive rules that provide certainty. Many operators, however, now have comprehensive safety management systems, some backed by technological solutions. Despite their systems, these operators are required to comply with the prescriptive rules – particularly on fatigue – as well.

¹ NTC, [A risk-based approach to regulating heavy vehicles](#). March 2019.

Meanwhile, the HVNL has failed to deliver the productivity gains that were predicted when it was developed.

In 2011, it was predicted that the law would deliver up to \$12.4 billion in economic benefits.² Figure 1 shows the reality. The productivity of the transport, postal and warehousing sector has fallen steadily since the law came into force in 2014.³

Figure 1: forecast and actual changes to industry productivity, 2014-2018



Source: Deloitte Access Economics.

The ATA's vision for the new HVNL is a law that has:

- **primary safety duties and executive officer due diligence obligations for all regulated parties.** These duties require businesses to take a systematic and thoughtful approach to safety, which could be through formal safety management systems.

² NTC, [Heavy Vehicle National Law regulation impact statement](#). September 2011. 16

³ Deloitte Access Economics, [Economic benefits of improved regulation in the Australian trucking industry](#). Report commissioned by the ATA, March 2019. 21.

- **simplified and more flexible prescriptive rules**, particularly on fatigue, for operators whose business practices and risk profile do not warrant more complex systems. In developing the simplified rules, the review should apply a filter to the law to retain only the rules that provide tangible safety benefits and those administrative requirements that are essential to delivering those benefits.
- a **separate, voluntary, safety-based system** for operators that need even more flexibility. Operators in this system would need to be accredited under an approved accreditation scheme. The NHVR would regulate scheme providers (including private sector providers like TruckSafe) and auditors. Operators in any approved accreditation scheme would be entitled to appropriate concessions from the prescriptive rules. The system would recognise the efforts of operators that adopt a systematic approach to safety, possibly by using proven technology solutions.
- a **completely different approach to enforcement**. There is a perceived lack of action by road agencies and the regulator on serious breaches of the law, including by off-road parties. There is too much focus on fishing expeditions against compliant operators, work diary errors and low risks that cannot be controlled.⁴ Operators and customers that invest large amounts of time and money to meet their obligations are forced to compete against firms whose business model is to avoid being caught.

As part of this new approach to enforcement, the recourses and protections for regulated parties need to be improved (page 16).

- a more streamlined and integrated approach to **heavy vehicle access and productivity** to deliver the productivity gains that the industry and customers need. To date, the HVNL review process has focused primarily on safety. The forthcoming issues papers on access and vehicle standards will need to switch that focus to productivity.

The HVNL would need to be substantially redrafted to deliver this vision, although some key elements – most notably chapter 1A of the current law – would be retained.

The ATA's answers to issues paper questions 6, 7 and 9 set out the changes to the structure of the law that would be needed to deliver this vision, as well as the corporate governance and accountability reforms that must be an integral part of this approach.

⁴ For example, see NTC, [Effluent and load restraint: consultation report](#). July 2018. 3.

4. Responses to issues paper questions

Question 2: What does the current HVNL do well? What should we keep from the current law? What do non-participating jurisdictions' regulations, or comparable regulations from other sectors, do better than the current HVNL that we might incorporate in the new law?

Elements to retain from the current HVNL

Chapter 1A of the HVNL came into force on 1 October 2018 and represents the best efforts of governments and industry to review the available evidence and introduce WHS primary duty and executive officer due diligence concepts into the road transport law.

The ATA considers that **the revised law should retain the primary duties in Chapter 1A**; however, the chapter should be amended to replace the **prescriptive list of parties in the chain of responsibility**⁵ with an expanded list of examples that recognise the industry's concerns about effluent and load restraint, as well as freight brokers and the growing role of online freight matching platforms.

The NTC pointed out in 2014 that a fundamental problem with the prescriptive approach to CoR was that if a party or a party's responsibility could not be identified or exactly described, the law would not recognise them in the chain.⁶

As specific examples:

- In its submission to the NTC on effluent and load restraint, ALRTA noted that government policy makers could not agree on whether livestock effluent was already covered by the list of chain of responsibility parties, even though all jurisdictions agreed in principle that the matter should be covered by the HVNL.⁷
- The ATA has argued that online freight matching platforms are not adequately covered by the prescriptive list of parties. Our concern is all the greater because of the past conduct of online rideshare platforms and their use of gamification to encourage drivers to work longer.⁸ In its submission to the Victorian on-demand workforce inquiry, NatRoad argued that online freight platforms should be covered by the HVNL to the extent they have influence or control over the freight task. This would distinguish a platform that is a marketing service from one that participates in transport transactions.⁹

The current HVNL's approach to **executive officer due diligence should also be retained.**

⁵ See HVNL s 5, definition of 'party in the chain of responsibility.'

⁶ NTC, [Chain of responsibility: duties review discussion paper](#). November 2014. 15

⁷ ALRTA, [Submission in response to NTC discussion paper: effluent and load restraint](#). July 2018, 10.

⁸ Scheiber, N. "How Uber uses psychological tricks to push its drivers' buttons," in [New York Times interactive](#), 2 April 2017.

⁹ NatRoad, [Submission to the inquiry into the Victorian on-demand workforce](#). February 2019. [15]-[17].

Under the current law:

- Executive officers have due diligence obligations with respect to the primary safety duties of their organisations and a defined list of non-chain of responsibility offences.
- The prosecution bears the burden of proving its case.

Executive officer liability for HVNL offences was the subject of intense debate from 2012 – when the ATA and the Queensland Law Society raised concerns about the issue – to 2016, when the NTC released its decision RIS on the extension of the due diligence obligation.¹⁰

The current approach is consistent with the Australian tradition that people are innocent until proven guilty. It is consistent with the COAG principles and guidelines for personal liability for corporate fault, as well as the requirements placed on executive officers under the Rail Safety National Law (RSNL) and the Model WHS Act.¹¹

In addition, the current HVNL's approach to **double jeopardy with respect to primary work health and safety law offences** should be retained and strengthened.

Many offences under the HVNL are also offences under primary work health and safety laws.

Section 18(3A) provides that if an act, omission or circumstances constitute an offence under the HVNL and a primary WHS law, an offender is not liable to be punished twice for the act, omission or circumstances.

In the absence of such a provision, a defendant faced with prosecution under both the HVNL and work health and safety law would need to seek a separate hearing about how the common law principle of double jeopardy would apply. This would be highly technical and costly.¹²

Later in the review process, the ATA will put forward detailed arguments about the operation of s 18 of the HVNL and the changes that are needed.

Drawing on the WA fatigue management and road access arrangements

The ATA considers that the new HVNL should draw on Western Australia's successful fatigue management and road access arrangements.

Western Australia regulates the fatigue of commercial heavy vehicle drivers under its occupational health and safety law, rather than road transport law. The WA fatigue requirements feature:

- mandatory medicals for all commercial drivers, not only those operating under accreditation

¹⁰ NTC, [Heavy Vehicle National Law – Extension of executive officer due diligence obligation decision regulatory impact statement](#), November 2016.

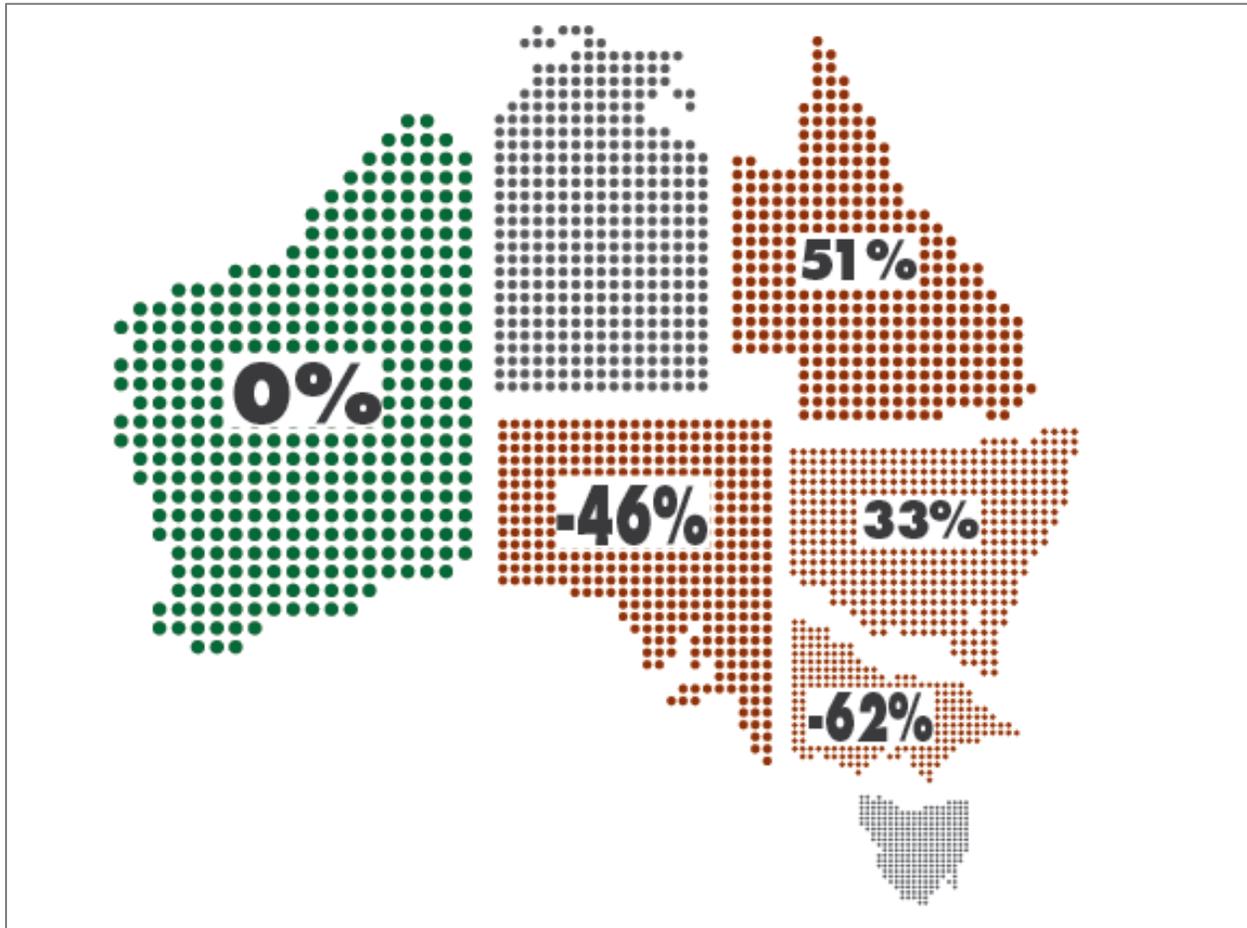
¹¹ ATA, [Executive officer due diligence obligation consultation RIS: Australian Trucking Association response](#), April 2016.

¹² ATA, [Primary duties for chain of responsibility parties and executive officer liability: ATA submission](#), August 2015, 14.

- more flexible work and rest hours
- non-prescriptive record keeping requirements.

Western Australia's flexible fatigue system has not resulted in a greater number of fatigue crashes. In fact, the latest NTI crash research shows that WA had a lower relative risk of fatigue related truck crashes than NSW or Queensland in 2017.¹³

Figure 2: relative risk of fatigue incidents by state corrected for freight volume, 2017



Source: NTI. No NTI insured trucks were involved in fatigue incidents in the NT or Tasmania in 2017. An incident was defined as one that incurred costs of more than \$50,000.

Western Australia also offers much faster turnarounds on road access applications.

- permit approvals are often granted within 48 hours
- the principles for assessing a restricted access vehicle approval include considering whether the route meets the relevant Route Assessment Guidelines and then adding it to the RAV network.

¹³ NTI, [2019 major accident investigation report](#). April 2019, 18.

Operator licensing should not be considered further

The issues paper notes that the HVNL does not set out requirements for operators to enter and exit the industry, and that barriers to entry are low compared with other transport modes.¹⁴

The low barriers to entry are often said to be a justification for licensing operators, with proponents pointing to the way other transport modes are regulated or overseas models.

In 2003, the National Road Transport Commission (NRTC) compared what was then a new approach to compliance – chain of responsibility – to operator licensing.

The NRTC rejected operator licensing in favour of chain of responsibility. It concluded that operator licensing was anti-competitive, heavy handed and risked regulatory capture, where regulatory decisions favour incumbents and not the public as a whole.¹⁵

The international history of operator licensing schemes illustrates its anti-competitive roots.

In New Zealand, operator licensing originated with the *Transport Licensing Act 1931*, which was designed to protect government owned railways from competition. It included limits on the distance that freight could be moved by road.

In the United Kingdom, operator licensing is established under the *Goods Vehicles (Licensing of Operators) Act 1995*, which consolidated regulations introduced in 1984 (in part to implement obligations under the European common transport policy) and Part V of the *Transport Act 1968*.¹⁶ The 1968 legislation set out a system of quantity and quality licensing, where a rail operator could object to a road transport quantity licence if they could carry the goods as efficiently and at similar cost. The purpose of the scheme was to maximise the use of rail for freight.¹⁷

The ATA agrees with the NRTC's findings. Operator licensing should not be considered in this review.

Question 3: Do you support using the proposed risk management approach to test current policy and to develop and test policy options? How can the proposed approach be improved?

The issues paper proposes a risk management approach to testing and informing policy options. It puts forward a draft regulatory principle (principle 1) specifying that the future HVNL should be risk based.¹⁸

¹⁴ NTC, March 2019, 38.

¹⁵ NRTC, [Road Transport Reform \(Compliance and Enforcement\) Bill regulatory impact statement](#). November 2003, 50.

¹⁶ United Kingdom, *Parliamentary Debates*, House of Lords, 15 May 1995, [vol 564, col 297 \(The Lord Chancellor\)](#).

¹⁷ United Kingdom, *Parliamentary Debates*, House of Lords, 11 June 1968, [vol 293, col 17 & 18 \(Lord Shepherd\)](#).

¹⁸ NTC, March 2019, 43.

The ATA supports the proposed risk management approach to developing policy options. It has already proved its worth as a way of identifying uncontrolled fatigue management risks.¹⁹

The ATA considers that the proposed approach could be improved by emphasising that it is being used for policy development, and that trucking operators would not – for example – be required to undertake a risk assessment for each truck journey.

Accordingly, we propose that draft principle 6 should be amended to specify that that the new law must reduce the regulatory burden on businesses, without compromising safety (page 19).

We further consider draft principle 1 should be amended to reflect the legitimate need for prescription to ensure that vehicles are interoperable and that components are compatible.

These prescriptive requirements cannot be replaced by duties-based provisions, because they are needed to ensure that equipment is compatible and interoperable.

For example, r 25 of the *Heavy Vehicle (Vehicle Standards) National Regulation* prescribes that:

- (1) A kingpin used in a B-double or road train must—
 - (a) be a 50mm kingpin, 75mm kingpin or 90mm kingpin; and
 - (b) have a D-value complying with AS 2175-1990 ‘Articulated Vehicles–Kingpins’.

There is no room for vehicle manufacturers or operators to adopt different kingpin dimensions: the prescriptive requirement is necessary to make sure equipment can be connected.

Question 4: Does the object or scope of the HVNL need to change? If so, how?

The object of the HVNL is:

- ...to establish a national scheme for facilitating and regulating the use of heavy vehicles on roads in a way that—
- (a) promotes public safety; and
 - (b) manages the impact of heavy vehicles on the environment, road infrastructure and public amenity; and
 - (c) promotes industry productivity and efficiency in the road transport of goods and passengers by heavy vehicles; and
 - (d) encourages and promotes productive, efficient, innovative and safe business practices.²⁰

In the ATA’s view, this object is appropriate. The scope of the HVNL is not, however, wide enough to achieve the public safety goal in s 3(a) or the productivity goal in s 3(c).

The issues paper points out that the elements of a safe and efficient heavy vehicle journey include a driver who is safe, authorised, competent and fit for duty.²¹ Under the current law, the NHVR does not have sufficient authority to administer these elements.

¹⁹ NTC, [Effective fatigue management issues paper](#). May 2019.

²⁰ HVNL, s 3.

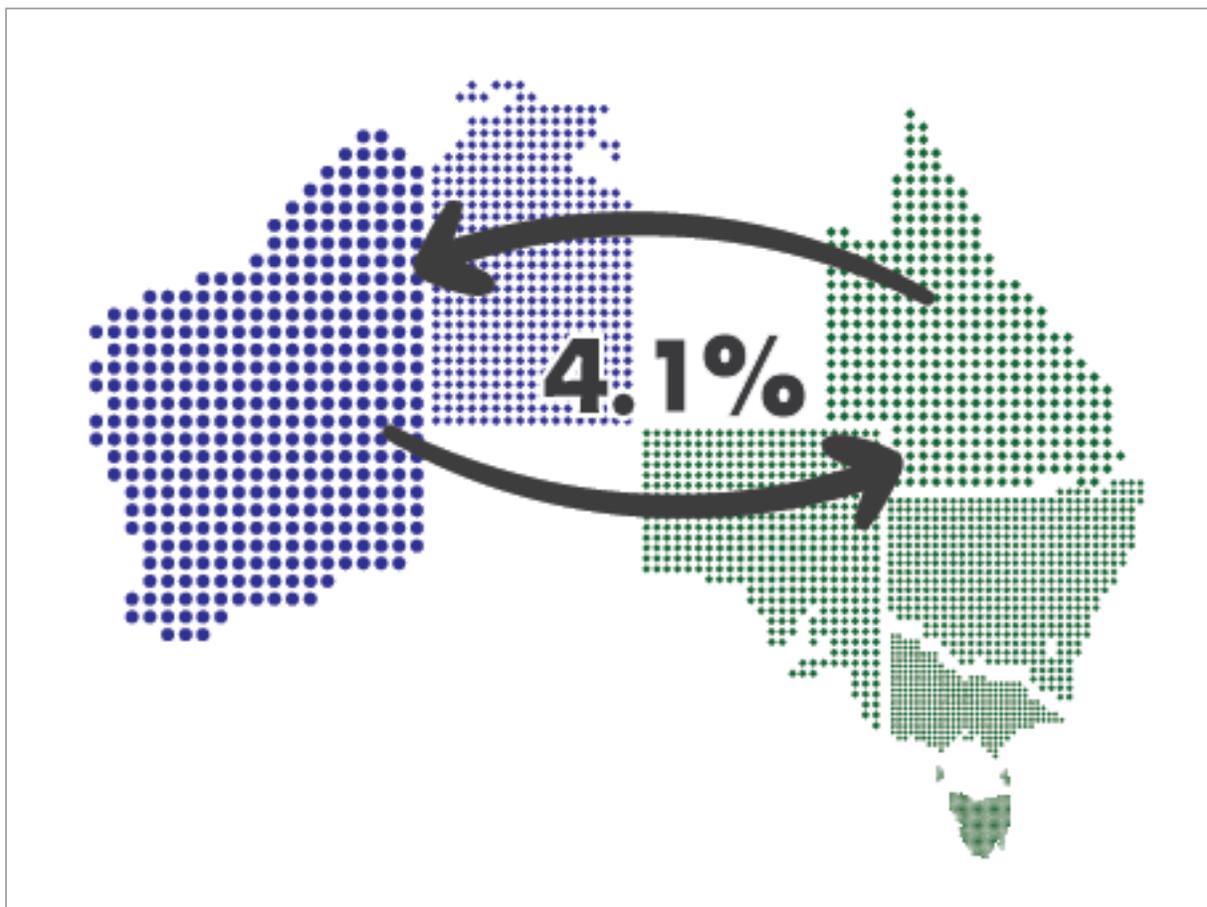
²¹ NTC, March 2019, 27.

The NHVR also does not have the scope to make productivity decisions that are in the wider national interest, despite s 3(c).

Question 5: Do you agree that national consistency is a goal that we should strive for, acknowledging it may mean compromise for participating and non-participating jurisdictions alike to be nationally agreeable?

The ATA agrees that consistency between participating and non-participating jurisdictions is an important goal. Figure 3, however, shows that only **4.1 per cent** of Australia's total road freight task in tonne-kilometre terms occurs between WA/NT and the HVNL jurisdictions.²² It follows that the economic gains from achieving national consistency would be small. They could even be negative, if striving for consistency reduced the productivity of the WA and NT industries.

Figure 3: Inter-system road freight as a share of total tonne-kilometres, 2017-18



Source: BITRE.

²² Unpublished BITRE O/D data in tonne-kilometre terms, 2017-18. The ATA would like to thank BITRE for its assistance.

Instead, most of the economic gains from truck law reform would come from:

- eliminating or at least minimising the inconsistencies between HVNL jurisdictions
- reducing red tape and increasing productivity for all operators within the HVNL jurisdictions, including intrastate operators, without compromising safety.

In the short term, the inconsistencies between the WA/NT and HVNL systems could best be addressed through:

- bottom-up negotiations about specific productivity issues, rather than seeking to impose consistency from the top
- the development of mutual recognition agreements to reduce the cost of holding the multiple accreditations that interstate operators need to operate in Western Australia. This process could also be used to resolve the issues with s 245 of the HVNL, which are to be addressed as part of this review.²³

Question 6: Do you agree we should simplify the law by placing obligations as low in the legislative hierarchy as we can? How do we balance agility and flexibility in the law with suitable oversight when deciding where obligations should reside?

Question 7: How do we encourage the use of technology and data for regulatory purposes? What do operators, regulators and road managers need or want?

Question 9: How could the law regulate heavy vehicles in a way that accommodates diversity, while retaining consistency and harmonisation across Australia?

As the issues paper points out, the HVNL is more than twice the size of the RSNL and the model WHS Act.²⁴ It is highly prescriptive. Even straightforward amendments to the primary legislation take more than a year to progress through the Transport and Infrastructure Council and the Queensland Parliament.²⁵

The primary legislation is supported by five sets of regulations and a host of guidelines, approvals, policies and manuals of uncertain legal standing.

As a result, it is onerous and time-consuming to change the detail of the law, which means that it cannot keep up with changing technology or the needs of our diverse industry.

A new, three-tier structure for the HVNL

The ATA considers that adopting the sound legislative practice of moving as much regulatory detail as possible to regulations or legislative instruments would help address these issues.

²³ NTC, [HVNL fatigue issues consultation report](#), July 2018, 9.

²⁴ NTC, March 2019, 33.

²⁵ NTC, March 2019, 36.

In our view, the new HVNL should be restructured as follows:

- the **primary legislation** would comprise the amended version of Chapter 1A; other key offences such as the s 93 prohibition on speed limiter tampering; overarching principles about enforcement, sanctions, reviews and appeals; corporate governance; and regulation and order/rule making powers.
- the **regulations** would provide more detail, including sanctions for lesser regulatory offences.
- There would be a new tier of **orders and standards**, which would be made by the regulator. To the extent they needed to be retained under the proposed risk management model, the current guidelines, policies and manuals would be remade as legislative instruments in this tier. The orders and standards would generally be disallowable. All persons exercising powers under the HVNL (including police and local governments) would be required to comply with them.

There would continue to be a key role for registered industry codes of practice and accreditation schemes under this new structure.

Industry codes would continue to be developed by industry and considered by the NHVR against registration standards.

The NHVR would also be responsible for developing registration standards for accreditation schemes and auditing registered schemes against those standards. Operators in registered schemes would all be able to access appropriate concessions, as discussed on page 3.

Corporate governance, oversight and accountability

The legislative model we are proposing would increase the workload and discretion of the regulator. This increase in the regulator's authority would need to be matched by corresponding improvements in its corporate governance, oversight and accountability.

The ATA and its members would only support the adoption of a three-tier model if these reforms were adopted.

A statutory consultation and best practice regulation obligation

The HVNL does not require the NHVR to consult with industry or set out how these consultations should be carried out.

In contrast, s 12 of the *Australian Maritime Safety Authority Act 1990* (Cth) provides:

In the performance of its functions and the exercise of its powers, the Authority must, where appropriate, consult with government, commercial, industrial, consumer and other relevant bodies and organisations.

The *Civil Aviation Act 1988* (Cth) has a similar provision.²⁶

The *Rail Safety National Law* goes further. It requires a 28 day consultation period for changes to accreditation conditions.²⁷ It also requires ONRSR to conduct cost-benefit analyses before it makes a range of decisions.

Although the RSNL approach has the appeal of embedding a fixed consultation period and some elements of best practice regulation in the law, it is unnecessarily prescriptive for a primary Act.

Accordingly, the ATA proposes an alternative approach to including a consultation obligation in the HVNL.

The NHVR is a national standard setting body. It should develop rules and consult with industry in accordance with COAG's best practice regulation requirements. The current (2007) version requires regulators to:

- establish a case for action before addressing a problem
- consider a range of feasible policy options and assess their costs and benefits
- adopt the option that generates the greatest net benefit to the community and
- consult effectively with affected key stakeholders at all stage of the regulatory cycle.²⁸

We propose that the new HVNL should include a two-part consultation and best practice regulation obligation:

- a statement of principle that the NHVR must consult, where appropriate, with government, commercial, industrial, consumer and other relevant bodies and organisations
- a specific requirement that the NHVR must comply with COAG policies on best practice regulation, including on competitive neutrality.

Strengthening the role of the NHVR board

Under s 664 of the HVNL, the NHVR board controls the affairs of the regulator. Its functions include deciding the regulator's policies (subject to any directions by ministers) and ensuring the regulator exercises its functions in a proper, effective and efficient way.

The board's functions appear to be broad, but in practice are highly constrained.

Sections 653 and 654 of the law reserve the function of approving a host of guidelines and approvals to ministers. Under s 655A, the only delegation of this function that ministers can make to the board is to approve minor amendments, including for 'clerical reasons.'

These limits on the board's authority are not consistent with best practice, which is that statutory authority boards should have the full power to act within their area of responsibility, subject to

²⁶ s 16.

²⁷ RSNL, s 72(2). The affected person can agree to a shorter period.

²⁸ Council of Australian Governments (COAG), [Best practice regulation: a guide for ministerial councils and national standard setting bodies](#). October 2007, 4.

ministerial oversight through a statement of expectations/corporate plan approval process and a broad power of direction.

These limits are also inconsistent with our proposed legislative model, which would see the NHVR making orders and standards in a responsive way.

As a result, the functions set out in current ss 653 and 654 should be transferred to the NHVR board or the CEO.

The functions of the board should also be amended to include:

- ensuring the NHVR complies with the consultation and best practice regulation obligation proposed in this submission and, more broadly
- ensuring the NHVR complies with policies agreed by responsible ministers or COAG.²⁹

Board membership and skills

The NHVR board consists of five members, including the Chair and Deputy Chair. The members of the board must consist of:

- (a) at least 1 member who has expertise in transportation policy; and
- (b) at least 1 other member who has expertise in economics, law, accounting, social policy or education and training; and
- (c) at least 1 other member who has experience in managing risks to public safety arising from the use of vehicles on roads; and
- (d) at least 1 other member who has financial management skills, business skills, administrative expertise or other skills or experience the responsible Ministers believe is appropriate.³⁰

As table 1 shows, the NHVR board is small by the standards of comparable regulators. NHVR Chair Duncan Gay is a former trucking operator, but there is no requirement for the board to include even one member with experience operating a business regulated under the law.

²⁹ For example, see *National Health Reform Act 2011* (Cth), s 5 and s 133.

³⁰ HVNL, s 663(1)

Table 1: Size and composition of typical regulatory boards

Regulator	Members	Member with industry background
NHVR	5	Yes – current Chair, but not required by the HVNL
Australian Maritime Safety Authority	9	Yes – required under s 13 (4A) of the Australian Maritime Safety Authority Act
Civil Aviation Safety Authority	7	Yes – 3 members, including the chair, have direct industry experience
Safe Work Australia	15	Yes – required that two members represent the interests of workers and two members represent the interests of employers
Australian Communications and Media Authority	8 (can be up to 9)	Yes – 3 members have direct industry experience.

In 2003, the Uhrig review concluded that a governance board should have between six and nine members. It noted that boards with fewer than six members may have difficulty meeting their statutory responsibilities due to workload pressures and their potential lack of breadth.³¹

Similarly, the AICD's governance advice on board size notes – as a rule of thumb for considering board size – that public sector boards of between six and 12 members are not unusual.³²

Given that this submission proposes a substantial increase in the NHVR board's responsibilities and workload, it would be appropriate to:

- increase the size of the board from five to nine, and
- require that at least two of those members have recent experience operating a truck or bus business, either as a director or as an employee. Consistent with the recommendations of the Uhrig review, the members would not be appointed as industry representatives but as individuals for their experience and judgement.³³

³¹ Uhrig, J et al. [Review of corporate governance of statutory authorities and office holders](#). June 2003. 96.

³² AICD, [Number of directors – board size](#). Fact sheet, 31 October 2017.

³³ Uhrig, 98.

Limiting delegation powers

Section 683 of the HVNL enables the chief executive officer to delegate his or her powers (other than the power of delegation) to:

- (a) an appropriately qualified member of the staff of the Regulator; or
- (b) the chief executive of an entity, or a department of government, of a participating jurisdiction.

The proposed change to the structure of the law would require changing these delegation powers.

In the ATA's view, the power to make instruments or standards should only be delegable to a member of the staff of the Regulator. It may be appropriate to limit the delegation of these powers to SES equivalent officers.

Requirements on persons exercising powers

An ongoing issue with the HVNL is that NHVR policies and guidelines are not binding on all the individuals and organisations who have authority under the law.

Under our proposed approach, many of the current policies and guidelines would become legal instruments. It is essential that all individuals and organisations with powers under the law be required to exercise their powers in accordance with those instruments, as well as the NHVR's other policies.

Parliamentary scrutiny

The HVNL adoption legislation in each participating jurisdiction provides that the parliament of the jurisdiction can disallow national regulations made under the HVNL as if they were regulations of that jurisdiction.

The disallowance provisions only apply to national regulations and not to guidelines, policies or standards made under the law.

In the ATA's view, the use of third tier legislation in the new HVNL would need to be matched by an increased level of parliamentary scrutiny.

As a result, third-tier legislation made under the law should be disallowable in the same way, for example, that orders and standards issued by CASA are disallowable.

Question 10: In a broad sense, what tools do the regulator and enforcement agencies need to respond appropriately to compliance breaches? What recourse and protections do regulated parties require?

The HVNL now has a comprehensive range of enforcement powers and sanctions and substantial maximum penalties, including potential imprisonment for individuals convicted of a category 1 primary duty offence.³⁴

The Heavy Vehicle National Law Amendment Bill 2019 (Qld) would also provide the NHVR with the specific power of providing advice, information and education to persons with duties or obligations under the law.³⁵

Although these enforcement tools cover the whole of the enforcement pyramid identified in the issues paper,³⁶ the increased use of safety management systems proposed in this submission means that the attitude of enforcement officers will need to change.

All too often, enforcement officers evaluate risk-based safety management systems according to what could have been done with perfect foresight, rather than testing a business's systems against the legislated standard of reasonable practicability.

Recourses and protections for regulated parties

Two important recourses and protections that regulated parties need are already in the law. These are the requirements that the prosecution prove its case and the section 18(3A) protection against double jeopardy.

In the ATA's view, the requirement that the prosecution prove its case is so fundamental that it should be added to draft regulatory principle 5 (page 18).

In addition, there remains a need to address the investigation powers under the law and appeals against authorised officer and road manager decisions.

Investigation powers

The NTC reviewed the investigation powers in the law in 2017. In its findings, it noted that the current HVNL review would be an appropriate opportunity to consider the complexity of the HVNL information gathering powers, as well as the entry, inspection, search and seizure powers.³⁷

The most important protections that need to be added to the information gathering powers in the law are:

- a requirement that requests for information must be directly relevant to the investigation being carried out and reasonable. The ATA is aware of cases where fishing exhibitions

³⁴ HVNL, s 26F

³⁵ Heavy Vehicle National Law Amendment Bill 2019 (Qld), cl 33, Amendment of s 659 (Functions of Regulator)

³⁶ NTC, March 2019, 22.

³⁷ NTC, [Review of HVNL investigative and enforcement powers](#). Policy paper, May 2017. 43.

for business records have effectively halted day to day operations, or where it has become so expensive for a regulated party to deal with the endless requests for information and appeals that it has become less expensive to settle.

- a mandatory warning provision. The incorporation of such a provision in the HVNL would elevate any operational procedures that are in place to the status of a codified legal requirement, and would deal with the known cases where enforcement officers bypass the law by asking for voluntary statements without giving a warning.

Appeals against authorised officer decisions, offences and defect notices

The NatRoad submission on this issues paper points out that most offences under the HVNL must be challenged in court or a plea in mitigation made in a court. These pleas are costly because even though the penalty might be reduced, the operator or driver must pay court costs and/or lawyer's fees. These latter costs are likely to exceed the original penalty amount.³⁸

Similarly, there is no straightforward way of appealing a defect notice, even though they are issued inconsistently.

The ATA considers that the new HVNL should include an early review process to address these issues.

Appeals against road manager decisions

Sections 643 and 644 of the HVNL enable an applicant to seek an internal review of a road manager's access decision. The decision by the reviewing officer is not subject to external appeal.³⁹

The Australian Government's Administrative Review Council⁴⁰ has identified a host of problems with internal reviews. These include:

- inconsistent appeal outcomes. One of the objectives of an appeals system is to make sure that people in the same circumstances are treated in the same way, regardless of the primary decision-maker. This means that appeals need to be considered centrally, not by a review officer located in the same organisation as the primary decision-maker
- the failure of internal reviews to consider whether an organisation's approach to applying external standards is appropriate. Internal reviews only consider if a primary decision maker applied an organisation's own policies correctly; they are most unlikely to consider whether those policies are consistent with external standards. This is a particular concern given the ATA's proposal to recast the guidelines, including the access guidelines, as enforceable standards (page 11).

³⁸ NatRoad, [Submission to the National Transport Commission: A risk-based approach to regulating heavy vehicles](#). May 2019, [60].

³⁹ HVNL, s 647(1)

⁴⁰Administrative Review Council, [Internal review of agency decision making](#). Report 44, 2000.

In the ATA's view, the new HVNL should enable road manager access decisions to be appealed to relevant appeal bodies. The need for this additional recourse should be recognised in draft regulatory principle 5 (page 19).

Question 11: How can the new HVNL help to improve safety, productivity and regulatory efficiency?

To support its input to this review, the ATA commissioned Deloitte Access Economics to make suggestions about potential reforms to the HVNL and then model their economic benefits.

According to its modelling, the new HVNL could:

- save the trucking industry \$1.8 billion a year by 2050
- reduce vehicle operating costs by 3.7 per cent
- reduce the costs of Australian industries by \$900 million a year
- save a typical Australian household more than \$400 per year on their everyday household purchases.⁴¹

These economic gains do not depend on extending the HVNL to non-participating jurisdictions. In fact, as this submission argues (page 9), extending the HVNL to Western Australia and the NT could reduce the productivity of trucking operations in those states.

In addition to these potential economic gains, the new HVNL must reduce the compliance burden faced by trucking businesses and drivers.

For example, one mid-size national trucking business estimates that its staff are required to manage 14 different industry, standards or customer audit processes, most covering the same issues. This proliferation of audits requires some 40 days of staff time per year to manage.

The ATA's proposed amendment to draft regulatory principle 6 (page 19) would embed, in the review process, the importance of reducing the compliance burden.

Question 12: Do you agree with the six draft regulatory principles? If not, why? Are there other principles we should consider?

As set out in this submission, the ATA recommends amendments to draft regulatory principles 1, 5 and 6.

As discussed on page 8, draft regulatory principle 1 should be amended to read:

The future HVNL should be risk-based. The law should be developed by identifying, analysing, evaluating and establishing controls for material risks or for ensuring the compatibility and interoperability of equipment. The future HVNL should not attempt to control immaterial risks or have controls that aren't clearly contributing to risk management. Controls should be specified in terms of suitable regulatory styles.

⁴¹ Deloitte Access Economics, March 2019. v.

And as discussed on pages 16 and 17, draft regulatory principle 5 should read:

The future HVNL should target the most significant risks associated with heavy vehicle operations. The new law should support sanctions and enforcement tools that reflect the severity of the risk. The new law should be based on a conventional burden of proof. Enforcement and access decisions must be able to be reasonably challenged, including through external appeal processes.

Draft regulatory principle 6 should read:

The future HVNL should deliver better safety, productivity and regulatory efficiency outcomes and lead to continual improvement across these key performance areas. The new law must reduce the regulatory burden on businesses, without compromising safety.



EASY ACCESS TO SUITABLE ROUTES HVNL REVIEW ISSUES PAPER

AUSTRALIAN TRUCKING ASSOCIATION SUBMISSION 16 AUGUST 2019

1. About the Australian Trucking Association

The Australian Trucking Association and its member associations collectively represent 50,000 businesses and 200,000 people in the Australian trucking industry. Together we are committed to safety, professionalism and viability.

2. Introduction

In June 2019 the National Transport Commission released the access issues paper for the Heavy Vehicle National Law (HVNL) review, *Easy access to suitable routes*.

More productive heavy vehicle access is a critical public policy goal that would benefit Australian consumers and businesses. Better access lowers freight costs, which ultimately means more local jobs.

Modelling from Deloitte Access Economics shows that trucking contributes to the cost of everyday consumer goods. For example, trucking makes up 4.4 per cent of the cost of a beer, 4.1 per cent of the cost of fruit and vegetables and 2 per cent of the cost of personal electronics.¹

The modelling also shows that cost savings to the trucking industry could directly reduce the costs faced by other industries. Potential savings include an annual \$80 million for wholesale trade, \$70 million for construction services and \$40 million for retail trade.²

Governments need to deliver more productive heavy vehicle access to lower costs and boost local jobs. Reforms to deliver these gains for the community should include:

- Delivering parallel and integrated reforms to improve the access network and supply-side road funding decisions.
- Faster access decisions that underpin the need to enable freight deliveries in a modern, on-demand economy.
- Reducing the number of permits for access decisions, with the priority for access decisions to be provided in clear, accessible as-of-right networks.
- Ensuring access decisions are consistent, justified and subject to external review.
- Fixing the disconnect between land use planning and providing productive heavy vehicle access.

The ATA developed this submission following detailed consultation with our members. The **Tasmanian Transport Association** has asked that this submission be taken as its own.

¹ Deloitte Access Economics, March 2019, [Economic benefits of improved regulation in the Australian trucking industry](#), 46.

² Ibid, 45.

3. What's wrong with access decisions under the HVNL?

At the NTC's Brisbane workshop on access, one of the views expressed was that there is not actually a problem. It was said that the legislation with regard to access does not need to change.

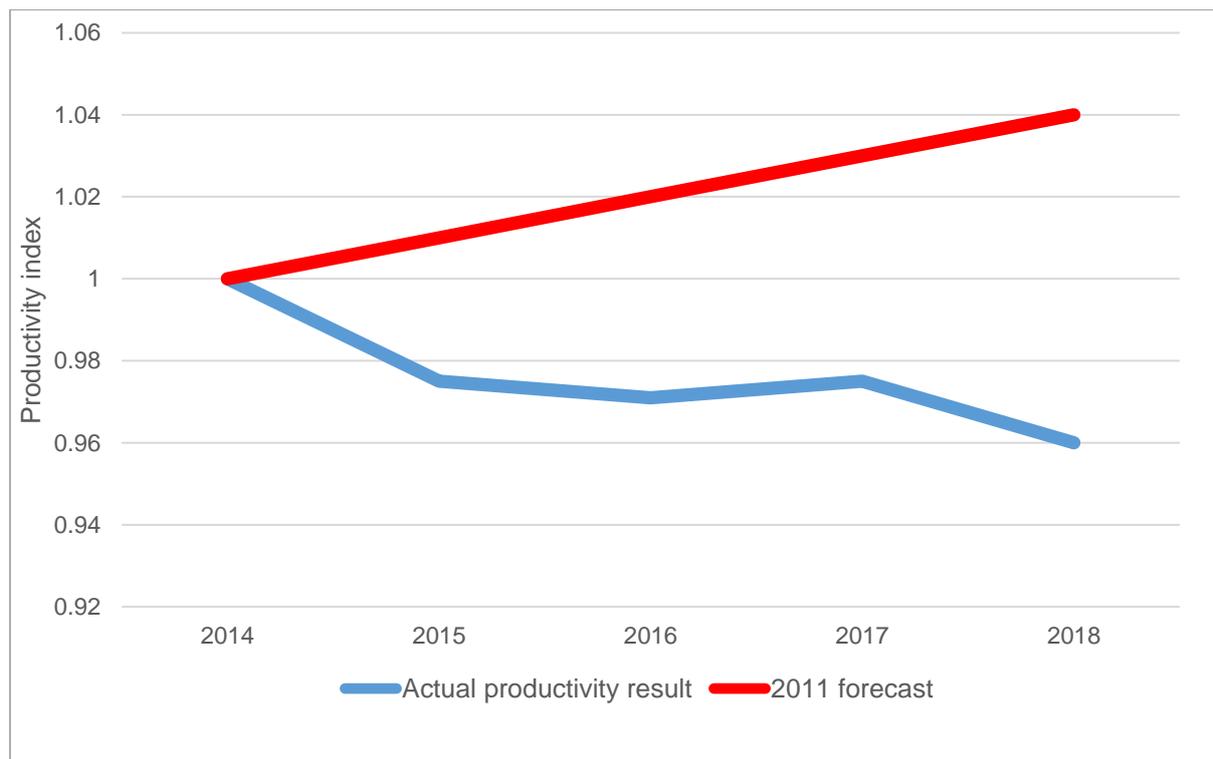
Whilst this was ultimately a minority viewpoint, it does warrant a key question. **If the HVNL legislation has been a success in relation to access, where are the economic gains that were envisioned?**

In 2011, the HVNL was predicted to deliver up to \$12.4 billion in economic benefits. Most of the benefits were to be made in gains from harmonising restricted access vehicles, higher mass limits and intelligent access program regulation.³

As stated by the NTC at the time, implicit in the benefit calculation was the assumption that the new decision-making framework would promote access.⁴

However, the results have fallen significantly short of these commendable objectives. The productivity of the transport, postal and warehousing sector has fallen steadily since the law came into force in 2014.⁵

Figure 1: forecast and actual changes to industry productivity, 2014-2018



Source: Deloitte Access Economics.

³ Deloitte Access Economics, March 2019, [Economic benefits of improved regulation in the Australian trucking industry](#), 17.

⁴ NTC, September 2011, [HVNL Regulation Impact Statement](#), 57.

⁵ Deloitte Access Economics, *ibid*, 21.

The legislation has failed to deliver what was intended. It can hardly be described as a success.

The NTC issues paper also summarises a number of key issues with the current system, including:

- The current system results in too many permits, delays for operators and inconsistent outcomes
- Even when journeys are low risk or routes pre-approved, where risks are already known, operators still need to apply for permits
- Matching vehicle classes to networks for access is complicated. Road managers do not necessarily have expertise with heavy vehicle classifications, which can complicate and protract access decisions
- The decision-making process is prescriptive and inflexible. There are many opportunities for parties to lose sight of or delay a permit application
- The access decision-making process challenges road manager resources and they are unable to delegate this role
- Only the NHVR's access decisions are subject to external review. There is no provision for external review of decisions made by road managers.
- There are challenges outside the HVNL, including slow third-party approvals and inconsistent pilot and escort arrangements.⁶

The ATA recommends that access decisions under the HVNL should be reformed, having failed to deliver the intended economic gains that were projected in 2011 assessment of the new laws.

⁶ NTC, June 2019, [HVNL review issues paper: Easy access to suitable routes](#), 37.

4. A national reform program – more productive heavy vehicle access and enabling the modern Australian economy

The National Freight and Supply Chain Strategy, which has been endorsed by the Australian and state and territory governments, identifies that Australia's freight system is the lifeblood of our economy and way of life.⁷ Road transport is the dominant form of freight for the majority of commodities produced and/or consumed in Australia.⁸

Road freight is an enabler of opportunity, allowing businesses to reach domestic and international markets, consumers to purchase goods, farms to sell their produce, and construction materials to enable new developments.

More efficient and competitive supply chains enable increased economic output for other sectors. The Competition Policy Review (Harper Review) found that in relation to road transport:

Even small changes in productivity in this sector can cascade through the economy, boosting productivity and output in other sectors. Also, given the size of the road transport sector, enhanced productivity in road transport can deliver large gains to the economy.⁹

The 2019 Australian Infrastructure Audit reports that our transport networks are vital to our collective economy and productivity, as well as to the quality and cost of living we experience as individuals.¹⁰ It also reports that the World Bank has found that Australia's international trade costs are higher than comparable countries.¹¹

The economic gains from better, more productive heavy vehicle access are well known. Although not achieved, they were a clear rationale for the introduction of the HVNL. They are also cited as a clear aim of Heavy Vehicle Road Reform (HVRR).

HVRR is a joint reform process of the Australian, state and territory governments through the Transport and Infrastructure Council (TIC). The stated aim of HVRR is to turn the provision of heavy vehicle road infrastructure into an economic service, where feasible. It is intended to provide clear links between the needs of users, the charges they pay and the services they receive.¹²

An assessment by Deloitte of the estimated net benefits from HVRR were in the range of \$8.5 billion to \$17.4 billion, assuming a 20-year timeframe.¹³ The analysis identifies that the realisation of the net benefit from each potential HVRR end state reform option rests heavily on the assumption that supply-side reforms to the provision of roads are implemented across state and territory jurisdictions.¹⁴

⁷ Transport and Infrastructure Council, August 2019, National Freight and Supply Chain Strategy, 9.

⁸ Ibid, 10.

⁹ Harper, Anderson, McCluskey, O'Bryan, March 2015, [Competition Policy Review Final Report](#), 38.

¹⁰ Infrastructure Australia, August 2019, [2019 Australian Infrastructure Audit](#), 260.

¹¹ Ibid, 351, 323 & 331.

¹² Australian Government, July 2018, [Heavy Vehicle Road Reform Changes to heavy vehicle road delivery: Background paper](#), 6.

¹³ Marsden Jacob Associates, July 2018, Consultation Regulation Impact Statement: HVRR Phase 2: Independent price regulation of heavy vehicle charges, 9.

¹⁴ Deloitte Access Economics, June 2017, [Economic analysis of potential end-states for heavy vehicle road reform](#), xvii

Access under the HVNL and proposed HVRR reforms are intending to deliver the same outcome – economic gains from more productive heavy vehicle access – but the reform programs are disconnected from each other and disconnected from local road manager decision makers.

A national reform program to deliver a modern, more productive and better-connected road freight network

Governments need to implement a reform program committed to achieving more productive heavy vehicle access to lower freight costs and boost local jobs.

The national agenda for more productive road freight should include reforms to access under the HVNL and reforms to the supply-side provision of roads. There should be one (or clearly linked) reform agenda. The policies encompassed in the reform process can then be properly assessed. What is needed is for an independent assessment of the costs and benefits from an agreed reform agenda to be undertaken, an agenda that enhances heavy vehicle access.

Governments must address the structural challenges that are holding back more productive heavy vehicle access.

Infrastructure Australia reports that despite the benefits from using High Productivity Freight Vehicles (HPFVs), that their use has been limited. Restricted use of HPFVs will lock in high freight costs for businesses and consumers, and limit benefits to road safety, air pollution and amenity.¹⁵

Ultimately the best framework, legislation and process can be established for improving access, but decision makers need to commit to broaden the as-of-right network to deliver the economic gains for the Australian economy.

The experience of the HVNL illustrates this point strongly, where anticipated gains based on improved access have not been delivered as anticipated.

As an example, the existing HVNL allows for road authorities in participating jurisdictions to step in if needed on access decisions.¹⁶ The access issues paper states that jurisdictions can over-ride local government access decisions, or step in when decisions are made. Despite this ability, road authorities are reluctant to exercise the power.¹⁷

The issues paper identifies the need for road managers to make proactive access decisions. This includes using current and planned land use data, transport analysis and strategy, with a view to pre-conditioning routes for access.¹⁸

¹⁵ Infrastructure Australia, August 2019, [2019 Australian Infrastructure Audit](#), 344, 345.

¹⁶ NTC, June 2019, [HVNL review issues paper: Easy access to suitable routes](#), 48.

¹⁷ Ibid, 48.

¹⁸ Ibid, 62.

Refocusing Heavy Vehicle Road Reform and supply side road funding reform to improve the provision of road infrastructure

A hesitation for local road managers to grant access can be based on the wear and tear of roads resulting from heavy vehicle traffic. An attempt to manage, and potentially prolong the need for maintenance results in a lack of access.

However, heavy vehicles pay for their use of the road network through the fuel-based road user charge and registration charges. That this funding is disconnected from local roads is a problem with the supply of road funding.

Defining, cataloguing and delivering national road service standards would be complementary to proactively identifying, planning and delivering a more productive road network.

It would assist in providing the right road infrastructure in the right places, as funding could be directed to rectifying gaps in the network that proscribe heavy vehicle access.

Service level standards should also be linked to access and funding. Identification of a route at a particular service level standard should be tied with as-of-right access for an appropriate heavy vehicle combination and funding to the road manager for maintenance to that standard. Considering the need to expand as-of-right access in the network, implementation of service level standards is a critical reform.

Implementation of this reform would likely need to be phased in, for example, starting with the National Land Transport Network.¹⁹ It would also need to include a principle where the new access standards could not be lower than existing access approvals.

The ATA recommends that the Heavy Vehicle Road Reform agenda should be refocused with a stronger focus on increasing productivity by improving the provision of roads. This should include:

- Setting clear and measurable service level standards.
- Ensuring revenue from heavy vehicle charges is allocated to the provision of service level standards that benefit heavy vehicle road users.
- Improving the selection, assessment and planning of road funding projects with a focus on delivering national service level standards.
- Establishing an independent economic regulator for setting heavy vehicle charges, including toll road and landside port charges.
- Continuing to set charges on a consistent network basis that does not set different charges for different roads, to ensure the entire road network and regional areas are appropriately funded.

On reforming charging and potential future decisions for a distance-based charging mechanism, the ATA notes that the Australian Government is currently in the early stages of piloting a different charging mechanism, to inform future policy decisions.

¹⁹ [The National Land Transport Network](#) includes nationally important roads and is determined in *The National Land Transport Network Determination 2014* under the *National Land Transport Act 2014*.

The new HVNL should not create unnecessary obstacles for a potential new charging framework. Instead, provisions such as the ATA's recommended notification network could be designed to allow future integration.

However, the ATA also notes that the net benefit to operators in changing the charging system has not yet been demonstrated. **As part of the wider reform agenda for a more productive road freight network, the costs and benefits of changing the heavy vehicle charges structure will need to be independently assessed in a transparent manner.**

A national, productive road freight network

As part of this national reform agenda, the end state for the new HVNL should enable a network where productive heavy vehicle access is provided as-of-right, as part of the service level standards of the road network.

The future heavy vehicle access system will need to focus on the exceptions to this system and identify where there are conditions or restrictions on access, within a wider network of access approved as-of-right.

Connecting land use and transport planning with heavy vehicle access

Operators experience the disconnect between land use planning, transport planning and heavy vehicle access as an additional cost of doing business.

New industrial and logistics areas are not always connected with investments in road infrastructure to access those precincts, and even if they are, proactive decisions to gazette as-of-right heavy vehicle access to these zones are often not a priority.

Local governments have to meet a number of existing planning obligations. As an example, NSW local governments have legislated responsibilities to produce local strategic planning statements, which set out a vision for land use over 20 years, the character and values that are to be preserved and how change will be managed. The statements implement actions in regional and district plans and the council's own priorities developed under local government legislation. Ultimately, the statements are intended to shape how development controls evolve over time.²⁰

However existing planning instruments are effectively incomplete, as they fail to link and fail to plan the connections between land use and heavy vehicle access.

As part of their wider land use planning obligations, local government and road managers should be required to produce a heavy vehicle access strategy. These strategies should link land use with providing better, more productive heavy vehicle access, and how road managers will proactively plan and invest to enable the productive delivery of Australia's freight task.

²⁰ NSW Department of Planning and Environment, [Guide to the updated Environmental Planning and Assessment Act 1979: Part 3 – Strategic Planning](#), accessed 13 August 2019.

Failure to plan for heavy vehicle access risks increases in vehicle movements and associated impacts on local communities. These are issues that are managed through the land use planning system.

Responsibility for implementation and measuring progress of access reforms

The national reform agenda for a modern, more productive and better-connected road freight network will also need to be measured, to ensure it is delivered.

With the projected growth in freight and congestion over coming years, and Australia's already high international trade costs, we cannot afford in five years' time to again be discussing what happened to the projected economic gains from better access.

Infrastructure Australia finds that governments and service providers do not always adequately measure and report on access, quality and costs for infrastructure users.²¹ This is the case for heavy vehicle access and undermines the reform goal of achieving better and more productive road access.

As part of developing road service level standards, governments need to transparently report on access and set objectives for improving these outcomes.

²¹ Infrastructure Australia, August 2019, [2019 Australian Infrastructure Audit](#), 39.

5. Regulatory principles for the new HVNL

Under the HVNL review terms of reference, the purpose of the review is to deliver – from a first principles perspective – a modern, outcome focused law that will support increased economic productivity and simplify the administration of the HVNL.²²

For access approvals, this should include a modernised focus on what the law should deliver, without being limited by an attempt to make incremental changes to the current law.

As such, the ATA supports the NTC’s draft regulatory principles with the following amendments (amendments are highlighted):

Draft regulatory principle 1: The fundamental goal of the new HVNL access arrangements should be to make the best, most productive and efficient use of infrastructure, vehicles and resources so we can:

- productively and efficiently deliver Australia’s freight task
- ensure the freight task is delivered safely and sustainably
- underpin our domestic services and a modern, on-demand economy
- enable economic opportunity for Australian businesses and consumers
- reduce the impacts of moving the freight task by encouraging the use of more productive vehicles
- promote competitiveness in international trade.

The ATA strongly recommends the revised draft regulatory principle 1 to be incorporated as the fundamental goal of access decisions in the new HVNL. Ultimately access is about the task of moving the freight task and enabling economic opportunity and underpins the ability of Australians to purchase and export goods in a global marketplace.

This objective should be embedded in the legislation and guide the establishment of more detailed guidelines in lower tiered legislative instruments.

Ultimately, access decisions are not just about what type of heavy vehicle combination uses a particular route, but also how many heavy vehicles will be needed to move the freight task and the nature of the task.

The principle should also recognise productivity as well as efficiency. The difference between productivity and efficiency is the difference between the productivity commission and the auditor-general’s office. The first is about maximising the output from a given set of resources; the second is about avoiding waste.

Additionally, improving the productivity focus of HVNL access decisions is likely to assist in reducing the differences between the HVNL and WA/NT.

Draft regulatory principle 2: Access decisions should apply as broadly as possible, so they’re needed less often. Decisions should be implemented using the most appropriate instrument, with a proactive focus on reducing the regulatory burden on operators.

²² NTC, January 2019, [Terms of reference: Heavy Vehicle National Law Review](#), 1.

Draft regulatory principle 3: Access decision-making should be simple, consistent, fair and transparent. The priority should be on proactive provision of gazetted, as-of-right networks, and decisions in response to a request should enable a modern, on-demand economy.

The new HVNL should seek the reduction in the number of permits and time taken to process permits as a fundamental goal.

New draft regulatory principle 3B: Access decisions should be subject to external review, and decision-makers exercising access powers under the HVNL should comply with consistent and transparent responsibilities.

Decision-makers have a responsibility to deliver justified, consistent decisions in line with the objectives of the new HVNL. There are too many instances of operators having to navigate lengthy timelines or inconsistent refusals which appear to be linked to issues with the decision-maker, such as lack of resourcing and lack of understanding of the application of heavy vehicle combinations and their impact on infrastructure.

Where a local road manager cannot perform access decision-making in line with the responsibilities of performing the role, then the HVNL should include a mechanism to transfer decision making to another body.

Draft regulatory principle 4: Access decision-makers, beneficiaries, facilitators and enforcement should have clear responsibilities and accountabilities.

New draft regulatory principle 5: Access decisions should recognise that an access refusal impacts the road network beyond a single road manager, the freight task and the wider economy by increasing the number of vehicles needed to move the freight task, increasing costs and undermining the aims of draft regulatory principle 1.

Ultimately road manager access decisions do not exist on an isolated road network.

The issues paper points out that the trucks don't stop if access for more productive vehicles is denied. Instead, the same amount of freight moves through the same route, on more trucks, at higher cost, higher safety risk and with higher environmental and amenity impacts.²³

Whilst it should be acknowledged that the level of freight may slightly decrease, due to increased costs reducing the competitiveness of this economic activity, the broad principle is an important one.

As a consequence, a local government refusing access can impact other parts of the road network (beyond the roads they specifically manage) with more trucks, higher cost, higher safety risk and higher environmental and amenity impacts. The decision to protect amenity in one location may cost it in another.

²³ NTC, June 2019, [HVNL review issues paper: Easy access to suitable routes](#), 59.

New draft regulatory principle 6: Access approval controls should not be the default policy mechanism for measuring road use.

There are a number of mechanisms to measure road use. Decision-makers should commit to selecting the right policy mechanism for achieving the intended public policy goal.

Knowledge on light traffic volumes, critical to planning road upgrades is also not managed by capping and managing individual vehicle movements. Such an approach would be a blunt, outdated and unfair approach to public policy.

Other policy mechanisms for measuring road use include:

- a denser network of fixed counting devices to provide aggregate truck movements for infrastructure planning
- road use surveys
- accessing mobile phone location data and maps
- voluntary telematics programs, noting that these should not be mandatory.

6. Responses to issue paper questions

Within the framework of the draft regulatory principles, **the ATA recommends that the HVNL access system should include:**

- Enforceable standards and orders
- External review
- Ability for local government to delegate their access decision-making role
- Acknowledging precedents in access decisions
- Extending the period and applicability of authorisation
- Process improvements and reduced processing timeframes
- Expanding as-of-right access
- Creation of a notification network
- Not mandating technology to improve access
- Not duplicating bridge assessments
- Further reforms to improve OSOM and PBS access
- Further reforms to improve farm gate / low volume access.

These key issues are expanded in response to relevant issue paper questions. The ATA response to the issue paper questions groups a number of relevant and related questions.

Question 1: Why do access decision timeframes vary significantly? To what extent does the HVNL cause or allow access decision delays?

Central to industry's concerns about the decision-making process is the application of inconsistent decisions and route assessments and the lengthy timeframes that apply for some permit applications. Inconsistent decision-making processes directly lead to inconsistent decision timeframes.

The issues paper identifies no consistent route assessment process applied by road managers, with use of the *Restricted Access Vehicle Route Assessment Tool* not mandatory and inconsistent criteria used when assessing routes.²⁴

The NHVR's *Approved Guidelines for Granting Access* are also not used consistently.²⁵ Even though road managers are required, by law, to have regard to the guidelines, they are not available on the NHVR website (as of the end of July 2019).

The reasons for access refusal also illustrate deficiencies with the system. Independent reports have found:

²⁴ Ibid, 45.

²⁵ Ibid, 49.

- Consent decisions from local government road managers often lack evidence of risks to infrastructure.²⁶
- Road managers can use grounds in the HVNL without compelling reasons, such as refusing access for risks to safety without specifying or substantiating what those risks are.
- Statements do not always include what access is available if risk-mitigation conditions were applied; for example, if reduced mass or a route variation would be accepted. Instead, operators need to make multiple applications to guess what would be acceptable.²⁷ Road managers should not make assumptions about what the applicant would or would not agree to in terms of conditions.

Oversize Overmass permits

There are significant delays with permit applications for OSOM vehicles which are enabled by the HVNL access decision framework. In contrast, operators report much quicker timeframes for OSOM applications in WA and the NT. These can be granted within a couple of hours, are often granted within 48 hours, and at worst are usually at two to three days.

For OSOM applications, Deloitte Access Economics report that:

- The process for OSOM vehicles is inconsistent across HVNL jurisdictions, with decisions lacking timeliness and transparency
- Local road managers often have few resources and limited technical OSOM knowledge
- The general need for pilot/escort vehicle approvals, utility clearances, bridge assessments and rail crossing approvals creates delays, especially where the relevant bodies have not coordinated with each other or there is no mechanism to facilitate this coordination
- Pilot and escort training and accreditation requirements continue to differ across HVNL jurisdictions.²⁸

OSOM issues are discussed further in response to questions 8, 9 and 10.

Question 2: Most road managers can grant consent within seven days. Given this is the case, should we reduce the 28-day timeframe currently in the HVNL? Should we introduce a mechanism to deal with a nil response?

Question 4: What are the challenges road managers face under the HVNL access decision-making framework? Which road managers do it well, and why not? Why are some road managers struggling with access?

Question 11: How should the new HVNL implement access decision-making? Should it specify process and roles? What role is there for the operator? What improvements to access decision-making can be made?

²⁶ Queensland Audit Office, June 2016, [Heavy vehicle road access reforms, Report 20: 2015-16](#), 4.

²⁷ Austroads, February 2018, Local road access for High Productivity Freight Vehicles, 31, 70.

²⁸ Deloitte Access Economics, March 2019, [Economic benefits of improved regulation in the Australian trucking industry](#), 31, 32.

Question 12: How do we reach consistent and predictable risk-based access decision-making? How can we make sure decision-making is transparent and fair?

Question 13: How do we best share the risk management responsibilities between parties with a role in heavy vehicle access?

Question 14: How do we manage the accountability of parties with a role in heavy vehicle access?

The HVNL jurisdictions cannot afford to run approximately 380 separate heavy vehicle access decision processes.²⁹ It would undermine the intent of the HVNL and having a national law and it undermines the economy and the ability of the HVNL to deliver its intended economic gains.

Ultimately, creation of a single free market was a foundational goal and intent of the Australian federation. Running over 380 different systems for how to determine access to move goods within that single and free market would undermine the intent and working of this foundational Australian objective.

That is to say, it is not possible or reasonable for local government inconsistencies on access decisions to continue.

Enforceable standards and orders

The ATA proposes that the new HVNL should incorporate a new three-tier structure. The third tier would be a new tier of orders and standards, which would be made by the regulator. Current guidelines, such as the NHVR's *Approved Guidelines for Granting Access* would be remade as legislative instruments in this tier.³⁰ The orders and standards would generally be disallowable. All persons exercising powers under the HVNL (including local governments) would be required to comply with them. The guidelines would need to be recast, following formal consultation, in light of this new legal status.

As this submission has already stated, local government access decisions have an impact beyond their own road network, impacting other road networks, the economy and the ability to freely move goods about within the wider Australian community.

As such, it is reasonable to impose enforceable standards on granting access on the role of local government decision-makers as their decisions have ramifications beyond their own road network.

²⁹ Based on local government association figures, there are 537 local governments in Australia (see page 45 of the NTC issues paper), with 138 in WA (see [WA Local Government Association](#)) and 9 in the NT (see [Local Government Association of the Northern Territory](#)), leaving approximately 381 local governments in the HVNL jurisdictions.

³⁰ Deloitte Access Economics recommended mandating the use of the NHVR's *Approved Guidelines for Granting Access*. Deloitte Access Economics, March 2019, [Economic benefits of improved regulation in the Australian trucking industry](#), iv.

Consistency of conditions

This new legislative approach and responsibility on decision-makers to operate within legislative guidelines will also need to deliver greater consistency and commonality in conditions that are attached to road access approvals.

Process improvements

The process of permit applications should be improved to deliver:

- Visibility for operators about the status of their application.
- A single online mapping resource for route planning. This will require a shift in the legal mapping resource that operators can rely on from individual jurisdictions to the NHVR.
- Adoption of ARRB's RAVRAT system at all road manager levels in the assessment of restricted access vehicle permits.³¹

Reduced processing timeframes

Processing timeframes should be reduced:

- Reduced timeframes for decision making, with extensions requiring justification.³² The issues paper reports that many road managers respond consistently within seven days.³³
 - The new HVNL should seek to have most access decisions made in a timeframe that enables a modern, on-demand economy. Decisions beyond 48 hours should be rare.
- Introduction of a mechanism to resolve applications where the road manager does not respond or does not meet required timeframes.
 - Road managers should have to provide justification for an approval process that will take longer than 48 hours, with a higher threshold for justification needed beyond 7 days. The grounds for justification should be governed by a lower tiered legislative instrument.
 - Access decisions that do not receive a response within 48 hours (either an outcome or justification for longer assessment) should become the jurisdiction of a state or territory road authority or the NHVR.
- Establishing a trigger point where the NHVR must review the status of unresolved applications. This could be accompanied by the new mechanism for resolving applications where the road manager does not respond, does not meet required timeframes and/or does not meet the standards for approving access.

³¹ Deloitte Access Economics, March 2019, [Economic benefits of improved regulation in the Australian trucking industry](#), iv.

³² Deloitte Access Economics recommended amending the HVNL to implement a maximum time period in which road managers must decide consent (subject to exceptions). Deloitte Access Economics, March 2019, [Economic benefits of improved regulation in the Australian trucking industry](#), iv.

³³ NTC, June 2019, HVNL review issues paper: Easy access to suitable routes, 45.

Ability for local government to delegate their access decision-making role

At the same time as increasing the obligations on local government to make access decisions as part of a consistent, evidence-based process, the new HVNL should provide local government with the ability to delegate their role as access decision makers. Where local government may not be able to perform their role under the HVNL, there needs to be a mechanism to resolve this lack of capacity.

Question 3: Is vehicle classification useful? Does the new HVNL need a vehicle classification system and, if so, should it be different from the current system?

Any changes to the current classifications would need to be considered to the extent that they would facilitate better access (changes to the classifications, if it resulted in existing vehicles losing access, would not be supported by the ATA) and if they would be nationally consistent.

Improvements that would assist in providing a quick reference for what is allowable under general access could be considered, especially if reforms provided an ongoing mechanism for including new vehicle designs, as appropriate, into general access.

Reforms could also focus on the access envelope, that is include all relevant vehicles that fit within a particular design and performance envelope. For example, if a route is suitable for a particular heavy vehicle combination, all combinations that fit within the performance and dimensions of that combination (ie the envelope) should be granted access for the same route.

Question 5: Should the law allow for external review of access decisions?

External review

As decision makers would be bound by enforceable standards, their decisions would also need to be subject to external review to ensure they act within those standards.

The issues paper reports that reviews of road manager decisions were restricted to internal reviews only due to the concern that road managers would restrict as-of-right access rather than incur the potential cost of challenges to access decisions.³⁴ It will be important to structure the detail of the access guidelines to protect against this potential approach, such as a justification requirement for access refusals.

In the ATA's 2011 submission on the HVNL we said that in order to deliver a significantly improved decision-making framework for access, that it is absolutely critical that the decisions by road asset managers are subjected to external review.³⁵ In considering how the HVNL has failed to deliver the level of productivity gains from better access that were intended, the ATA recommendation on external review should be revisited and included in the new HVNL.

³⁴ Ibid, 48.

³⁵ ATA, May 2011, [Submission on the draft HVNL and Regulatory Impact Statement](#), 14.

Road asset manager decisions are critical decisions, and these should be transparent and accountable. Transparency would be improved if an access applicant can request a statement of reasons and request a review by an alternative decision maker. These obligations are common to Commonwealth agencies and have demonstrated enhanced decision making. Reviews should be limited to applicants, and not any party.

The ATA's previous specialist legal opinion on this issue of the 2011 RIS position of not extending decisions to external review stated that:

The justification for restricting road manager decisions to internal review only is brief with little supporting argument. The RIS states that it is not feasible at this juncture as Councils would be required to source second opinions and legal expertise likely to be outside their budgetary reach.

This is an unusual justification. There are many decisions that Councils make which, if subject to external review, would require them to source second opinions and legal expertise and which would not fall with any fixed budgetary allocation.

The opinion also stated that:

These decisions have to be based on infrastructure protection and public amenity and the RIS implies that Councils are reluctant to grant access on either ground as refusal is a safe decision..” and that “The prospect of external review is, in our view, more likely to result in better informed and careful access decisions and made in accordance with the comprehensive evaluative tools mentioned in the RIS.³⁶

The experience of the HVNL adds weight to this view. The HVNL access issues paper includes a case study experienced by the South Australian Road Transport Association (SARTA), an ATA member association.

In this case study, it appears that the local government was seeking to block an access application without having a reasonable or logical cause. The NHVR did not have the power to do anything except try and persuade the council staff, and the portal system effectively allowed the application to reach 114 days without being flagged for urgent attention.

Ultimately the council's objections were not based on defensible grounds, and the application was granted more than 200 days after the operator applied for the permit.³⁷

³⁶ 2011 advice by Special Counsel, Tony Hulett, of Lord Commercial Lawyers, as included in the ATA 2011 submission on the draft HVNL and RIS.

³⁷ South Australian case study, NTC, June 2019, HVNL review issues paper: Easy access to suitable routes, 50.

Question 6: Have we covered the issues with access under the current HVNL accurately and comprehensively? If not, what else should we consider?

Technical inconsistencies of vehicle standard and access requirements

Operators report that the application of technical and dimension requirements around heavy vehicle access are inconsistent. Some heavy vehicles are effectively being denied access, or potentially receiving infringements, for having the same technical and dimensional requirements as other vehicles which are given access.

Some examples provided by operators include:

- Being over width by less than 100mm for tautliner curtains/poles, when vehicles have a greater width allowance for mirrors.
- Providing a higher height to some operators (such as livestock) and not general freight operators.
- The application of one tonne mass transfer allowances to GML but not CML or HML.

These issues impact the ability to access the road network.

Heavy Vehicle Road Reform

As raised by ATA members at the Brisbane workshop on the access issues paper, future reform of heavy vehicle charges and how roads are funded are critical, linked issues to providing better access. These issues are further considered in section 4 of this submission.

Understanding what isn't working (NSW)

Whilst the issues paper focuses on a number of issues that are not working in the access system, it does not provide a specific focus on jurisdictions and road managers where there is a problem.

For example, the road manager performance statistics indicate that NSW has a large number of road managers that are not meeting the NTC's analysis of consistently good performance for road manager processing timeframes³⁸. As a critical jurisdiction for transport operations, a better and more specific understanding of what is not working in NSW would provide a better basis from which to make decisions to fix these issues.

Loss of state jurisdiction permit teams

The issues paper has not effectively discussed the implementation of the HVNL, the replacement of what existed prior to these reforms and this implementation could have been improved. In particular, a number of jurisdictions (such as VicRoads) previously operated state-based permit approval teams within agencies, which were closed on the introduction of the HVNL.

³⁸ NTC, June 2019, HVNL review issues paper: Easy access to suitable routes, 40, 42.

Operators report that the loss of these teams was significant in terms of loss of knowledge and accessibility of decision-makers. The ATA is not proposing that these teams should be reinstated, but that understanding the impact on operators from this process is important to understanding what needs to be considered for the future access system.

Question 7: How can the new HVNL work, most likely with other reforms, to best support optimised use of our transport assets and vehicles?

The ATA response to this question is section 4 of this submission, on the need for a national reform program to deliver a modern, more productive and better-connected road freight network.

Question 8: How can the new HVNL expand as-of-right access and generalise access authorisations? Can we remove time limits for notices, for example?

Question 9: Do we have the right tools to implement access decisions? How can we modernise the tools for access authorisations?

Question 10: How can the new HVNL accelerate access decisions? Is a proactive approach possible?

Expanding as-of-right access

The issues paper states that the new HVNL should expand general access of the road network as far as reasonable.³⁹ Reducing the number of access decisions will lower the costs of delay and processing.

Acknowledging precedents in access decisions

The issues paper also proposes that the new HVNL should seek to maximise the applicability and scope of all access decisions and acknowledge precedents.⁴⁰

The ATA supports this intent, acknowledging that implementation would need to guard against access being refused in order to prevent the setting of a precedent.

Local government would maintain the ability to manage road assets when conditions change. The NTC points out that permits can be cancelled.⁴¹

³⁹ Ibid, 60.

⁴⁰ Ibid, 60.

⁴¹ Ibid, 42.

Extending the period and applicability of authorisation

The issues paper also proposes that authorisations should apply for longer periods, if not ongoing, and that they should apply to equivalent vehicle combinations (and not be limited to specific combinations).

The ATA agrees with this approach. Permit approvals should be granted for longer periods of authorisation.

Work by the Queensland Trucking Association with the Queensland Government illustrates the potential gains from such an approach. On 27 June 2019, it was announced that the Queensland Government would extend permit durations for Class 1 Oversize Overmass vehicles to 12 months, reducing the frequency for which operators need to apply for permits. This is estimated to save industry more than \$1 million in fees and 3,300 hours in paperwork on an annual basis.⁴²

In addition to the period of authorisations, their applicability needs to be extended. Permits should not be specific to an individual vehicle registration. Instead, any vehicle that meets the vehicle specification of the permit should be able to be used. This would reduce red tape and allow better flexibility for operators.

Transition of routes from permit approvals to as-of-right access

Acknowledging precedents and extending the period of permit authorisation could, in effect, deliver a quasi-as-of-right network. It is important the new HVNL does not introduce unnecessary complexity.

The new HVNL should include a mechanism, potentially to be held by the NHVR, where routes can be proposed for inclusion in as-of-right networks based on the history of permit approvals. This should trigger a formal consultation process involving both local road managers and operators. Whilst there would need to be grounds for rejecting such a proposal on the advice of a road manager, these should be under specific reasons.

Where a road meets the infrastructure requirements to grant as-of-right access, and in order to deliver draft regulatory principle 1 for the new HVNL, then the NHVR should have an available mechanism to initiate that process. This mechanism would not be dependent on local road manager approval to move a road to as-of-right access, but instead be dependent on if the road meets a particular set of criteria.

⁴² The Hon Mark Bailey, Minister for Transport and Main Roads, Queensland Government, 27 June 2019, [Media Release: Permit reform to boost heavy vehicle industry](#).

Replacing pre-approvals with a notification network

The NHVR has worked with road managers to develop pre-approvals for agreed routes, which reduces the administrative burden for the NHVR and relevant road managers. However, whilst this process reduces delays it still places an administrative and regulatory burden on trucking operators, requiring a permit application to authorise road access.⁴³ In these cases, road managers already know that the route is suitable but still require a permit application.

The issues paper states that notices present road managers with challenges, as there are few options to monitor road use. Permits are seen as giving greater control over access⁴⁴ and helping road managers understand what heavy vehicle movements are occurring. Access decisions are also linked to protecting public amenity, including issues of noise and congestion.⁴⁵

Pre-approved routes should be transitioned to a new notification network. Ultimately using permit approvals to understand what is moving on the road network is the wrong mechanism for the intended policy outcome.

For permit applications on the notification network, when the application is for an approved heavy vehicle combination the approval should be granted instantly through the online application system.

The issues paper also identifies an option of providing road managers with greater assurance of asset management through telematics to reduce the reliance on individual permit authorisations as a mechanism for understanding what is being moved on the local road network.

The new notification network should include a voluntary telematics option, where operators who are providing road use information through the telematics framework do not need to apply for approval to use the notification network.

This voluntary telematics framework would see operator telematics data voluntarily reported to road managers in a de-identified form. This data would then be available to road managers to inform asset management (including infrastructure and maintenance planning) and achieve instant compliance for operators with the notification network. This telematics framework should be designed to encourage integration from existing telematics solutions already in use by operators. The framework would not be used for compliance functions.

⁴³ NTC, June 2019, HVNL review issues paper: Easy access to suitable routes, 43.

⁴⁴ Ibid, 39.

⁴⁵ Ibid, 17.

Intelligence Access Program (IAP) and not mandating technology to improve access

The telematics framework to enable the notification network should not repeat the mistakes of IAP. Access should not be dependent on telematics, but telematics should instead be a tool for automating and speeding up the approval process.

Deloitte Access Economics report a number of challenges with the existing approach to IAP, including:

- Industry experience that IAP is too precise and stringent for its intended purpose
- Ongoing scope creep in the application of IAP by some road managers, contributing to significant distortions in the operation of IAP, increases in the number of non-compliance reports and additional data processing costs
- High costs of IAP for operators, reducing the incentive to use more productive vehicles
- Inconsistency in the application of IAP, leading to a highest common denominator compliance cost for operators.⁴⁶

Ultimately IAP has failed – and it has illustrated that governments should not mandate a specific technological solution. The experience with IAP also illustrates that relying on telematics to enable better access will not, on its own, achieve the gains that are sometimes attached to it.

In contrast to IAP, previous work by the Bureau of Infrastructure, Transport and Regional Economics (BITRE) on telematics data from trucking operators operated on the following core principles:

- Data provision by industry is to be voluntary
- Data is not to be used for regulatory or enforcement purposes
- Confidentiality of firm and individual data protected
- Data is only available in a de-identified, aggregate form.⁴⁷

Bridge assessments

Operators should not have to pay to have bridges assessed where there is an existing, applicable assessment.

Requiring new assessments where there is an existing, current assessment in place is an unnecessary and unreasonable cost and regulatory burden on industry.

The new HVNL should include a mechanism for providing bridge assessments to the NHVR, who would then have the responsibility for processing approvals that fit within that assessment, including, the instant-approval network.

⁴⁶ Deloitte Access Economics, March 2019, [Economic benefits of improved regulation in the Australian trucking industry](#), 29, 30.

⁴⁷ For more information, see case study 3.3 and enduring questions 5.2a and 5.3a in Department of Infrastructure and Regional Development, September 2017, [National Infrastructure Data Collection and Dissemination Plan](#)

OSOM access

After strong advocacy by industry, the ATA and its members, WSP conducted a review of oversized overmass access arrangements which reported in September 2018. The report provides a strong assessment of the problems with OSOM access and potential measures to improve access.

The report made 38 detailed recommendations, of which 13 are presently being progressed by governments (either in whole or in part).

Of the recommendations which have not yet been accepted, the ATA recommends that governments should commence work to:

- Agree to reduce permit volumes by 30% by 2020, through pre-approvals, notices or gazettal.
- Introduce a project specific permit, which allows multiple movements and configurations for the same application.
- Implement an industry-centric triaging system for bridge assessments.
- Harmonise national standards for pilot and escort vehicle arrangements.
- Harmonise inconsistencies around accreditation for pilot drivers.
- Simplify pilot and escort process to remove layers to the consent process.
- Work with Austroads to refine the proposed OSOM envelopes to establish infrastructure bridge loading limits in the standards.
- Implement an envelope approach for low-risk OSOM vehicles.
- Low risk OSOM vehicles to be provided a 48-hour turnaround time on average following the envelope approach.
- Implement flexibility to make minor changes to the application without having to resubmit.
- List multiple prime movers or trailers on permits to allow flexibility.⁴⁸

PBS access and providing access within an envelope

The productivity benefits of performance-based standards vehicles have significant potential but are often restricted by limited and highly regulated road access.

Reform needs to:

- Resolve and end situations where operators can go through the lengthy, expensive, PBS approval process for a new vehicle but then be denied road access.
- Provide PBS road access to routes where access is already granted for equivalent combinations.
- Recognise the productivity, safety and environmental benefits from PBS vehicles.
- Better enable trucking operators to access and utilise PBS vehicles where freight tasks are not predictable or have sufficient lead times for current PBS approvals (such as by providing improved as-of-right PBS access).

⁴⁸ WSP, September 2018, [Review of Oversize Overmass \(OSOM\) Access Arrangements](#), vii – xiii.

Farm gate / low volume access

Last mile access, in particular on rural and regional roads, needs a new regulatory approach. This is critical to providing better access between established freight routes and local farms and businesses.

As an example, the NSW Government is trialling the Farm Gate Access Project, developed in conjunction with the Livestock, Bulk and Rural Carriers Association. LBRCA is a member of the Australian Livestock and Rural Transporters Association (ALRTA), who are a member of the ATA.

The project introduces a road access assessment framework, including a third-party risk assessment tool. It aims to provide greater information on the road and roadside as part of the access application to assist local councils in their responsibility as road manager when considering access requests on low volume roads to farms that operate small-scale primary production activities.

The model aims to benefit local farmers, businesses, participating councils and the broader community by fostering safe and legal access for heavy vehicles.⁴⁹

Amenity

In simple terms, amenity can be described as the value of the desirability or attractiveness of a place. In terms of the interaction of amenity with transport systems, amenity can be impacted by congestion, noise, emissions and the quality and useability of urban design (such as the walkability of neighbourhoods).

The issues paper lists impacts on public amenity as one of the effects of heavy vehicles on public infrastructure that needs to be managed.

Simplistically speaking, a road manager may wish to deny access for a more productive heavy vehicle as the amenity impact may be seen as worse due to having larger vehicle dimensions. However, high productivity freight vehicles reduce the number of truck movements to move a particular freight task, and reduce impacts on emissions, noise, safety and congestion.

If amenity is to be considered in heavy vehicle access decisions, it should be with a presumption to granting access to more productive vehicle combinations.

Amenity would be better managed through local governments producing heavy vehicle access strategies that seek more productive delivery of the freight task, and not individual access decisions.

⁴⁹ NSW Government, [Farm Gate Access Project](#), accessed 13 August 2019.



EFFECTIVE FATIGUE MANAGEMENT HVNL REVIEW ISSUES PAPER 2

AUSTRALIAN TRUCKING ASSOCIATION SUBMISSION 16 AUGUST 2019

1. About the Australian Trucking Association

The Australian Trucking Association and its member associations collectively represent 50,000 businesses and 200,000 people in the Australian trucking industry. Together we are committed to safety, professionalism and viability.

2. Introduction

In May 2019, the National Transport Commission released its second issues paper for the Heavy Vehicle National Law review, *Effective fatigue management*.¹

This submission provides detailed responses to a number of the questions in the paper, with our response to question 1 setting out an overview of our vision for fatigue management.

The submission includes the necessary legislative drafting to give effect to our proposals (attachment A) and an engineering analysis validating the feasibility of providing a length incentive for the use of wider sleeper cabs (attachment B).

The **Queensland Trucking Association** and the **Tasmanian Transport Association** have asked that this submission be taken as their own.

3. Responses to issues paper questions

Question 1: How can we change our approach to fatigue management so we reduce fatigue-related incidents and deliver Australia's road transport task efficiently and safely?

Consistent with the ATA's vision for the HVNL,² this submission argues that the Law should provide regulated businesses with two fatigue management options:

- a new, performance-based framework that would enable operators to **manage fatigue as a risk rather than counting time**, including by adopting new technology and proven fatigue management systems.

This framework would be backed by accreditation and auditing, which would be delivered by accreditation schemes regulated, but not run by, the NHVR. (question 9, page 12)

¹ NTC, [Effective fatigue management](#). May 2019.

² ATA, [A risk-based approach to regulating heavy vehicles](#). May 2019. 1-3.

Businesses and drivers working under this framework would not be subject to the prescriptive fatigue rules, including the requirement for drivers to maintain work diaries – a massive reduction in unnecessary regulatory paperwork.

- a **simplified system of prescriptive fatigue rules**, to support businesses whose size or risk profile did not warrant a more complex approach.

The new system would include simpler but more flexible time counting rules and a much simpler work diary. A 'substantial compliance' provision would ensure that drivers could not be charged for mistakes that had no fatigue implications (question 8, page 8).

The new system would bring **4.5-12 tonne trucks into the scope of these requirements**, but specific record-keeping rules for local work would remain (question 2, page 3).

The ATA has long been concerned about fitness for duty and driver health. This submission proposes that **all commercial heavy vehicle drivers should have regular medicals against upgraded fitness for duty standards** (question 4, page 4).

The ATA's recommended approach would involve fundamental changes to enforcement, including a **dramatic reduction in penalties for prescriptive work and rest hour and record-keeping offences**. These penalties were set before the primary safety duty and offences in Chapter 1A of the Law were developed. Today, systemic fatigue management issues should be prosecuted as primary duty offences instead (question 11, page 13).

To implement these changes to the law and accommodate fatigue management technologies, the ATA recommends that the **structure of the law should be changed to adopt the three-tier legislative structure set out in our risk-based regulation submission**.³ Table 2 on page 7 summarises where the fatigue risk controls would be located in the new structure of the law.

The submission recommends that **all commercial heavy vehicle drivers should have fatigue training**, and closes with recommendations about **electronic work diaries** and a length incentive to provide drivers with **more comfortable sleeper cabs** (question 12, page 14).

Overall, the ATA's approach to fatigue management would:

- increase safety and improve driver health
- reduce the compliance burden for both performance and prescriptively regulated businesses
- enable businesses in the performance-based system to adopt new fatigue management technologies
- deliver more flexibility for drivers who just want to get home or to a suitable rest area
- ensure drivers are no longer fined for trivial paperwork errors.

³ ATA, May 2019, 10-11.

Question 2: What fatigue risks that are currently out of scope for the HVNL should be brought into scope? What is in scope that shouldn't be?

Although the primary duties in chapter 1A of the HVNL apply to all heavy vehicles, the issues paper points out that the full controls in chapter 6 only apply to 22 per cent of heavy vehicles.

The remainder are heavy vehicles that mass between 4.5 and 12 tonnes (31 per cent), or fatigue regulated heavy vehicles that undertake local work (47 per cent).⁴

4.5-12 tonne trucks

When the current fatigue laws were developed, it was decided to exclude the drivers of trucks massing between 4.5 and 12 tonnes because there was, at the time, little data on the incidence of fatigue for drivers of these vehicles. It was assumed that long working hours were less of a problem for these drivers.⁵

The gaps in the data have now been filled.

- In 2013, Friswell and Williamson found that at least as many light drivers as heavy drivers experienced fatigue frequently and as a problem. More than half the drivers in both groups reported that they had gone to sleep at the wheel.⁶
- Internal Toll Group statistics, cited in its submission to this review, show that motor vehicle incidents are far more likely for pick up and delivery than linehaul tasks. PUD tasks are typically carried out in smaller vehicles and over shorter distances.⁷

Given these clear fatigue issues, **ATA members consider that the scope of the fatigue provisions in the new HVNL should include all trucks weighing more than 4.5 tonnes.**

The drivers of these vehicles should be subject to the same fatigue management requirements, including record keeping obligations, as the drivers of vehicles weighing 12 tonnes or more. These obligations, however, should continue to be modified by specific local work record-keeping rules, discussed below.

Local work

Sections 318-319A of the HVNL provide that drivers of fatigue regulated heavy vehicles do not need to maintain work diaries for work within a 100 kilometre radius of their home base. The drivers and their record keepers are instead obliged to keep an extensive range of trip records.

⁴ NTC, May 2019, 31.

⁵ NTC, [Heavy vehicle driver fatigue – final regulatory impact statement](#). December 2006. 72.

⁶ Friswell, R and A Williamson. "Comparison of the fatigue experiences of short haul light and long distance heavy vehicle drivers." *Safety Science* 57 (2013), 203-213.

⁷ Jones, S. *Toll Group submission on effective fatigue management*. July 2019. 7.

The NHVR has issued exemption notices:

- extending the 100 kilometre radius to 160 kilometres for the transportation of primary products between a primary production facility and another facility or a point of sale, processing or distribution⁸
- clarifying that the 100 kilometre radius applies, in NSW, to heavy vehicle sales and repair, manufacturing, and hire and rental.⁹

The local work record keeping rules were originally introduced to reduce the compliance burden on local drivers who travel short distances with frequent breaks during which they load or unload.

In the ATA's view, the local work record-keeping rules should be retained, with the detailed rules subject to further discussion as the review continues.

The ATA's proposal to require all commercial heavy vehicle drivers to have fatigue training (page 14) would help address the compliance issues raised in the NTC paper,¹⁰ as would restructuring the NHVR's guidance material to make the local work rules more prominent.

Question 4: How should a new HVNL address driver health and lifestyle factors? What kinds of controls could be effective?

The issues paper identifies licensing medicals under *Assessing Fitness to Drive* (AFTD) and accreditation as two of the three risk controls that reduce the likelihood of driving while fatigued.¹¹

Neither risk control is effective.

As table 1 shows, most heavy vehicle licensing categories in Australia do not require medical assessments under AFTD. The notable exception is Western Australia, where all commercial vehicle drivers are required to have medicals at regular intervals.¹²

⁸ [National Primary Production Work Diary Exemption Notice 2018 \(No 1\)](#).

⁹ [New South Wales Fatigue Record-Keeping Exemption Notice 2019 \(No 1\)](#).

¹⁰ NTC, May 2019, 30.

¹¹ NTC, May 2019, 20.

¹² *Occupational Safety and Health Regulations 1996* [WA], s 3.131.

Table 1: Medical assessment requirements by state and territory

	Driver licence category ¹					
	LR	MR	HR	HC	MC	AC
NSW	x	x	x	x	✓	✓
Victoria	x	x	x	x	x	✓
Queensland	x	x	x	x	x	✓
South Australia	x	x	x	x	x	✓
Western Australia ²	✓	✓	✓	✓	✓	✓
Tasmania	x	x	x	x	✓	✓
Northern Territory	x	x	x	x	x	x
ACT	x	x	x	x	x	✓

Note 1: LR=light rigid; MR=medium rigid; HR=heavy rigid; HC=heavy combination; MC=multi-combination; AC=accreditation.

Note 2: All commercial drivers in WA are required to have medicals.

Source: State driver licensing websites.

In addition, and as the ATA has previously argued,¹³ AFTD is not a fitness for duty medical standard and has significant deficiencies:

- AFTD does not deal adequately with sleep apnoea, because it relies on the Epworth Sleepiness Scale (ESS): a subjective index of sleepiness. Peer reviewed research conducted from 2008 to 2011 found that **41 per cent** of Australian long-distance commercial drivers had obstructive sleep apnoea, but only **12.2 per cent** recorded a positive (>10) score when they filled in the ESS.¹⁴
- In 2008, the Queensland Centre for Medical Health Research found that some **6.3 per cent** of truck drivers had type 2 diabetes, compared to the Australian norm of **3.1 per cent**.¹⁵ Despite this finding, the urine glucose test for diabetes was removed in the 2012 edition of AFTD – it was medically deprecated – but not replaced with an updated test.
- Cardiovascular disease is a most significant issue for the trucking industry. In 2013, Elkington and Stevenson concluded that **37.3 per cent** of the drivers who participated in their major study of long-distance commercial drivers were overweight; a further **47.2 per cent** were obese.¹⁶ Despite this, the AFTD medical exam does not include routine screening for cardiac risk factors.

¹³ ATA, [Assessing Fitness to Drive: 2014 Review](#). 5 December 2014.

¹⁴ Sharwood, L et al (2012) "Assessing sleepiness and sleep disorders in Australian long-distance commercial vehicle drivers: self-report versus an 'at home' measuring device" in *Sleep* 35:4, 472.

¹⁵ Queensland Centre for Medical Health Research (2008) *Health Survey of the NSW Trucking Industry*. Work Outcome Research Cost-Benefit (WORC) Project. 63.

¹⁶ Elkington, J and M Stevenson, *The heavy vehicle study—final report*. 2013, 26. These percentages are across both the case and control groups.

In our submission to the 2014 review of *Assessing Fitness to Drive*, we recommended that the NTC should develop a new category 1 commercial medical standard, which would apply to drivers working under accreditation and DG licensing.¹⁷

Given the administrative difficulties involved in having two medical standards for truck drivers, the ATA has reconsidered this approach and now recommends that:

- all commercial heavy vehicle drivers be required to have medicals at regular intervals
- those medicals be carried out against an upgraded fitness for duty standard that includes enhanced screening for sleep apnoea, type 2 diabetes and cardiovascular risk factors.

Question 5: How do we ensure the HVNL is agile enough to adopt best practice fatigue management as it emerges? How do we encourage continuous improvement? Can training help?

Question 6: How can we better accommodate emerging technologies? How can the new HVNL get the best value from technology and data? Do you think fatigue monitoring technology can supersede work and rest hour requirements?

In the ATA's view, the best way to make the HVNL agile and to ensure it can accommodate emerging technologies is to adopt the three-tier legislative structure set out in our risk-based regulation submission.¹⁸

Under this regulatory model:

- the **primary legislation** would comprise an amended version of Chapter 1A; other key offences; overarching principles about enforcement, sanctions, reviews and appeals; corporate governance; and regulation and order/rule making powers.
- the **regulations** would provide more detail, including the penalty provisions for work and rest hour and record keeping offences.
- There would be a new tier of **orders and standards** made by the NHVR. These standards would include rules for accreditation schemes and technology providers, the details of the prescriptive work and rest hours and the prescriptive record keeping requirements.

Table 2 summarises how the fatigue risk controls in the HVNL could be remade to fit into this model.

¹⁷ ATA, December 2014, 3.

¹⁸ ATA, May 2019, 10-11.

Table 2: Location of fatigue risk controls under the existing HVNL and the ATA model

Control	Existing location	ATA model
Safety duties relating to fatigue	HVNL Chapter 1A (CoR parties and executive officers)	Retain but remove prescriptive list of chain parties
	HVNL Part 6.2 (duty of driver to avoid driving while fatigued)	Retain within a general safety duty for workers and consolidate in Chapter 1A. The maximum penalty should not be increased
Performance-based accreditation stream		
Standards for accreditation schemes	N/A	New heavy vehicle accreditation scheme standards
Accredited operator fatigue standards	BFM/AFM standards and businesses rules as approved by ministers	Set by approved schemes in line with accreditation scheme standards
Prescriptive stream		
Prescriptive work and rest hours	Heavy Vehicle (Fatigue Management) National Regulation	New heavy vehicle fatigue standards
Offence provisions for prescriptive work and rest hours	HVNL Part 6.3	Heavy Vehicle (Fatigue Management) National Regulation
Prescriptive record keeping requirements	HVNL Part 6.4	New heavy vehicle fatigue standards
	Heavy Vehicle (Fatigue Management) National Regulation	New heavy vehicle fatigue standards
Offence provisions for prescriptive record keeping requirements	HVNL Part 6.4	Heavy Vehicle (Fatigue Management) National Regulation

The ATA's recommended approach would mean the NHVR could consider and approve best-practice approaches to fatigue management as new technologies evolve and are shown to work as regulatory tools.

Question 5 separately asks if training could be used to encourage continuous improvement. The ATA's response to this question is on page 14.

Question 7: How can the new HVNL meet the needs of all Australian states and territories? What should the new HVNL adopt from Western Australia and the Northern Territory, other transport modes and other industries' fatigue management approaches?

The ATA's risk-based regulation submission points out that only **4.1 per cent** of Australia's total road freight task in tonne-kilometre terms occurs between WA/NT and the HVNL jurisdictions.¹⁹

The gains from trying to draft a new HVNL that meets the needs of all states and territories would be small or negative, if it proved achievable at all.

There are cross-border fatigue issues between WA and the HVNL area that need to be addressed. These are:

- The need for operators to hold more than one accreditation and go through multiple overlapping audits
- Section 245 of the HVNL, which means that drivers travelling into Western Australia for seven days or fewer must comply with the HVNL work and rest hours and not the Western Australian rules.²⁰

The need to rationalise the number of audits is best dealt with through mutual recognition arrangements between the accreditation schemes rather than legislation. These mutual recognition arrangements must not provide operators in one state with an unfair advantage over operators in other.

The best way to deal with section 245 is to repeal it.

Question 8: Are prescriptive rules desirable in a new HVNL? If so, how can we simplify rules in the HVNL to make them easier to understand so that they're easier to comply with?

There are 46,000 road freight businesses in the HVNL states. 24,000 are non-employing businesses such as owner drivers or small companies where only the directors work in the business.²¹ In addition, the NHVR regulates many more non-transport businesses that operate trucks for their own internal purposes, such as operating farms, mines, or distributing their own products in urban areas.

Although some very small road transport businesses have mature safety practices, it would be unreasonable to expect the bulk of these businesses and the tens of thousands of non-transport businesses that operate trucks to adopt complex safety management systems.

Accordingly, the ATA considers that the new HVNL should include a **simplified system of prescriptive fatigue rules**, to support these businesses.

It should be emphasised that **businesses in the performance-based framework (question 9, page 12) would manage fatigue as a risk** and would not be subject to these prescriptive rules.

¹⁹ ATA, May 2019, 9.

²⁰ NTC, [HVNL fatigue issues consultation report](#), July 2018, 9.

²¹ ABS cat 8165.0, June 2018.

Simplifying the prescriptive fatigue rules

As the issues paper points out, the HVNL time counting rules are difficult to understand. They force drivers to work by the book rather than take sensible steps to manage their fatigue. It not uncommon for the current rules to:

- discourage drivers from taking a break early in a shift when they feel tired because of productivity consequences that may apply later
- prevent drivers from working when they are not fatigued, such as immediately after a seven hour continuous break when an overlapping 24 hour counting period still applies and
- disrupt normal start times for the remainder of a 14 day work cycle if an unforeseen delay occurs to one start time, such as a two hour loading delay.

The complexity of the time counting rules has also been criticised by the courts. In *Ballantyne v National Heavy Vehicle Regulator*, Peek J commented that:

As to the examples in the log books issued to truck drivers I do consider that they could be more 'user friendly', particularly having regard to the audience to which they are addressed. It seems to me that, without in any way trying to be comprehensive, the single most obvious improvement might be to expressly state, loudly and clearly, that following the end of a major rest break there can be two overlapping 24 hour periods running at the same time.²²

The ATA proposes that the prescriptive fatigue rules – effectively an updated, simpler and more effective version of standard hours – should be developed by the NHVR in consultation with industry and made as an order by the regulator (table 2, page 7). This would ensure that the rules could be changed as problems emerged, instead of forcing the regulator to look for administrative workarounds.

The new standard hours rules should draw on fatigue science and the findings of the heavy vehicle driver fatigue project to:

- better balance the short break requirements to address the known issues with drivers settling into their shift patterns.²³
- remove the requirement that each short break must be at least 15 minutes. This requirement is not supported by the science, which shows that what is important is the break and respite from the driving task, not minutes ticking by on a clock.²⁴ The new rules should, however, require a minimum amount of total short rest during a shift.
- simplify the overlapping 24 hour periods in the time counting system, to enable a driver to recommence work after a compliant continuous sleep break.
- provide drivers with an extra one hour of flexibility at the end of a shift to help maintain regular shift patterns, maintain normal mealtimes, deal with unforeseen

²² *Ballantyne v National Heavy Vehicle Regulator*, [2019] SASC 135.

²³ National Truck Accident Research Centre, [2019 Major accident investigation report](#). 28.

²⁴ Fatigue Expert Group, [Options for regulatory approach to fatigue in drivers of heavy vehicles in Australia and New Zealand](#), February 2001. 38.

circumstances, reach a suitable rest area or get to their destination rather than be forced to take a seven hour rest break and then drive home at night.

The heavy vehicle driver fatigue project found that shifts longer than 12 hours were associated with an increase in drowsiness events.²⁵ In the ATA's view, the risks associated with this increase would be controlled by:

- restricting the total driving time allowed under these new prescriptive rules to 24 hours in a 48 hour period, so a driver working a 13 hour shift one day would be restricted to an 11 hour shift on the next day. Drivers operating under these rules would not be able to transfer more than one hour from one day to another
- the commercial heavy vehicle driver medical and fatigue training requirements in this submission.

In any case, it must be recognised that fatigue risks are multi-faceted and a level of flexibility in managing total work hours on any particular day would be beneficial for promoting consistent work patterns and better quality rest. The 2001 Fatigue Expert Group report identified the need for this flexibility,²⁶ but it was not implemented in the current version of standard hours.

Drivers and businesses wanting more flexibility to manage fatigue as a risk would be accommodated through the performance-based framework (question 9, page 12). They would not be subject to these prescriptive rules or the record keeping requirements below.

Simplifying fatigue record-keeping

In addition to simplifying the work and rest hours, there is an **urgent need to simplify the existing national heavy vehicle work diary** for drivers operating under the prescriptive system.

Drivers and businesses operating under the alternative, performance-based framework would manage fatigue as a risk and would not be subject to the work diary requirements.

The existing national heavy vehicle driver work diary is complex and full of traps for drivers. Its 27 pages of instructions are policed with zero tolerance for trivial paperwork errors, such as failing to draw vertical lines between work and rest periods.²⁷

The ATA considers that the national driver work diary could be made more driver-friendly by:

- **Removing the licence number field.** All work diaries are numbered and linked to individual drivers. There is no legitimate compliance reason to require the owner to fill in their licence number on every page
- The **work and rest hour option boxes should be removed**, given that this work diary would only be used by drivers in the prescriptive stream of regulation

²⁵ Alertness CRC, 2019. 14.

²⁶ Fatigue Expert Group, 2001, 43.

²⁷ NTC, May 2019, 43. The vertical lines rule is so ridiculous and easy for drivers to forget that a large trucking business recently asked the ATA for a consignment of 15cm promotional rulers. The business plans to issue each of its drivers with a ruler for the sole purpose of drawing the vertical lines.

- The **total work and total rest boxes should be replaced**, given that they ask for meaningless information. For 24 hour periods, time is counted forward from the relevant major rest break, not from midnight, except in the rare occasions when a legal sleep rest ends at midnight. The boxes cause a great deal of confusion, including amongst general duty police officers.
- The **requirement for drivers to sign work diary pages should be removed**. Because work diaries are linked to individual drivers, signature evidence that a driver has filled out a page is not legally needed. It is, however, legally necessary for drivers to date work diary pages.
- The 'do not drive if you are impaired by fatigue' watermark should be removed – it could only have been written by a committee – and replaced with **useful guidance throughout the diary** that respects the expertise of Australia's professional truck drivers. The NHVR requires the inclusion of this guidance in new AFM programs now, including – for example – a warning that drivers with fewer than five hours of sleep will be impaired by fatigue.

In addition, the ATA proposes that the work diary requirements should be amended so that drivers would only need to **substantially comply** with the requirements. The example below sets out what this would mean in practice.

Attachment A sets out legislative drafting that would give effect to these recommendations.

The replacement work diary design should be tested through a case-control trial before it is finalised.

Example: substantial compliance with work diary requirements

Alice is a truck driver who works under the new version of standard hours.

She drives a semitrailer from Hume, in Canberra, to Sydney and stops at the BP Marulan service centre for coffee.

Alice records that she stopped at Marulan but does not write down the truck's odometer reading as required.

Although Alice has not strictly complied with the work diary rules, she has **substantially complied**, for there is no reasonable doubt about where she has stopped.

Alice has not breached the work diary rules.

Question 9: Would the compliance options described in section 4.5 be a more effective approach to regulating fatigue management? If so, what should be included in the new HVNL, its subordinate documents, or elsewhere, such as in work health and safety laws? How would the appropriate fatigue management option be allocated to an operator – by self-selection or other means?

Draft principle 5 in section 4.5 of the issues paper suggests there should be flexible compliance options that enable operators to comply in a way that best meets their needs.²⁸

The ATA and its members agree.

In our view, the new HVNL must include a new, performance-based framework that enables operators to manage fatigue as a risk, including by adopting new technology and proven fatigue management systems. This view is consistent with the consensus statement from the NHVR's initial fatigue safety forum.²⁹

The best way to implement this framework would be through a new accreditation system that would replace Chapter 8 of the Law.

Businesses and drivers operating under this framework would not be subject to the prescriptive fatigue requirements in the HVNL, including the requirement for drivers to maintain work diaries.

Role of the NHVR under a new accreditation system

The NHVR would regulate **accreditation scheme providers** (including industry providers like TruckSafe) and **auditors**. Scheme providers would be required to meet a **National Accreditation Standard**, which would set out broad requirements for the schemes' business rules and standards (including for fatigue risk management).

A legitimate concern with this approach is that it could result in the establishment of very small accreditation schemes that could suddenly close. Alternatively, it could result in the establishment of in-house, corporate schemes where accreditation became a condition of doing business with that company.

The ATA considers that these concerns can be addressed through the creation of strong entry conditions for accreditation schemes, in the same way that the NHVR's guidelines for industry codes of practice are helping deliver strong, well-written industry codes.³⁰

Role of approved accreditation scheme providers

Approved accreditation schemes would be responsible for maintaining their own certification standards and business rules, as well as certifying operators against their standards.

The prescriptive fatigue requirements in the HVNL would not apply to any business regulated under this framework that met the NHVR's compliance requirements, regardless of the approved scheme they were in.

²⁸ NTC, May 2019, 47.

²⁹ NHVR, [Fatigue safety forum – summary of outcomes](#). 15 March 2019. The forum was held in October 2018.

³⁰ NHVR, [Guidelines for preparing and registering industry codes of practice](#). 2017.

Common standards for medicals and training

Because of the complexity involved, and to make sure that employees could easily transition from one certified operator to another, there would be common standards for:

- truck driver medicals, although the schemes would be responsible for auditing operators to ensure their medicals were up to date (page 4)
- the necessary fatigue training units (page 14).

Question 11: How can we get the best overall value from a compliance and enforcement strategy for fatigue management? How are scarce resources best allocated, and what tools do regulators need? What provisions in the law do operators need?

Duties of persons exercising powers under the HVNL

In some states, the police have an important role in enforcing the HVNL. The police are not, however, required to comply with the NHVR's enforcement policies, guidelines and manuals. They have their own approach to enforcement.

This divergence in approach is unjustified now and would become even more problematic under the ATA's model for the law, where more businesses would operate under flexible fatigue arrangements than prescriptive work and rest hours.

Accordingly, the ATA considers that the police must be required to exercise their powers under the HVNL in accordance with NHVR policies and directions in notices. This could be implemented by amending s 697 of the Law.

Prescriptive work and rest hour and record-keeping penalties

The current HVNL imposes very high maximum penalties for minor work and rest hour and record-keeping offences. For example:

- the maximum penalty for minor risk breach is \$4,470 or \$447 if the offence is handled by an infringement notice
- the maximum penalty for failing to record information in a written work diary is \$1,680, or \$168 if handled as an infringement.³¹

These penalties for minor breaches of the fatigue rules do not make the roads safer. They act, instead, as a frustrating maze of random hazards for drivers. The result is that good, safe drivers are leaving the industry.

³¹ NHVR, [Schedule of infringement penalties and demerit points 2019-20](#).

As Chris, a driver who took a seven year break from driving trucks, said:

I stopped driving trucks seven years ago following two fines I received for 15 minute errors in my old log book that I carried in my truck for 28 days – as per law. On my way from Queensland on a Friday, I got stopped at Goondiwindi and Dubbo by RMS both in one day and fined for separate offences both over one month old. Simple mistakes, well in the past, that cost me a week's wage.³²

The existing maximum penalties were set before the general safety duty offences in Chapter 1A were introduced. Serious, systemic fatigue breaches can now be prosecuted as general duty offences rather than as multiple individual offences.

As a result, the maximum penalties for prescriptive fatigue offences – including the record keeping offences – should be reduced to more appropriate levels.

In addition, the ATA considers that historic work diary breaches -- prior to a driver's current counting period – should be considered expired. There is no safety benefit in pursuing a driver for old breaches, although a pattern of work diary issues should be usable as evidence in prosecuting an offence under Chapter 1A.

A better internal review process for work diary offences

Under the current HVNL, it is difficult for a driver issued with an infringement notice for a work diary offence to exercise their right to have the matter heard in court.

The driver would, in due course, be issued with a court attendance notice to appear at a court near where the notice was issued. The driver could well be working on that date on the other side of Australia.

As a result, few drivers choose to exercise their right to a court hearing.

The new HVNL should include a better internal review process for work diary offences, so that drivers who wish to appeal an infringement notice can do so without the need to attend a court hearing.

Question 12: What else would you like to tell us about effective fatigue management?

Fatigue training

The 2018 review of the national heavy vehicle driver competency framework concluded that the existing licensing units for heavy vehicle drivers were inadequate.

As an example, the review compared the existing HR licensing unit (TLILIC2016 Licence to drive a heavy rigid vehicle) with ten known safety risk areas. The review concluded that the current unit completely failed to address six of those risks – including fatigue – and did not properly address the other four.³³

³² Cited in B Magill, *The driver shortage approach – reformed*. Daimler Truck and Bus Future Leaders' Program report, 2019.

³³ Austroads, [Review of the national heavy vehicle driver competency framework](#). Report AP-R564-18, May 2018. 38.

Further, the existing fatigue risk management units of competency, TLIF0005 (for drivers) and TLIF006 (for schedulers and their supervisors) are not fit for purpose.

In December 2016, when the units were being developed, the ATA argued that:

- the units needed to increase the participants' understanding of what caused fatigue and what would make drivers safe, not just provide information on how to comply with the law
- there needed to be a greater appreciation of the limits of what could be learned within a single unit and the limited timeframes involved.
- strong consideration should be given to requiring participants to demonstrate the practical application of their new knowledge within the workplace as part of the assessment process.³⁴

None of these concerns were adequately addressed in the development of the units. The development process was characterised by a lack of effective consultation, poor quality assurance and an indifference to the actual requirements of the law and the NHVAS BFM/AFM standards.

At present, government training support is only available for traineeships, apprenticeships or full vocational certificates. There is a strong argument that support should also be available to industry participants who wish to undertake single units of competency or skill sets.

Accordingly, the ATA considers that:

- all commercial heavy vehicle drivers should receive fatigue training as part of the driver licensing process, possibly through an e-learning module as is the case in Western Australia
- the NHVR mandated fatigue units should be revised to focus on what causes fatigue and fatigue prevention
- government training funding should be available to industry participants who need to undertake these units, given the importance of improving fatigue management and safety in the industry.

Electronic work diaries

Under the current HVNL, drivers using written work diaries count time in blocks of 15 minutes, with rest time rounded down.³⁵ In contrast, electronic work diaries count time at one minute intervals.³⁶

In an attempt to deliver equitable treatment between drivers using written and drivers using electronic work diaries, EWD drivers operating under standard hours or BFM can exceed a work period by up to and including eight minutes in 24 hours.³⁷

In the ATA's view, the eight minute tolerance does not deliver equity between users. Accordingly, the ATA considers that **both written and electronic work diaries should count time in 15 minute intervals.**

³⁴ ATA, "Fatigue management accreditation units." Email submission to Australian Industry Standards, 5 December 2016.

³⁵ HVNL, s 246

³⁶ HVNL, s 246A(2)

³⁷ *Heavy Vehicle (Fatigue Management) National Regulation*, ss 5(4), 8(4), 9(4), 10(4).

In addition, the ATA considers that the **technological assumptions in the law about EWDs should be reviewed**.

Section 326, for example, makes it an offence for a driver to have more than one electronic work diary. This section would make it unlawful for a driver to download an app onto multiple devices and use them, as convenient, to access a common database of work and rest hours.

The ATA further considers that:

- there should be incentives for uptake to ensure the adoption of EWDs is low cost or cost neutral, particularly for small operators
- the EWD standards should continue to ensure that devices offered by different vendors are compatible and that data can be transferred without vendor lock in.

Sleeper cab dimensions

Truck drivers and, in particular, long distance truck drivers know that the size of their truck's sleeper cab has a critical effect on their comfort and sleep quality.

ADR 42 sets out the minimum legal requirements for sleeper berths, which include the following bunk dimensions:

- 1,900 mm of bunk length
- 530 mm of bunk width at the shoulders, reducing to 440 mm after 1,200 mm
- 630 mm of headroom, noting that the horizontal and roof corners of the berth can be rounded to radii not exceeding 270 mm.³⁸

These dimensions are not large enough for comfort when drivers can be living away from home for a week or more.

The CEO of the Queensland Trucking Association, Gary Mahon, received overwhelming support when he argued at the 2019 NatRoad conference that **combinations with large sleeper cabs should be able to access a length increase**, which would need to be implemented through both ADR 43 (for single vehicles) and the *Heavy Vehicle (Mass, Dimension and Loading) National Regulation* (for combinations).

After considering a number of options, the ATA considers that **the best way to give effect to the incentive would be to allow bonneted prime movers with sleeper cabs of more than 1,220 mm nominal width to be coupled to 13.2 metre reference dimension trailers throughout the network** as well as 12.3 metre reference dimension trailers.³⁹

The incentive would be available for sleeper cabs up to 1,320 mm wide.

At present, a 13.2 metre trailer can only be used if the total length of the combination falls within the dimensional limits prescribed in the national regulation. For example, the dimensional limit for a semitrailer is 19 metres.⁴⁰ The incentive would relax this strict requirement.

³⁸ ADR 42, par 16.3.

³⁹ Reference dimensions are taken from the kingpin to the rear of the trailer. A 12.3 metre reference dimension trailer is a 45 foot trailer; a 13.2 metre reference dimension trailer is a 48 foot trailer.

⁴⁰ *Heavy Vehicle (Mass, Dimension and Loading) National Regulation*, sch 6 s 3(1)(a).

The primary technical issues that need to be considered in examining any length increase are overall length and low speed off-tracking (LSOT) performance.

Given the small size of the dimensional increase, overall length is not considered to be a major hurdle.

LSOT performance needs to be considered more closely, however. To validate the concept, the ATA modelled the LSOT performance of five combinations using the Queensland DTMR's VPath package.⁴¹

Table 3 (page 17) summarises the results and shows that all the combinations modelled achieve an LSOT performance that is better than the Austroads reference vehicle (7.5 metres) and in line with the PBS level 1 performance standard (7.4 metres).⁴²

The detailed modelling results are in attachment B.

Table 3: VPath analysis of bonneted prime movers with wide sleeper cabs

Prime mover	Sleeper (mm)	Trailer (m)	Overall length (m)	Swept path (m)
Austroads reference	N/A	12.30	19.00	7.5
Mack Superliner	1,320	13.20	19.80	7.4
Kenworth T909	1,270	13.20	19.75	7.3
Kenworth T659	1,270	13.20	19.95	7.4
Freightliner Coronado 122	1,320	13.20	19.82	7.4

Source: ATA engineering analysis using DTMR VPath model

⁴¹ Department of Transport and Main Roads [Qld]. [Vehicle path](#).

⁴² NHVR, [Performance-based standards scheme – the standards and vehicle assessment rules](#). 10 November 2008. 37.

Legislative drafting for key ATA proposals

Amendment to existing section 295 of the HVNL

295 National regulations for information to be included in work diary

- (1) The national regulations may provide for—
 - (a) work diary requirements for the driver of a fatigue-regulated heavy vehicle; and
 - (b) the manner in which information is to be recorded in the driver's work diary; and
 - (c) any other matter relating to information that is to be recorded in the driver's work diary.
- (2) Without limiting subsection (1), the national regulations may provide—
 - (a) for information to be recorded on a daily basis (including each period of work time and rest time the driver has on a day) or on some other stated basis; and
 - (b) for information to be recorded immediately before or after a period of work time or rest time; and
 - (c) for information to be recorded when finishing work for a day; and
 - (d) for information to be recorded when there is a change of the driver's base; and
 - (e) for information to be recorded when there is a change of the driver's record location; and
 - (f) for information to be recorded regarding the parties to a two-up driving arrangement.
- (3) Without limiting subsections (1) and (2), the national regulations may provide that, if the driver stops working on a day and starts a major rest break that will continue until the end of the day, the driver may stop recording information for the day when the driver stops working and starts the major rest break.

Amendment to existing section 291 of the HVNL [*provision to be transferred to Part 3 of the Fatigue Regulation as an introductory provision to Part 3]

Application of this Part

- (1) This Part applies if the driver of a fatigue-regulated heavy vehicle—
 - (a) is undertaking non-local work under standard hours; or
 - (b) was undertaking non-local work under standard hours in the last 14 days.
- (2) However, this Part does not apply to the driver of a fatigue-regulated heavy vehicle who is working under an approved fatigue management accreditation scheme.
- (3) For the purposes of this section, ***approved fatigue management accreditation scheme*** means an accreditation scheme that deals with fatigue management and that is approved by the Regulator as an approved accreditation scheme in accordance with section 458.

Amendment to existing regulation 15 of the Fatigue Regulation

15 Information to be recorded immediately after starting work

- (1) Immediately after starting work on a day, the driver must record—
 - (a) the day of the week and date; and
 - (b) the registration number of the fatigue-regulated heavy vehicle; and
 - (c) the driver's name; and
 - (d) whether the driver is a solo driver or operating under a two-up driving arrangement; and
 - (e) the address of the driver's base, unless the driver has previously recorded the address in relation to the work and it is still current; and
 - (f) the address of the driver's record location, unless the driver has previously recorded the address and it is still current; and
 - (g) the time zone of the driver's base.

Amendment to existing section 293(1) of the HVNL (plus additional sub-sections (3) and (4)) [*provision to be transferred from HVNL to Part 3 of the Fatigue Regulation]

Driver of fatigue-regulated vehicle must carry work diary

- (1) The driver of a fatigue-regulated heavy vehicle must—
 - (a) keep a work diary; and
 - (b) ensure:
 - (i) the driver's work diary records adequate information to determine whether the driver has complied with the driver's work and rest hours option;
 - (ii) the driver's work diary records the information required to be recorded under Subdivision [x] for each day in the previous 14 days; and
 - (iii) the driver's work diary is in the driver's possession while the driver is driving the vehicle.

Maximum penalty—

- (2) Substantial compliance with Subdivision [x] is adequate for compliance with section 293(1)(b)(ii).
- (3) There is taken to be **substantial compliance** with the requirements of Subdivision [x] if there is no reasonable doubt as to whether the driver has complied with the driver's work and rest hours option or the driver's duty to avoid driving while fatigued even though one or more of the requirements of Subdivision [x] may not have been strictly complied with.

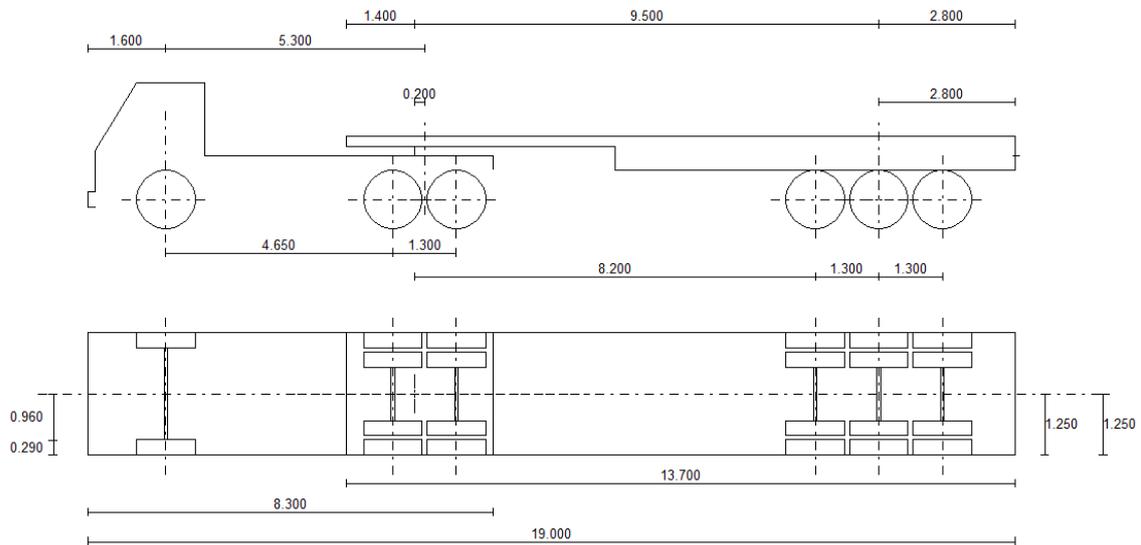
Amendment to existing section 300 of the HVNL [*provision to be transferred from HVNL to Fatigue Regulation]

Application of Div [x]

- (1) This Subdivision states how the driver of a fatigue-regulated heavy vehicle who is required to record information in the driver's work diary under Subdivision [x] must record the information.
- (2) Substantial compliance with this Subdivision is adequate for compliance with this Subdivision.
- (3) There is taken to be **substantial compliance** with the requirements of this Subdivision if there is no reasonable doubt as to whether the driver has complied with the driver's work and rest hours option or the driver's duty to avoid driving while fatigued even though one or more of the requirements of this Subdivision may not have been strictly complied with.

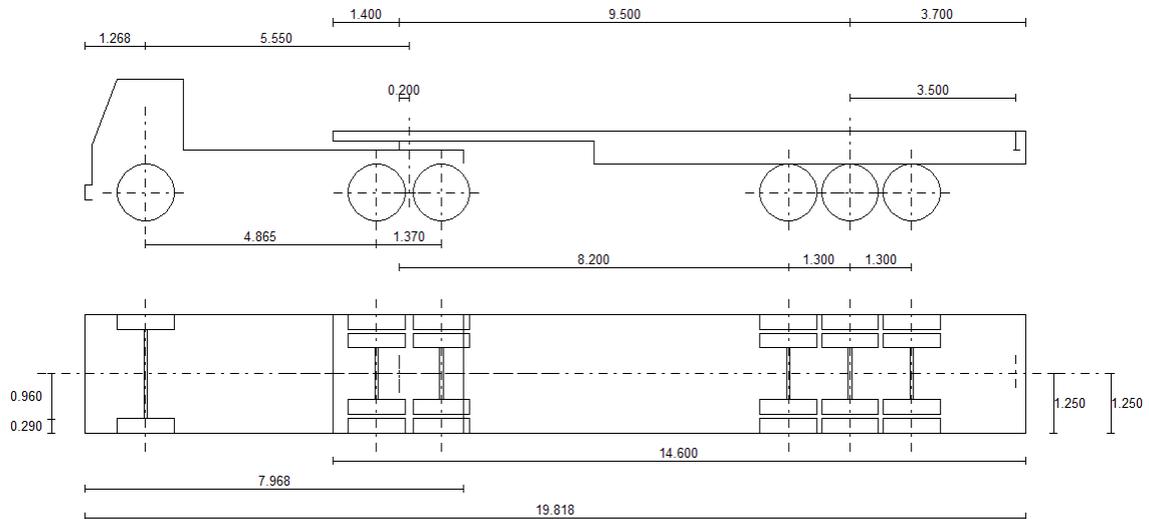
Combinations modelled and results

Austrroads 19 metre semitrailer based on an ADR 43 semitrailer, maximum dimension kingpin to rear of 12.3 metres and maximum "S" dimension 9.5 metres; reference benchmark vehicle.



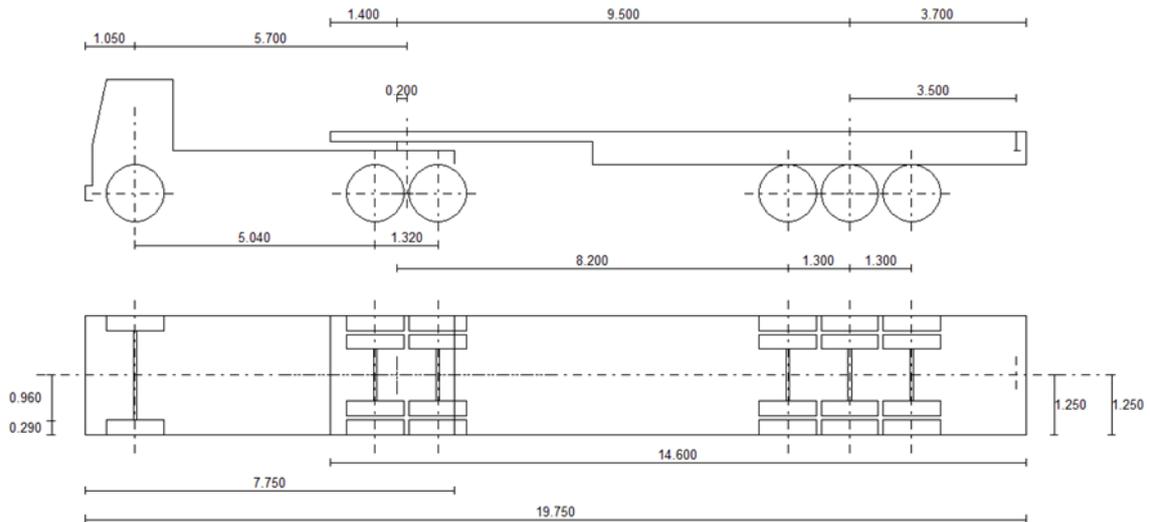
Prime mover	Dimensions (m)	Semitrailer (12.3 m)	Dimensions (m)
Front overhang	1.6	Rear overhang	2.8
Wheelbase	5.3	Wheelbase	9.5
Fifth wheel	+0.2	Axle group spread	2.6
Swept path		7.5 metres	

Nominal 20 metre semitrailer combination based on a Mack Superliner with a 5.55 metre wheelbase, 1,300 mm sleeper and bull bar) and a 13.2 metre trailer under the proposed incentive.



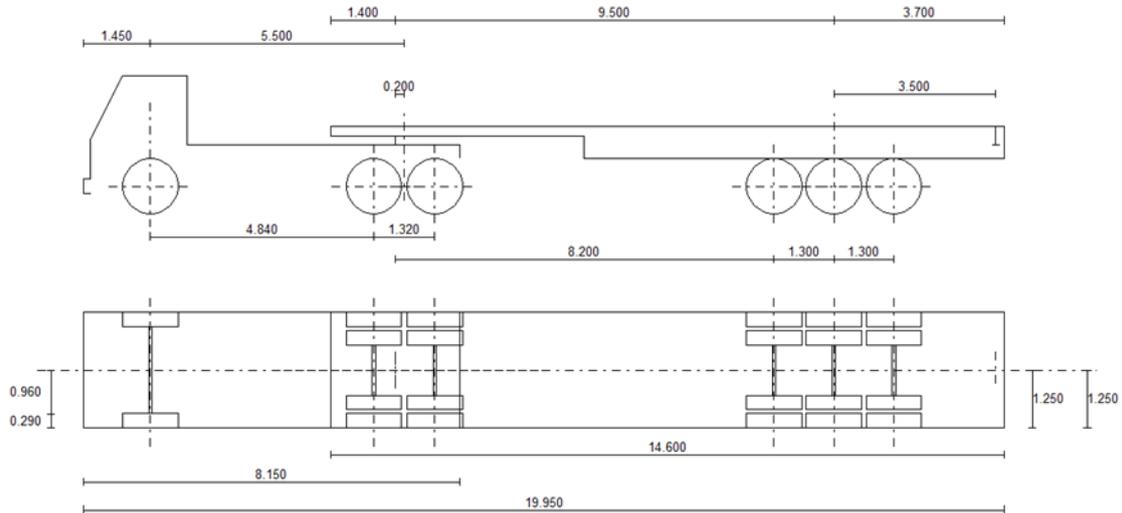
Prime mover	Dimensions (m)	Semitrailer (13.2 m)	Dimensions (m)
Front overhang	1.27	Rear overhang	3.7
Wheelbase	5.55	Wheelbase	9.5
Fifth wheel	+0.2	Axle group spread	2.6
Swept path		7.4 metres	✓

Nominal 20 metre semitrailer combination based on a Kenworth T909 with a 5.7 metre wheelbase, 1,250 mm sleeper and bull bar) and a 13.2 metre trailer under the proposed incentive.



Prime mover	Dimensions (m)	Semitrailer (13.2 m)	Dimensions (m)
Front overhang	1.05	Rear overhang	3.7
Wheelbase	5.7	Wheelbase	9.5
Fifth wheel	+0.2	Axle group spread	2.6
Swept path		7.3 metres	✓

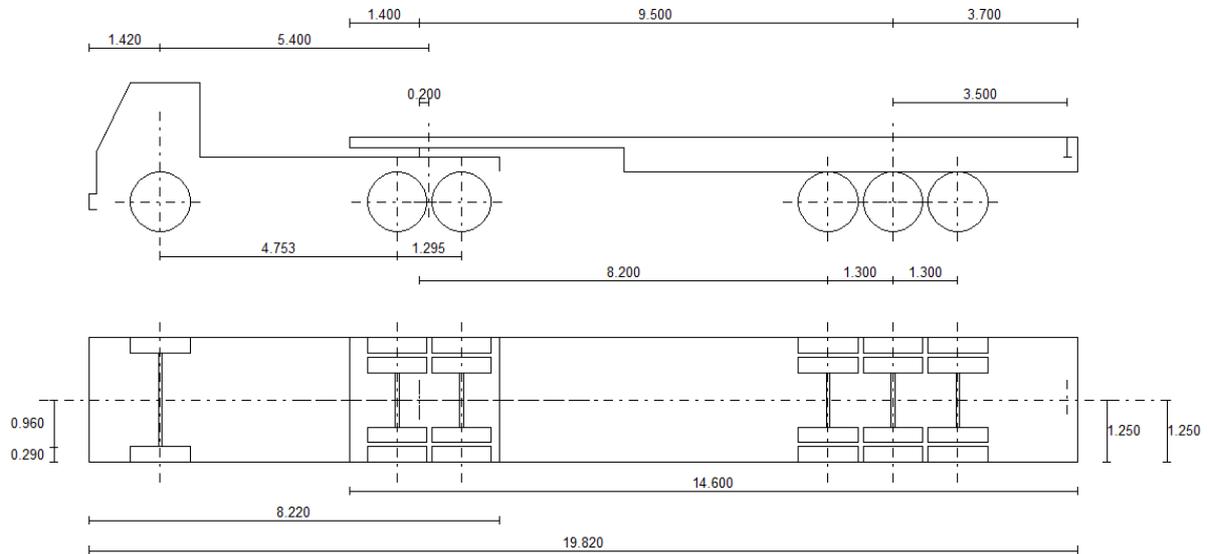
Nominal 20 metre semitrailer combination based on a Kenworth T659 with a 5.5 metre wheelbase, 1,250 mm sleeper and bull bar) and a 13.2 metre trailer under the proposed incentive.



Prime mover	Dimensions (m)	Semitrailer (13.2 m)	Dimensions (m)
Front overhang	1.45	Rear overhang	3.7
Wheelbase	5.5	Wheelbase	9.5
Fifth wheel	+0.2	Axle group spread	2.6
Swept path		7.4 metres	



Nominal 20 metre semitrailer combination based on a Freightliner Coronado 122 with a 5.4 metre wheelbase, 1,300 mm sleeper and bull bar) and a 13.2 metre trailer under the proposed incentive.



Prime mover	Dimensions (m)	Semitrailer (13.2 m)	Dimensions (m)
Front overhang	1.42	Rear overhang	3.7
Wheelbase	5.4	Wheelbase	9.5
Fifth wheel	+0.2	Axle group spread	2.6
Swept path		7.4 metres	





VEHICLE STANDARDS AND SAFETY HVNL REVIEW ISSUES PAPER 5

AUSTRALIAN TRUCKING ASSOCIATION SUBMISSION 18 SEPTEMBER 2019

1. About the Australian Trucking Association

The Australian Trucking Association and its member associations collectively represent 50,000 businesses and 200,000 people in the Australian trucking industry. Together we are committed to safety, professionalism and viability.

2. Introduction

In July 2019 the National Transport Commission (NTC) released the vehicle standards issues paper for the Heavy Vehicle National Law (HVNL) review.¹

In the paper, the NTC has proposed four draft regulatory principles as aspirations for the new HVNL. After detailed consultation with our members, including through our unique Industry Technical Council, the ATA supports these broad aspirations with amendments and additions (ATA amendments are highlighted):

Draft regulatory principle 1: The future HVNL should promote greater use of vehicles that perform to higher safety standards and deliver productivity benefits. It should support international harmonisation of vehicle standards and recognise and encourage the use of safer vehicle technology.

In supporting an amended draft regulatory principle 1, the ATA notes that this is dependent on reforms to improve heavy vehicle access approvals.

New draft regulatory principle 1B: The governance of vehicle standards by the future HVNL and RVSA (*Road Vehicle Standards Act 2018*) should be integrated, seamless for operators and provide proactive and timely adoption of international standards and safety technologies.

Draft regulatory principle 2: The future HVNL should support effective, flexible, risk-based maintenance regimes to improve safety outcomes. ~~It should support efforts to bring consistency to inspections.~~-(see new draft regulatory principle 5)

Draft regulatory principle 3: The future HVNL should support proactive, efficient identification, repair and clearance of defects. It should support getting vehicles back to service quickly, enable in-situ repairs and self-clearing defects.

Draft regulatory principle 4: Technical breaches that do not pose an imminent safety risk to operators, drivers or other people should be managed proportionally.² Roadworthy inspections should be nationally consistent and proportionate to the reason for the inspection and condition of the vehicle.

¹ NTC, July 2019, [HVNL review issues paper: Vehicle standards and safety](#).

² NTC, July 2019, [HVNL review issues paper: Vehicle standards and safety](#), 31-33.

New draft regulatory principle 5: The future HVNL should establish enforceable standards for defect notices and vehicle inspections, delivering consistency and a review mechanism.

New draft regulatory principle 6: The future HVNL should not duplicate existing legislation and government responsibilities, including *the Australian Consumer Law* and Australian Government responsibility for fuel quality standards.

New draft regulatory principle 7: The future HVNL should recognise the NHVR's role in setting national vehicle standards and implement COAG's best practice regulation requirements, including the application of new standards and policies to a consultation regulation impact statement.

The new HVNL should make significant reforms to defect notices and national inspection policies, which are detailed in section three of this submission. This section supports the ATA's recommendations for amending draft regulatory principles three and four, and the addition of new draft regulatory principle five.

Our responses to the specific questions set out in the issues paper are in section four of this submission. This section supports the ATA's recommendation for new draft regulatory principles 1B, six and seven and amendments to principle one.

3. Reforming defect notices and national inspection policies

The reform of defect notices and inspection approaches is necessary, even though the NTC issues paper finds that in general, the regulation of vehicle safety is working well.³

The ATA raised in 2014 the need for an agreed, stable national approach to the assessment of heavy vehicle roadworthiness, including accreditation, inspection, interception and defect processes.⁴

This included the need for clear, nationally accepted criteria to be established for the purposes of declaring a vehicle roadworthy or not, and for issuing and clearing defect notices.

The ATA also called for consistent interpretation of the National Heavy Vehicle Inspection Manual by inspectors and authorised officers and for the role of accreditation through schemes such as TruckSafe to receive more support from governments.⁵

Unfortunately, the lived experience of the HVNL since the ATA's 2014 recommendations only reinforces the need for reform in this area. Concerns raised by our members include that defect notices are inconsistent, poorly structured and do not always have an identified link to a significant safety issue.

As a central reform principle, the ATA's 2014 recommendations cited international best practice and the need for the focus on improving heavy vehicle safety to recognise that some elements of roadworthiness have a greater impact on road safety than others. The

³ Ibid, 8.

⁴ ATA, September 2014, [Submission on the Heavy Vehicle Roadworthiness Review – Phase 2 integrity review](#), 4.

⁵ Ibid, 4.

ATA supported the identification of eight safety critical or primary elements requiring high priority attention during inspections:

- Axle/wheel-ends
- Brakes
- Couplings
- Frame/chassis
- Load restraint
- Steering
- Suspension
- Tyres.⁶

Other vehicle components do require assessment, but the focus should be on the safety of the vehicle on the road for the driver and other road users, without defects being used as an inconsistent and extra-judicial form of punishment.

It also needs to be recognised that heavy vehicles do not sit in a depot or a showroom – they operate on the road, in Australian conditions and often on roads where the quality of the infrastructure contributes abnormally to the wear and tear on vehicles.

The nature of the task and operating environment of a heavy vehicles will inevitably contribute to the likelihood of defects developing whilst the vehicle is on the road.

Purpose of a defect notice

The Heavy Vehicle National Law sets out a clear intent of vehicle defect notices is to apply if the vehicle on the road poses a safety risk.⁷

However, the lived experience of trucking operators is that enforcement agencies seek to use defect notices as a punishment. At the ATA's 2018 Technology and Maintenance Conference, VicRoads outlined a clear intent to use every opportunity, including defect notices, to affect the direct income of some trucking companies in terms of both the direct cost and the loss of time and potential failure to meet delivery contract timelines.

Ultimately, the purpose of a defect notice should be focused on safety and the risk posed by the vehicle on the road.

Defect notices should not be used as a form of extra-judicial punishment. The NHVR and road agencies have ample powers, backed by substantial penalties, to prosecute operators through the court system if they consider it necessary.

⁶ Ibid, 5.

⁷ HVNL, s526 (1) (b)

Reforming defect notices under the HVNL

The new HVNL should:

- Deliver enforceable defect standards by incorporating the National Heavy Vehicle Inspection Manual and the NHVR's national risk-based inspection criteria and framework as legislative instruments under the three-tiered structure of the new HVNL. These manuals would need to be revised, with a formal consultation process, prior to being incorporated as enforceable standards.
 - This should include establishing consistency on the clearance requirements for defects.
- Establish a risk-based approach to managing defects and identify that the purpose of defect notices is to ensure the conditions of use of a heavy vehicle reflect the elevated risk the vehicle poses to its driver and other road users, as a result of a defect.
- Enable and set out enforcement standards for minor defects which can be addressed by formal warnings, on the spot (in-situ) repairs (when safe, appropriate and timely) and self-clearing processes.
 - For example, a cracked windscreen should be self-clearing with an appropriate repair invoice. This should not require a follow-up vehicle inspection.
- Provide a review mechanism for defect notices, enabling the NHVR to review and overturn defects that may have been issued in error or are inconsistent with inspection and roadworthiness manuals.
- Deliver nationally consistent and proportionate roadworthiness inspections.

Ultimately, the NHVR's inspection manual and risk-based approach need a stronger legislative basis to establish consistency in their application by requiring all inspectors and authorised officers to comply with it. This should extend to better enabling the NHVR to review defects that may have been issued in error or in conflict with the NHVR's manual.

Roadworthiness inspections provide an important safety role. Inspection requirements, including frequency and scheduling, methods and practices vary by jurisdiction.⁸ They also represent a significant cost to business, including the costs of the inspection and the opportunity cost of the vehicle not operating a transport service.

Additionally, some operators report routinely replacing partially worn components that are still within their serviceable tolerances simply to ensure the vehicle passes an inspection and avoids further costs of being out of service.

Additional cost and unnecessary waste also result when a defect relating to an ADR requirement then requires a vehicle to undergo a full inspection. Only the component at fault should require inspection, unless there are grounds for a wider inspection.

⁸ NTC, July 2019, [HVNL review issues paper: Vehicle standards and safety](#), 21.

Case study 1: Retracting seat belt defect

In this example, a trucking operator had one of their trucks receive a defect in South Australia for the seat belt on the vehicle not retracting quickly enough. The truck was less than three years old and the driver reported that it was operating in very good condition.

Following replacement of the seat belt, the trucking operator had the truck taken to VicRoads to have it inspected and were informed the vehicle would require a roadworthy certificate, requiring a full inspection on the whole truck.

The roadworthy will cost the business around \$2,000 and result in them missing a customer's load. The full cost to the business is between \$8,000 to \$10,000, which is a substantial cost for a small business and a crippling cost for the business in question.⁹

The financial impact of this particular defect notice is in the magnitude of \$10,000. Over 14 per cent of Australia's trucking operators have a turnover of less than \$50,000.¹⁰ The bottom quarter of trucking operators have either a negative or non-existent profit margin.¹¹

Defects, clearances and the use of roadworthy inspections must be proportionate to the safety risk or they will drive small and family businesses out of business.

Case Study 2: Inconsistent number plate positioning rules

A Queensland truck driver was fined \$673 and three demerit points for not having the vehicle number plate correctly fixed whilst driving in New South Wales. The relevant NSW law specifies that number plates need to be no more than 1.3m above ground level. Whilst the same law applies in Queensland, it does not apply to vehicles with a national heavy vehicle plate (so the vehicle was legal in Queensland but not in NSW).

The truck driver eventually had the matter dismissed through the courts, although had to plead guilty to enable that outcome. The driver was out of pocket \$10,000 for taking time off work to travel to NSW for the court appearance. The magistrate is reported to have stated the matter was "trivial rubbish."¹²

⁹ Example as provided to the ATA, September 2019.

¹⁰ Australian Bureau of Statistics, [June 2018, 8165.0 – Counts of Australian businesses, including entries and exits, June 2014 to June 2018: Businesses by main state by industry class by turnover size ranges](#).

¹¹ ATA analysis of ANZ industry research.

¹² Big Rigs News, 6 September 2019, Truckie fights 'trivial' penalty, 12.

4. Response to issue paper questions

Question 1: What risks to safe vehicles that are currently out of scope for the HVNL should be brought into scope? What is in scope that shouldn't be?

Question 2: Have we covered the issues relating to safe vehicles accurately and comprehensively? If not, what do we need to know?

Question 3: How can the future HVNL most effectively deliver safer vehicles to the road? Which aspects of the PBS scheme are working well, and which aren't? What barriers to the broad uptake of safer vehicles exist?

Harmonisation with international standards / MVSA / RVSA

The issues paper identifies that the *Motor Vehicle Standards Act 1989*, to be replaced by the *Road Vehicle Standards Act 2018*, sets the national standards for new or used imported vehicles for initial supply to the Australian market.¹³ This legislation and framework is administered by the Australian Government and is not within the scope of the HVNL.

However, the regulatory oversight of vehicle standards for the initial supply of heavy vehicles to market and the oversight of in-service standards by the HVNL are linked and need to be integrated in their objectives.

The NTC reports that mass and dimension limits can present an unintended barrier to the supply of safe vehicles to the Australian market.¹⁴ Ultimately Australia is part of a global marketplace and harmonisation with international vehicle standards would increase the accessibility of heavy vehicles to the Australian market.

The ATA also notes that the issues paper references the Austroads width research project exploring the possibility of moving to a permissible vehicle width of 2.55 metres from the current 2.50 metre width.¹⁵

This process, the Austroads project scope and the timetable all illustrate the limited priority that governments place on delivering harmonisation with international standards.

The ATA supports the Austroads project's stated commitment to international harmonisation and exploring greater width. However, productivity benefits and supply chain integration do not happen because it is written in a project brief.

The scope of the project rules 2.60 metres width out of scope, despite acknowledging the need for international harmonisation on the width of refrigerated truck trailers. The clear international benchmark for refrigerated vehicles is a width of 2.60 metres.

It should be recognised that this is not a new issue, so the failure to actively consider the issues involved for a permissible width of 2.60 metres continues a long trend of governments committing to international harmonisation as an intent, but not as a policy to actually be delivered. The process of international harmonisation has been slow and reactive.

¹³ NTC, July 2019, [HVNL review issues paper: Vehicle standards and safety](#), 16.

¹⁴ Ibid, 26.

¹⁵ Ibid, 26.

Mandating new safety technologies

The regulatory process for mandating new safety technologies does not maximise safety outcomes.

The ATA welcomed the Australian Government decision to mandate stability control technology for all NC category prime movers; NC category rigid prime movers with short wheelbases and all TD category. This technology will save 126 lives and prevent 1,101 serious injuries in the coming years.¹⁶

However, the ATA recommended approach would be to extend this decision to include all rigid trucks. This is estimated to save an additional 22 lives and prevent an additional 395 serious injuries, compared to the current policy decision. The overall reform benefit-cost ratio would be at least 1.99.¹⁷

The Australian Government has now released a consultation regulation impact statement on autonomous emergency braking (AEB) for heavy vehicles. It recommends that AEB should be mandated for new heavy vehicles under a broad scope, which would save 78 lives and prevent 2,152 serious injuries in the coming years. Associated ESC requirements, consistent with the ATA recommendation to broaden the scope of the current ESC policy decision, would see 102 total lives saved and 2,564 serious injuries prevented in coming years.¹⁸

It is important that the decisions on mandating these new safety technologies prioritise road safety benefits.

Incentivising business investments in new heavy vehicles

The new HVNL, in combination with the MVSA/RVSA framework, in seeking to deliver a safer vehicle fleet needs to incorporate the understanding that new laws don't deliver safer vehicles if businesses are unable to invest in purchasing those vehicles.

Whilst a number of barriers to investment in new vehicles are outside of the HVNL (such as stamp duty), it is important that the new HVNL does not increase barriers to purchasing new vehicles and that governments proactively seek to reduce other barriers to purchasing new heavy vehicles.

The ATA has made several recommendations for incentivising business investment in a submission to the House of Representatives Standing Committee on Economics inquiry into the impediments to business investment.¹⁹

¹⁶ Department of Infrastructure, Regional Development and Cities, April 2018, [Regulation Impact Statement: Improving the Stability and Control of Heavy Vehicles](#), 57.

¹⁷ ATA, February 2018, [Submission on Improving the stability and control of heavy vehicles consultation Regulation Impact Statement](#), 8.

¹⁸ Department of Infrastructure, Transport, Cities and Regional Development, August 2019, [Regulation Impact Statement: Reducing Heavy Vehicle Rear Impact Crashes: Autonomous Emergency Braking](#), 41.

¹⁹ ATA, May 2018, [Submission on impediments to business investment](#).

PBS approvals, access and modular combinations

The NTC issues paper cites strong benefits with the use of PBS vehicles, but also lists barriers to their uptake.²⁰

Restrictions and regulatory burden on access to the road network is a critical concern, and the ATA recommended approach on access issues is contained within the ATA submission to the *Easy access to suitable routes* issues paper.

The NTC vehicle standards issues paper lists administrative hurdles in the approval process for PBS vehicles.²¹ This was also cited in the NTC review on the effectiveness of the PBS scheme in 2017.²²

Ultimately, PBS has failed to deliver industry-wide productivity improvements, despite benefits for individual vehicles. The ATA submission on access further details the comprehensive reforms needed to unlock the economic gains from delivering a more productive road network.

As noted in the ATA's 2017 submission, the restrictive nature of the PBS scheme, limited road access and long lead times, PBS is not suitable to the significant part of the road freight task that does not have predictable freight volumes and sufficient lead times suitable for PBS approval.²³

The practical experience of road freight operators is that while the PBS scheme works well in particular sectors (such as the intense and high volume gravel and cement markets, and for container haulage (excluding containers with unknown load heights)), it only has a limited at best application for the wider road freight sector.

Additionally, the NTC vehicle standards issues paper notes that the PBS scheme was intended to be a testing ground, where new vehicles and combinations would transition to the prescriptive heavy vehicle fleet. This has not been fulfilled, with no PBS vehicles having transitioned to the prescriptive fleet.²⁴ As the original intent of the scheme has not been realised, governments should not be surprised that the PBS scheme is failing to lift industry-wide productivity.

If governments continue to rely on PBS for productivity improvements, in its current form, the current decline in industry productivity will continue. Industry needs access to more productive combinations, with road access, which are modular combinations. Modular combinations provide higher flexibility as they can be reconfigured to smaller legal combinations when they need to reach parts of the road network with lower access approvals.

²⁰ NTC, July 2019, [HVNL review issues paper: Vehicle standards and safety](#), 24.

²¹ Ibid, 24.

²² NTC, August 2017, [Assessing the effectiveness of the PBS Scheme Discussion paper](#), 32.

²³ ATA, October 2017, [Submission on assessing the effectiveness of the PBS scheme](#), 5.

²⁴ NTC, July 2019, [HVNL review issues paper: Vehicle standards and safety](#), 25.

Fuel and Diesel Exhaust Fluid (also known as AdBlue) quality

The ATA notes that fuel and diesel exhaust fluid quality have been raised as issues that should be included in the HVNL.²⁵ The ATA does not support any recommendation to include fuel and diesel exhaust fluid quality in the HVNL.

Ultimately, fuel standards are within the legislative and administrative responsibility of the Australian Parliament and Government. It would not be appropriate to include these issues within the HVNL.

There is no evidence from operators that DEF quality is an actual issue in practice. Its sale is adequately regulated through Part 3-1 of the *Australian Consumer Law*.

VSB6 modification codes

The issues paper sets out the framework for the approval of modifications to heavy vehicles and the role of the Vehicle Standards Bulletin 6 (VSB6) in providing modification standards.²⁶ VSB6 is one in a series of bulletins providing information on the design, manufacture, sale, modification, maintenance, import and repair of road vehicles for industry and other clients. While most of this series are provided by the Australian Government, VSB6 is hosted by the NHVR.²⁷

VSB6 does not supersede (over-arch) a vehicle manufacturer's guide and in most cases a component manufacturer's modification guidelines. Where a modification covered by VSB6 is made it must be assessed by an accredited approved vehicle examiner (AVE).

ATA members have raised concerns around some of the G codes and the P2 code relating to vehicle modifications. **The future HVNL should adopt a risk-based approach to heavy vehicle modifications.**

The G Codes: these relate to brakes and ancillaries that may impact on braking systems. As an example, some transport clients require operators to fit a park brake interlock that won't allow the release of the trailer parking brakes whilst the rear door/s of a van/tautliner/reefer are open; or, the AIP (Australian Institute of Petroleum) Driveaway Protection System (Gate) is open on a fuel tanker (to prevent a drive off during loading/unloading or loading/delivery of fuel). This system is commonly referred to as NAIM (no air in motion).

These systems do not impact on the service brake nor parking brake performance but are a modification to the trailer parking brake circuit.

If this system is fitted by the OEM (truck manufacturer) before the Compliance Plate is fitted, even though the "certified braking system" has been modified it doesn't require a Modification Plate; but if the trailer is then registered and then taken back to the same OEM for this very same modification, then technically the vehicle requires a modification plated issued by an AVE, and the OEM is unlikely to be an AVE.

²⁵ Truck Industry Council, August 2019, [HVNL review submission on vehicle standards and safety](#), 2.

²⁶ NTC, July 2019, [HVNL review issues paper: Vehicle standards and safety](#), 19.

²⁷ Australian Government, [Vehicle Standards Bulletins](#), accessed 16 September 2019.

ATA recommendation: Systems such as Parking Brake Interlock (NAIM) should be “controlled” via a self-certification modification, which is available only to operators/workshops in an approved Accredited Maintenance Scheme along the process of:

- The initial modification (for a specific operator) be certified by the OEM or an AVE who provides a Report that includes a report number, diagrammatic drawings, parts listing, installation instructions and post-installation system validation instructions.
- The operator/workshop would complete modifications to subsequent trailers in accordance with these instructions as a “self-certified modification (SCM)”
- The proposal for “plating the modification” needs to be simple and auditable. For example: “Accredited Maintenance Scheme – SCM Report No:”) and that record be maintained as part of the Accreditation Scheme Record keeping.

The P2 code: (specifically, the fitting of fifth wheels to prime movers). This was not enforced in states other than Queensland until the 1st July 2015, even though it has been in VSB6 since 1993.

- Prime movers are supplied with fifth wheel mounting angles; and the fifth wheel assembly is certified via the CRN (component registration number) system; in raw basics the Signatory is really only certifying the bolting of the fifth wheel baseplate to the mounting angles;
- If the fifth wheel mounting angles are drilled for multiple mounting angles and this range is stated on the Modification Plate, then it is acceptable for workshop personnel to relocate the fifth wheel (which may or may not use the original bolts);
- When a workshop is performing detailed maintenance in the rear suspension area, frequently the fifth wheel is removed for access – the refitting is completed without re-certification;

Self-certification needs to be within the bounds of an approved accreditation system, the OEM could readily provide a guideline (ie: within the OEM body builders manual) stating the fifth wheel position range; or, it could be based on an AVE Report.

The issue here will be the accreditation, but again there is an opportunity within the scope of an Accredited Maintenance Scheme.

ATA recommendation: A “controlled” via self-certification modification, which is available only to operators/workshops in an approved Accredited Maintenance Scheme along the process of:

- The initial modification (for a specific operator) be certified by the OEM Body Builder Guidelines or an AVE who provides a Report that includes a report number, location drawings, installation instructions and post-installation system validation instructions.
- Then the operator/workshop would complete modifications to subsequent trailers in accordance with these instructions as a “self-certified modification (SCM)”

The proposal for “plating the modification” needs to be simple and auditable. Eg: “Accredited Maintenance Scheme – SCM Report No:”) and that record be maintained as part of the Accreditation Scheme Record keeping.

Steer axle mass limits

Governments are considering through the Strategic Vehicle Safety and Environment Group (SVSEG) a regulatory proposal to vehicle dimensional and mass limits.²⁸ As part of this proposal, the NHVR and/or states and territories would allow additional axle mass limit allowances for vehicles with Euro VI emission standards.

The SVSEG proposal recognises that legacy state and territory requirements for vehicle configuration are a barrier to international harmonisation and a disincentive to the take up of newer heavy vehicles with improved emissions standards. It is also effectively an acknowledgement that additional steer axle mass limits are compatible with Australian roads.

However, the ATA does not support the SVSEG proposal in its current form. Restricting additional steer axle mass limits to Euro VI vehicles would put Australian made Euro V heavy vehicles at a competitive disadvantage.

The priority for renewal of the heavy vehicle fleet should be in updating vehicles with much older emission standards (or none at all). Euro V heavy vehicles still have a significant role to play in renewal of the Australian truck fleet.

The ATA recommends that additional steer axle mass limits should be granted, and if these are to be based on emission standards they should include Euro V heavy vehicles.

The NHVR's role in setting national vehicle standards

In the ATA's submission to the HVNL review issues paper on risk-based regulation, the ATA recommended that the future HVNL should include a consultation obligation.

The NHVR is a national standard setting body, which is clearly illustrated in relation to vehicle standards and the NHVR's oversight of modifications and VSB6. It should be required to comply with Council of Australian Governments (COAG) best practice regulation requirements. This includes a requirement that regulators:

- establish a case for action before addressing a problem.
- consider a range of feasible policy options and assess their costs and benefits
- adopt the option that generates the greatest net benefit to the community, and
- consult effectively with affected key stakeholders at all stages of the regulatory cycle.²⁹

²⁸ Considered by SVSEG on 5 June 2019.

²⁹ COAG, October 2007, [Best practice regulation: a guide for ministerial councils and national standard setting bodies](#), 4.

Question 4: How can the future HVNL encourage suitable maintenance programs? How can it most effectively identify and remove dangerous vehicles from the road?

Question 5: How can the future HVNL meet the assurance needs of all Australian state and territory road transport authorities in a way that does not unreasonably impose on operators?

The new HVNL should encourage maintenance and provide assurance to road transport authorities by getting the accreditation framework right and incentivising its use.

This should include:

- Reduction in inspection requirements for accredited operators in an approved maintenance accreditation program.
- Applying competitive neutrality to heavy vehicle accreditation to encourage more businesses to become accredited.
- Enable the NHVR to focus its safety and regulatory role on oversight of a small number of accreditation schemes rather than running an accreditation scheme itself.
- Legal recognition of accreditation within the new HVNL.
- Operators in all authorised accreditation schemes would be eligible for regulatory benefits.

The ATA will further expand on these issues in response to the upcoming HVNL issues paper on accreditation.

Question 6: Do we need assurances regarding repairs and replacement parts? If so, could these be achieved using standards? Should third-party repairers be explicitly included in the Chain of Responsibility? How can defect clearance processes be reasonably expedited?

Question 7: Should the future HVNL apply a risk-to-safety threshold for vehicle standards and loading matters?

Defect clearance

Defect clearance is considered in section three of this submission.

Third-party repairs

According to the NTC³⁰, the development of Chain of Responsibility (CoR) provisions applying to vehicle standards was investigated in 2004 and 2005 but the NTC did not proceed for a number of reasons, including what was described as a lack of evidence of the link between breaches of the vehicle standards and on-road incidents.

Previous analysis by the ATA found that research showed vehicle defects account directly for less than five per cent of heavy vehicle accidents, but they can be a latent condition

³⁰ NTC stakeholder brief on chain of responsibility and vehicle standards. 2014

associated with a higher percentage of accidents. A safety related defect in a vehicle can mean the difference between a near miss and an accident.³¹

To deliver on the safety objectives of the HVNL, this risk should be addressed.

In the ATA's view, the TruckSafe maintenance module sets out a best practice maintenance system for trucking operators. This module requires:

- daily visual checks of vehicles
- a system for recording and reporting faults
- procedures for prioritising and repairing faults
- a system for conducting scheduled maintenance
- procedures for documenting and recording maintenance activity and decisions
- defined responsibilities for maintenance staff and a program to ensure they are trained in their responsibilities
- an internal review process to fix non-conformances and deliver continuous improvement and
- procedures to ensure that speed limiters are maintained and checked for tampering at regular intervals.

Coronial reports can also show what can happen when businesses do not follow these practices, or at least some of them. Previous ATA analysis of reports on maintenance-related truck crashes suggest extension of CoR to vehicle standards should target corporate behaviours such as:

- the lack of an effective system to manage maintenance, although the HVNL should not require every business to have a scheme as comprehensive as TruckSafe
- the lack of appropriate maintenance or fault repair
- unauthorised vehicle modifications and
- not allocating the necessary resources to carry out vehicle maintenance and quality assurance.

Previous advice from the NTC suggests there had been disagreement in 2004 and 2005 about targeting entities such as maintenance providers in chain of responsibility, because of the argument that they were potentially covered by other legislation and did not have a role in influencing on-road behaviour.

However, for some businesses there is a trend towards outsourcing of vehicle asset management and maintenance to third party providers. As a consequence of outsourcing this activity, operators lose control over workshop outcomes. **Third party providers play a critical role in managing the business's maintenance management systems and compliance obligations, and should, as a result, be included as chain parties.**

³¹ ATA, September 2014, [Submission on the Heavy Vehicle Roadworthiness Review – Phase 2 integrity review](#), 7.

Replacement parts

The NTC issues paper identifies concerns that replacement parts fitted to a vehicle in service may not be exactly the same as the original parts and as a result may exhibit different performance characteristics, raising safety concerns.³²

The ATA notes that recommendations have been made to the HVNL review to install a new layer of regulatory approval for replacement parts.³³ The ATA does not support these recommendations.

The Australian Competition and Consumer Commission provides clear guidance that businesses cannot mislead about their products or services, including about the quality or benefits of goods or services, or any associated guarantee or warranty.³⁴

Again, *the Australian Consumer Law*, s 18, establishes that a person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

The HVNL should not seek to duplicate other areas of legislation.

Additionally, knowingly using unsuitable parts, or not exercising due diligence to assure that parts are suitable, would be a general duties breach.

Rather than duplicating existing legislation, governments should focus on improving guidance material and education on the application of *the Australian Consumer Law* to the trucking industry.

³² NTC, July 2019, [HVNL review issues paper: Vehicle standards and safety](#), 29.

³³ Truck Industry Council, August 2019, [HVNL review submission on vehicle standards and safety](#), 5-6.

³⁴ ACCC, [False or misleading statements](#), accessed on 6 September 2019.



ASSURANCE MODELS HVNL REVIEW ISSUES PAPER 6

AUSTRALIAN TRUCKING ASSOCIATION SUBMISSION 23 OCTOBER 2019

1. About the Australian Trucking Association

The Australian Trucking Association and its member associations collectively represent 50,000 businesses and 200,000 people in the Australian trucking industry. Together we are committed to safety, professionalism and viability.

2. Introduction

In August 2019, the National Transport Commission (NTC) released its sixth issues paper for the Heavy Vehicle National Law review, *Assurance models*.¹

The ATA has 28 years of experience in running the industry's leading accreditation scheme, TruckSafe, and is a strong supporter of accreditation as a way of improving safety in the trucking industry.

Section 3 of this submission summarises how TruckSafe works and compares it to the National Heavy Vehicle Accreditation Scheme (NHVAS), run by the National Heavy Vehicle Regulator.

Section 4 sets out the ATA's model for how the new HVNL should handle accreditation. The submission closes with chamber-ready legislative drafting to give effect to our proposals (attachment A).

3. Background

About the ATA's TruckSafe program

The ATA, then known as the Road Transport Forum, established the initial pilot of TruckSafe in 1992, when 15 operators participated in a 12 month program to validate the concept.² Some of the companies in the pilot, including Roadmaster, K&S and Nolan's Interstate Transport are still TruckSafe members.

TruckSafe has strengthened its accreditation standards repeatedly since it was established. The 2019 TruckSafe standards are aligned to the master registered code of practice and, as a result, are a strong way of complying with the safety duties in Chapter 1A of the Law.

The TruckSafe audit process is notable for its robustness.

- TruckSafe assigns and pays its auditors, so there is no financial relationship between auditors and the companies they audit

¹ NTC, [Assurance models](#). August 2019.

² Roche, P. et al. *Putting safety first: a history of the Australian Trucking Association*. Focus Publishing, Sydney, 2011. 98.

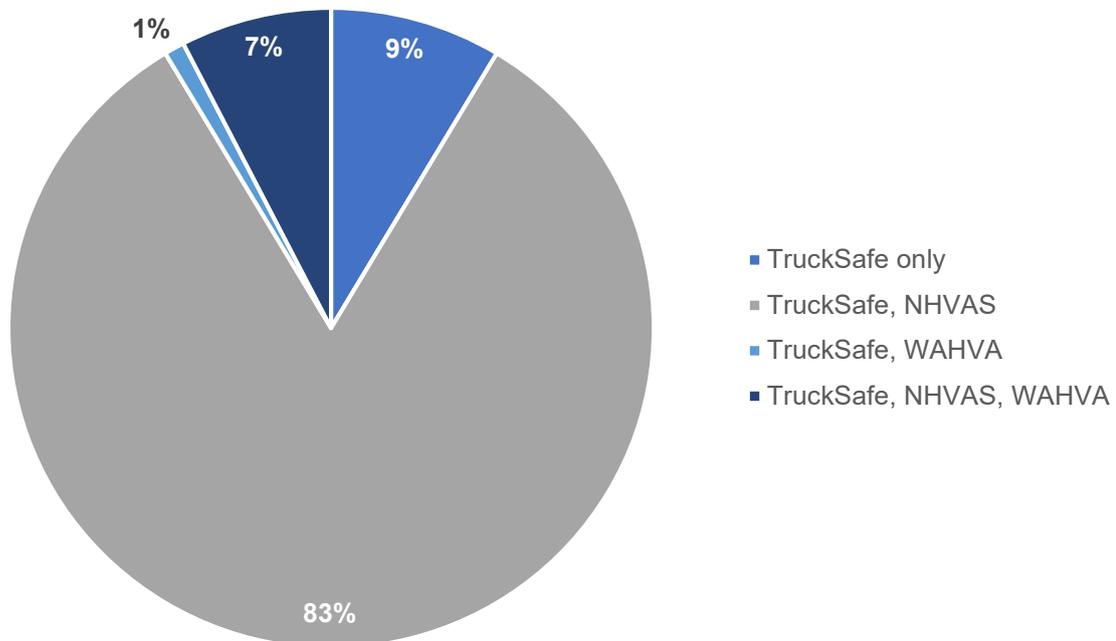
- TruckSafe audits are reviewed by the independent Trucksafe Industry Accreditation Council (TIAC), which sits outside the TruckSafe management structure.

The Medlock review of heavy vehicle safety accreditation schemes noted in 2018 that operators who were accredited under both TruckSafe and NHVAS found the TruckSafe audits to be, at times, more rigorous.³

Despite the rigour of the TruckSafe program, TruckSafe accredited operators do not have access to the alternative compliance arrangements available to NHVAS operators. The arrangements for TruckSafe operators were withdrawn in 2004 as part of the expansion of NHVAS.⁴

As figure 1 shows, 90 per cent of TruckSafe operators are also accredited under NHVAS – an unnecessary compliance burden that adds cost without improving safety.

Figure 1: TruckSafe members in multiple accreditation schemes



Source: internal TruckSafe data as at 1 October 2019.

The availability of alternative compliance arrangements to NHVAS accredited operators but not TruckSafe operators does not only result in operators paying to belong to multiple accreditation schemes: it also breaches governments' competition policy obligations.⁵

³ Fellows Medlock and Associates. [Analysis of heavy vehicle safety accreditation schemes in Australia](#). Report prepared for the NHVR. February 2018, 50.

⁴ Roche, 2011, 104.

⁵ ATA, [Review of the Australian Government's competitive neutrality policy](#). April 2017. 3.

About the National Heavy Vehicle Accreditation Scheme (NHVAS)

The National Heavy Vehicle Accreditation Scheme (NHVAS) was offered to the industry in 1999.⁶ It was initially run by the state transport agencies, before being transferred to the NHVR in 2013.

NHVAS consists of four modules:

- Maintenance management
- Mass management
- Basic fatigue management
- Advanced fatigue management.

Operators can choose to be certified under one, some or all the modules. Operators in NHVAS maintenance management can choose to nominate only some of their vehicles.⁷

The NHVAS modules are not up to date and do not reflect the current HVNL. NHVAS does not cover, for example:

- fatigue management under standard hours
- speed management
- speed limiter tampering
- mass management for vehicles operating at GML
- management of vehicle dimensions or
- load restraint.

NHVAS accreditation does not deliver compliance with the safety duties in Chapter 1A of the HVNL, with the extraordinary result that the NHVR is operating a scheme that does not meet the requirements of its own Law.

The 2014 NTC/NHVR heavy vehicle roadworthiness review concluded that NHVAS could be improved by adopting aspects of TruckSafe.⁸

The review noted that the TruckSafe requirement for ‘in one – in all’ was a particular strength that required 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.

⁶ NTC, August 2019, 22.

⁷ NHVR, [National Heavy Vehicle Accreditation Scheme: business rules and standards](#). Version 2.4, August 2019. 31.

⁸ NTC/NHVR, *Heavy vehicle roadworthiness review phase 2 – integrity review of the national heavy vehicle roadworthiness system*. August 2014. 64.

The review identified two specific opportunities:

Opportunity 37: consider adopting an “In one – In all” approach to accreditation against the NHVAS modules. This could be required either:

- a) at the first point of entry to the scheme whereby accreditation must be against all modules; or
- b) sequentially, with accreditation against each successive module being a prerequisite for the next (for example, maintenance management could be a precondition to accreditation for mass management or fatigue management).

Opportunity 38: consider expanding the NHVAS accreditation modules and/or standards to ensure that similar, important safety issues to those covered by TruckSafe are suitably addressed.

The NPRM for the NHVAS business rules and standards review did not address the deficiencies in the scheme or these opportunities.⁹

Findings about the effectiveness of heavy vehicle accreditation

The Medlock review into heavy vehicle accreditation schemes examined ten years of government reports about the effectiveness of heavy vehicle accreditation.

The review concluded that the available evidence pointed to improvements in operator safety performance through membership of an accreditation scheme or multiple schemes. This was evident in terms of:

- lower crash rates
- lower insurance claim rates
- lower incidents of non-conformities
- lower rates of major defects.¹⁰

The final report of the review made nine recommendations, which included:

- the development of single national accreditation framework
- within the context of the single national framework, the extension of regulatory concessions to operators in any scheme that meets the required standards
- changing the NHVR’s role so it supervises alternative providers of accreditation services rather than providing these services itself.¹¹

The findings of the report were referred to a joint government-industry working group for development.

⁹ NHVR, [NHVAS business rules and standards review](#). Viewed 23 October 2019.

¹⁰ Fellows Medlock, 46.

¹¹ Fellows Medlock, 89-90.

4. The ATA model for heavy vehicle accreditation

The ATA's vision for the new HVNL is set out in our submission on risk-based heavy vehicle regulation. Relevantly, the ATA considers that the new HVNL should have:

- simplified and more flexible prescriptive rules, particularly on fatigue, for operators whose business practices and risk profile do not warrant more complex systems.
- a separate, voluntary, safety-based system for operators that need even more flexibility. Operators in this system would need to be accredited under an approved accreditation scheme. The NHVR would regulate scheme providers (including private sector providers like TruckSafe) and auditors.¹²

Of the four assurance models in the issues paper,¹³ the **ATA's preferred option is therefore model 2**: a market for regulatory certification.

Model 1 (vertical integration, where operators are certified only by governments) is the current system and would carry its deficiencies forward into the new law. In particular, model 1:

- would not provide governments or the NHVR with any incentive to bring NHVAS up to date or maintain it
- would not address the proliferation of customer and certification audits and
- would continue to be in breach of governments' competition policy obligations.

The ATA agrees with the issues paper that model 3 (outsourcing accreditation to JAS-ANZ or a similar body) would be the most complex option and the most expensive to administer.¹⁴

Model 4 (eliminating heavy vehicle accreditation and relying on performance-based standards) would reduce heavy vehicle safety. There would no systematic, regulated assurance carried out on businesses purporting to operate under the performance-based system.

None of the models proposed by the NTC would involve mandatory accreditation. The ATA welcomes this approach.

Mandatory accreditation is effectively another form of operator licensing. The NTC's forerunner, the NRTC, concluded in 2003 that operator licensing was anti-competitive, heavy handed and risked regulatory capture, where regulatory decisions favour incumbents and not the public as a whole.¹⁵

¹² ATA, [A risk-based approach to regulating heavy vehicles](#). May 2019. 2-3.

¹³ NTC, August 2019, 35-40.

¹⁴ NTC, August 2019, 39.

¹⁵ NRTC, *Road Transport Reform (Compliance and Enforcement) Bill regulatory impact statement*. November 2003, 50. Cited in ATA, May 2019, 7.

Purposes of accreditation

The ATA considers that the accreditation chapter in the new HVNL must start with a statement of its purpose. The current purpose of accreditation is set out in s 456. It says:

456 Purpose of Ch 8

The purpose of accreditation under this Law is to allow operators of heavy vehicles who implement management systems that achieve the objectives of particular aspects of this Law to be subject to alternative requirements under this Law, in relation to the aspects, that are more suited to the operators' business operations.

Given the ATA model of accreditation and the concerns that have been raised about the existing accreditation system, we consider that **the statement of purpose in s 456 should be amended:**

456 Main purposes of accreditation

The main purposes of accreditation under this Law are to—

- (a) Allow operators of heavy vehicles who are certified under an approved accreditation scheme that achieves the objectives of particular aspects of this Law to be subject to alternative requirements under this Law;
- (b) Enable operators of heavy vehicles to demonstrate their compliance with the duties and obligations under this Law;
- (c) Reduce the regulatory burden created by the unnecessary duplication of accreditation and customer audits; and
- (d) Improve the safety, efficiency and productivity of operators of heavy vehicles.

This amendment is also set out in attachment A.

Role of ministers

At present, the NHVAS standards and business rules are approved by ministers, not the NHVR.¹⁶

The issues paper suggests that ministers could continue to have a role in the standard setting process.¹⁷

The ATA does not agree with this suggestion. In our view, the requirement for ministerial approval is one of the reasons the NHVAS standards are so out of date.

The role of ministers should be to set the NHVR's strategic priorities and hold its board to account, not to engage in the detail of third tier regulation.

¹⁶ HVNL, s 654(1)(b)

¹⁷ NTC, August 2019, 37.

As a result, **section 654 should be repealed**. The power to make those approvals should be transferred to the NHVR.

The ATA submission on risk-based heavy vehicle regulation includes detailed recommendations about reforming the NHVR's governance, oversight and accountability.¹⁸ The new HVNL will not be a success unless these reforms are implemented.

Role of the NHVR

Under the ATA's proposed model, the NHVR would:

- regulate accreditation scheme providers and auditors
- approve certified operators to enter the alternative compliance system.

Regulation of accreditation scheme providers and auditors

The ATA proposes that **the NHVR should have the power to make heavy vehicle accreditation scheme standards**, which would set out broad requirements about the establishment, approval, operation and exit of approved accreditation schemes (Attachment A, draft s 458).

The ATA would expect that the accreditation standard would be aligned, wherever possible, with the relevant Australian and international standard, AS/NZS ISO/IEC 17021.¹⁹

The NHVR would be able to approve heavy vehicle accreditation schemes as approved schemes for the purposes of the law, if they met the requirements of the standards (Attachment A, draft s 459).

If required, the NHVR could insource certification scheme expertise through staff hires, a consultancy agreement or the inclusion of JAS-ANZ as a member of the scheme assessment panel.

One potential concern about this approach is that it could result in the establishment of very small accreditation schemes that could suddenly close.

The ATA considers that this concern could be addressed through **strong entry conditions for accreditation schemes** in the standards, in the same way that the NHVR's guidelines for industry codes of practice are helping deliver strong, well-written industry codes.²⁰

In addition to the AS/NZS 17021 requirement, the entry conditions should require that:

- accreditation schemes be structured as not-for-profits or majority owned by not-for-profits
- schemes have enough members, and sufficiently strong management systems, to remain in operation indefinitely
- they comply with the *Competition and Consumer Act* and particularly its prohibition on exclusive dealing.²¹

¹⁸ ATA, May 2019, 11-15.

¹⁹ AS/NZS ISO/IEC 17021.1:2015 [Conformity assessment - Requirements for bodies providing audit and certification of management systems](#).

²⁰ NHVR, [Guidelines for preparing and registering industry codes of practice](#). 2017.

²¹ *Competition and Consumer Act 2010* (Cth), s 47.

A second potential concern is that industry schemes may not operate with the same level of rigour as a government-owned scheme, despite the findings of the NTC/NHVR roadworthiness review (page 3) and the Medlock review (page 2).

In the ATA's view, this potential concern should be addressed by ensuring that the accreditation scheme standards include an **assurance framework based on AS ISO/IEC 17011**.²² The standards should require:

- a scheme review and reaccreditation process at intervals of no longer than five years²³
- regular sample-based assessments, including NHVR participation in a sample of operator audits²⁴
- documented procedures and criteria for suspending or withdrawing the approval of a scheme²⁵
- documented processes for receiving, evaluating and making decisions about complaints and appeals.²⁶

Approval of certified operators to enter the alternative compliance system

The NHVR's second role under this model would be to approve certified operators to enter the alternative compliance system.

The NHVR holds confidential enforcement information. It cannot share this information with industry schemes. As a result, an approved scheme could, at least hypothetically, certify an operator with enforcement red flags to enter the alternative compliance system.

The ATA proposes that:

- approved accreditation schemes would be responsible for certifying members but
- the NHVR would validate certified operators to enter the alternative compliance system against clear standards, with the presumption that operators would be validated automatically unless the NHVR held serious adverse information about them.

Previous breaches of the law should not necessarily be a reason to prevent an operator from entering the alternative compliance system. An operator may wish to become certified and enter the system to improve their legal and safety compliance – including under an enforceable undertaking or a supervisory intervention order.

Role of approved accreditation scheme providers

Approved accreditation schemes would be responsible for maintaining their own certification standards and business rules, as well as certifying operators against their standards.

²² AS ISO/IEC 17011:2018. [Conformity assessment – Requirements for accreditation bodies accrediting conformity assessment bodies.](#)

²³ AS ISO/IEC 17011, 19 [7.9.1].

²⁴ AS ISO/IEC 17011, 19 [7.9.3].

²⁵ AS ISO/IEC 17011, 20 [7.11.1].

²⁶ AS ISO/IEC 17011, 20 [7.12] - 21 [7.13].

Advantages of being certified

The ATA recommends that certification should carry the following advantages for trucking businesses and their customers:

All certified trucking businesses

- All businesses certified by an approved scheme would be **deemed to comply with the safety duties under the HVNL**. Attachment A includes a new section of the Law, s 26I in new Part 1A.4, that would give effect to this approach. The proposed section would align with the Victorian OHS Act approach to compliance codes²⁷ and the findings of the Maxwell Report.²⁸
- **Customers and other chain parties, including prime contractors, would be able to rely on a trucking business's certification as evidence that the business was compliant with its safety duties and obligations** (attachment A, draft s 26J). The customer would be able to focus on meeting its own obligations rather than second guessing the trucking operator's systems.

Certified trucking businesses validated for alternative compliance

- As proposed in the ATA's fatigue management submission, certified businesses validated by the NHVR would be able to **access the alternative fatigue management regime**.²⁹
- Certified and validated businesses would be **exempt from yearly vehicle inspections in NSW, Queensland and South Australia**.
- Certified and validated businesses could be subject to a **lower level of roadside enforcement**, although it should be noted that this claimed advantage of the NHVAS maintenance module has not been delivered.^{30,31}
- Certified and validated businesses would be **pre-credentialled for the current NHVAS access arrangements and mass concessions**.

What would happen to NHVAS?

There would be no place or reason for NHVAS to continue under this model.

It would not be appropriate – or consistent with AS ISO/IEC 17011 – for NHVAS to remain under the management of the NHVR.³² There would be an obvious conflict of interest between the NHVR approving accreditation schemes and running its own scheme,

²⁷ *Occupational Health and Safety Act 2004* (Vic), s 152.

²⁸ Maxwell, C. *Occupational Health and Safety Act Review*. March 2004. 359.

²⁹ ATA, [Effective fatigue management](#). August 2019. 12-13.

³⁰ NHVR, [Maintenance management accreditation guide](#). January 2013. Viewed 21 October 2019. 4.

³¹ NTC, August 2019, 32.

³² AS ISO/IEC 17011, 8 [4.4.11].

particularly since the NHVR would also validate individual operators to access alternative compliance.

To address this conflict, the Medlock review entertained transferring NHVAS to a separate government organisation or allowing it to be taken over by a private entity.³³

But the NHVAS does not have a separate corporate existence to the regulator. It is not a subsidiary company that could be transferred.

Accordingly, the ATA considers that the simplest approach would be to **close NHVAS when the new HVNL comes into force.**

NHVAS accredited operators would be invited to select their new accreditation provider from a list of approved schemes, in the same way that vehicle owners are invited to transfer to private CTP providers when states deregulate their CTP systems.³⁴

Eliminating the need for multiple accreditations

The ATA considers that adding sections 26I and 26J would go a long way toward removing the perceived need for customers to conduct their own chain of responsibility audits.

The sections would not, however, prevent a customer from requiring operators to be certified under their preferred scheme, even though other approved schemes would meet the same standards and offer the same level of legal protection.

Accordingly, **a new section should be added to the HVNL to ban requests or contracts that would require or encourage businesses to be certified under a particular approved scheme.**

A draft of this proposed new section, s 26K, is in attachment A.

The section would ban persons from making prohibited requests or entering into prohibited contracts relating to heavy vehicle accreditation. The maximum penalty, \$10,000, would be in line with s 26E of the Law.

The section would define a prohibited request or contract as one that requires or encourages an operator to obtain certification from a particular approved accreditation scheme.

The section would not apply to:

- a request or contract that relates to aspects of an approved accreditation scheme that are in addition to the parts of the scheme that cover duties and obligations under the HVNL. The ATA envisages that some approved schemes may choose to offer additional certification services. It would, in our view, be entirely reasonable for a customer to select a certification scheme because it provided those additional, non-HVNL services
- requests or contracts between related bodies corporate.

Proposed subsection (6) would make it clear that the provision does not prevent requests or contracts from encouraging or requiring operators to be certified under any approved scheme, as long as the operator does not have to be certified under a particular scheme.

³³ Fellows Medlock, 88.

³⁴ See CTP Regulator (SA), [Why your CTP is now your choice](#). Viewed 18 October 2019.

It should be emphasised that s 26K would only apply to accreditation schemes approved under the HVNL, and not WAHVAS.

The ATA argued in our risk-based regulation submission that mutual recognition agreements should be used to reduce the cost of holding the multiple accreditations that interstate operators need to operate in Western Australia.³⁵

³⁵ ATA, May 2019, 10.

Legislative drafting for key ATA proposals

New Part 1A.4: Use of heavy vehicle accreditation to comply with safety duties

26I Compliance with heavy vehicle accreditation scheme requirements

If—

- (a) An approved heavy vehicle accreditation scheme under this Law makes provision for or with respect to a duty or obligation imposed by this Law; and
- (b) A person is certified under the scheme—

The person is taken to have complied with this Law in relation to that duty or obligation.

26J Entitlement to rely on heavy vehicle accreditation

If—

- (a) An approved heavy vehicle accreditation scheme under this Law makes provision for or with respect to a duty or obligation imposed by this Law; and
- (b) A person is certified under the scheme—

Then—

- (c) Another person, including another party in the chain of responsibility, is entitled to rely on that person's certification as evidence that the person has complied with this Law in relation to that duty or obligation; and
- (d) To the extent that the other person has a duty or obligation under this Law in relation to the conduct of that person, the other person is taken to have complied with this Law in relation to that duty or obligation.

26K Prohibited requests and contracts relating to heavy vehicle accreditation

- (1) Subject to this section, a person must not make a prohibited request or enter into a prohibited contract relating to heavy vehicle accreditation.

Maximum penalty—\$10000

- (2) A person makes a prohibited request relating to heavy vehicle accreditation if that person asks, directs or requires (directly or indirectly) an operator or a party in the chain of responsibility to do or

not do something that the person knows, or ought reasonably to know, would have the effect of causing the operator, or would encourage the operator, or would encourage a party in the chain of responsibility to cause the operator to obtain certification from any particular approved accreditation scheme.

- (3) A person enters into a prohibited contract relating to heavy vehicle accreditation if the person knows, or ought reasonably to know, that the contract would have the effect of causing the operator, or would encourage the operator, or would encourage a party in the chain of responsibility to cause the operator to obtain certification from any particular approved accreditation scheme.
- (4) A person does not make a prohibited request or enter into a prohibited contract merely because a request or contract asks, directs, requires, causes or encourages an operator to obtain certification from any particular approved accreditation scheme in relation to aspects of that approved accreditation scheme that are in addition to those aspects which make provision for or with respect to any duty or obligation imposed by this Law.
- (5) This section does not apply to requests or contracts between two or more bodies corporate that are related bodies corporate within the meaning of section 50 of the *Corporations Act 2001* (Cth).
- (6) This section does not prevent a person from making a request or entering into a contract that asks, directs, requires, causes or encourages an operator to be certified under any approved accreditation scheme, without specifying any particular approved accreditation scheme.

New and replacement provisions for Chapter 8: Accreditation

456 Main purposes of accreditation

The main purposes of accreditation under this Law are to—

- (a) Allow operators of heavy vehicles who are certified under an approved accreditation scheme that achieves the objectives of particular aspects of this Law to be subject to alternative requirements under this Law;
- (b) Enable operators of heavy vehicles to demonstrate their compliance with the duties and obligations under this Law;
- (c) Reduce the regulatory burden created by the unnecessary duplication of accreditation and customer audits; and
- (d) Improve the safety, efficiency and productivity of operators of heavy vehicles.

457 Definitions for Ch 8

In this Chapter—

approved accreditation scheme, means a heavy vehicle accreditation scheme approved by the Regulator under section 459.

heavy vehicle accreditation scheme standards, means the heavy vehicle accreditation scheme standards approved by the Regulator under section 458.

Note— A copy of the heavy vehicle accreditation scheme standards is published on the Regulator's website.

458 Heavy vehicle accreditation scheme standards

- (1) The Regulator may make heavy vehicle accreditation scheme standards about the establishment, approval and operation of approved accreditation schemes for the purposes of this Law.
- (2) The standards, and any instrument amending or repealing the standards, must be published in the Commonwealth Gazette.
- (3) The Regulator must ensure a copy of the standards in force under subsection (1) are—
 - (a) made available for inspection, without charge, during normal business hours at each office of the Regulator; and
 - (b) published on the Regulator's website.

459 Approval of heavy vehicle accreditation schemes

- (1) A person may apply to the Regulator for approval of a heavy vehicle accreditation scheme.
- (2) An application under subsection (1) must—
 - (a) be in the approved form;
 - (b) provide details, as reasonably required by the Regulator, of the applicant's accreditation scheme; and
 - (c) be accompanied by the prescribed fee for the application.
- (3) The Regulator may, by notice given to the applicant, require the applicant to give the Regulator any additional information the Regulator reasonably requires to decide the application.
- (4) The Regulator must decide the application as soon as practicable after receiving it.
- (5) If the Regulator is satisfied that the applicant's accreditation scheme will comply with the heavy vehicle accreditation scheme standards, the Regulator must—
 - (a) approve the applicant's application; and
 - (b) give notice of its decision to the approved accreditor that must include any—
 - (i) conditions on which the approved accreditation scheme may operate;
 - (ii) the period for which the Regulator's approval of the approved accreditation scheme applies.
- (6) If the Regulator is not satisfied that the applicant's accreditation scheme will comply with the heavy vehicle accreditation scheme standards, the Regulator must give the applicant an information notice for the decision.



INFRASTRUCTURE AUSTRALIA: 2019 AUSTRALIAN INFRASTRUCTURE AUDIT

AUSTRALIAN TRUCKING ASSOCIATION SUBMISSION 15 NOVEMBER 2019

1. About the Australian Trucking Association

The Australian Trucking Association and its member associations collectively represent 50,000 businesses and 200,000 people in the Australian trucking industry. Together we are committed to safety, professionalism and viability.

2. Findings of the 2019 Australian Infrastructure Audit

The 2019 Australian Infrastructure Audit makes several important findings on our freight networks and the challenges that they face. The findings by Infrastructure Australia highlight a number of issues and priorities that are well known to the Australian trucking industry.

Importance of freight

Infrastructure Australia reports that our transport networks are vital to our collective economy and productivity, as well as the quality and cost of living that we experience as individuals.¹

IA also report:

- Australia is well positioned to take advantage of Asia's economic development, but to do so we need to ensure our freight and supply chains operate efficiently and minimise costs for business and consumers²
- The freight task is growing faster than population growth³
- In Australia, supply chain costs represent around 10 per cent of the final cost of a product, which is ultimately borne by consumers.⁴

Challenges for our freight network

Despite the importance of road freight to the Australian economy, the 2019 Australian Infrastructure Audit finds that our agricultural, non-bulk and urban supply chains face significant challenges.

¹ Infrastructure Australia, June 2019, [An Assessment of Australia's Future Infrastructure Needs: The Australian Infrastructure Audit 2019](#), 260.

² Ibid, 322.

³ Ibid, 323.

⁴ Ibid, 351.

These challenges include:

- Our cities are key centres of demand, supply and processing of freight, but are bottlenecks that suffer from congestion, feature land-use planning that does not consider freight and impose red tape on freight operations⁵
- Poor planning and congestion can lead to unnecessary, long and expensive trips for trucks and inefficient operations⁶
- In our cities, many networks were designed decades ago and were never intended to support cities of today's scale, or to meet the needs of our modern population⁷
- While freight planning issues are recognised in most strategic freight plans, actions to address them are often generic in nature and do not sufficiently target specific and complex issues
- Agricultural supply chains suffer from poorly maintained infrastructure that often lacks capacity and suffers from bottlenecks, whilst also suffering from inconsistent and prescriptive regulation⁸
- Australia's international trade costs are higher than many other high-income OECD countries, including New Zealand, Japan, Canada and the United States⁹
- Regulations controlling access to the freight network are fragmented, inefficient and confusing for transport operators¹⁰
- The Heavy Vehicle National Law is not so much a national law as a merging of various highly prescriptive, jurisdictional laws with many variations in requirements.

The audit also places much-needed focus on high productivity freight vehicles:

- IA report that HPFVs reduce total vehicle movements, reduce congestion growth, lower costs of freight, enable faster delivery times and are more likely to be safer, quieter and be less emissions intensive¹¹
- Despite their benefits, the use of HPFVs on our roads has been limited
- Time consuming and costly case-by-case decision-making on access permits can discourage the uptake of HPFVs
- **Restricting the use of HPFVs locks in high freight costs for businesses and consumers, and limit benefits to road safety, air pollution and amenity.**¹²

This finding is particularly important and one that must be addressed by reform action from governments.

⁵ Ibid, 322.

⁶ Ibid, 338.

⁷ Ibid, 181.

⁸ Ibid, 324, 353.

⁹ Ibid, 331.

¹⁰ Ibid, 343.

¹¹ Ibid, 344.

¹² Ibid, 345.

Provision of roads

The audit identifies a number of key issues and challenges affecting the provision of roads. These include:

- Road funding and maintenance are not directly linked to use or road-related revenue. Funding and maintenance are susceptible to budget limitations and regional roads in particular lack funding consistency¹³
- Road expenditure should be sufficient to maintain a pre-determined service level and should be part of a detailed asset management plan
- Smaller projects, such as better use interventions to improve the productivity of existing assets, cost less and generally produce better economic returns¹⁴
- Infrastructure projects can improve people's quality of life, increase productivity and kick-start economic development. However, to achieve these outcomes, projects need to be carefully assessed, designed and timed. Getting our infrastructure decisions right is crucial to our future success¹⁵
- Early announcement of infrastructure projects, prior to effective problem identification and robust assessment, narrows choices and excludes the possibility for more efficient and less expensive solutions
- Big capital fixes often take undue priority over smaller and more frequent maintenance spends. This is often the by-product of a lack of clear long-term policy objectives
- Projects are often announced without a detailed assessment of needs and analysis of a range of potential solutions. Business cases are not always published to allow for public consultation and scrutiny. Post-completion reviews are rarely undertaken¹⁶
- Four-year forward estimates make it difficult to plan for the future of assets and can lead to patch up problems, rather than more efficient long-term solutions¹⁷
- Infrastructure is not an end in itself. It is not so much an engine of growth as an enabler of growth. It exists to provide services to users in a way that best meets their immediate and future needs¹⁸
- Governments and service providers do not always adequately measure and report on access, quality and costs for users.

¹³ Ibid, 291, 297.

¹⁴ Ibid, 298.

¹⁵ Ibid, 212.

¹⁶ Ibid, 216.

¹⁷ Ibid, 228.

¹⁸ Ibid, 166.

Infrastructure for regions

The audit identifies:

- Northern Australia faces distinct challenges and there is untapped potential for growth in northern Australia¹⁹
- Parts of northern Australia suffer from low-quality infrastructure
- Freight investments can unlock and be a catalyst for regional development²⁰
- A community's economic prosperity is linked to its access to markets.

These findings illustrate the need for critical infrastructure reform to be undertaken by governments.

3. Independent regulation of infrastructure access charges

The IA audit also identifies another key challenge for freight in the significant increases in charges paid by land transport operators for collecting and delivering containers to and from ports. The audit identifies concerns that:

- Landside operators face practical constraints and limited market power, so they cannot avoid these costs
- Increasing stevedore costs may lead to increasing costs for exporters and consumers
- The benefits of increased stevedore competition may not be realised equally across the supply chain.²¹

Unfortunately, the audit does not reflect similar concerns and experience of industry with toll roads charges for heavy vehicles. The audit identifies user pays as an underutilised funding source that has a high level of community support,²² with some negative sentiment driven by limited understanding of how tolls are calculated.²³

Heavy vehicle tolls have progressively been increased on most routes to three times the rate of light vehicle tolls. In NSW, this forms part of the Government's tolling principles.²⁴ Whilst on one hand the way heavy vehicle tolls are calculated is clear – they are set by governments in tolling concession agreements with private companies – the principles on which they are set are not clear.

¹⁹ Ibid, 194.

²⁰ Ibid, 349, 351.

²¹ Ibid, 333.

²² Ibid, 226.

²³ Ibid, 178.

²⁴ NSW Legislative Council, October 2017, [Road tolling in New South Wales](#), 79.

The higher rate appears to be justified by governments and tolling companies by a number of problematic arguments, which are explored below:

*The rate is nationally consistent*²⁵

Justifying tolling rates as nationally consistent, when one private company is the dominant supplier, is just an excuse to increase tolls.

In March 2017, the Brisbane City Council announced that Transurban would fund the Inner City Bypass upgrade and take over maintenance and operation, in return for increased heavy vehicle tolls on the Clem7, Legacy Way and Go Between Bridge. The increase in the truck toll multiplier from 2.65 times to 3 times the light vehicle toll was justified by Transurban as being in line with the market and consistent with toll roads in Sydney and Melbourne. Also in March 2017, the Transurban announcement of increases to CityLink heavy vehicle tolls in Melbourne was stated to bring the rate into line with rates on other toll roads and roads in other states.

Within the same month, Transurban announced increases in the heavy vehicle multiplier in separate cities, effectively using the other increase on its own roads as justification.

Higher truck tolls reflect increased maintenance and road damage costs by heavy vehicles

Research into the marginal cost of road wear as a result of the impact of an additional trip made by a heavy vehicle indicates that in terms of recovering the cost of truck use to road wear and repair costs, the Transurban heavy vehicle multiplier vastly exceeds the marginal cost.

For a fully laden 6 axle articulated heavy vehicle, the estimated maximum marginal cost would be \$0.16 per kilometre for an urban toll road.²⁶

Using the M7 as an example, the maximum capped truck toll is \$24.72 for a continuous 20km or greater trip, three times the maximum car toll of \$8.24.²⁷ Of the extra \$16.48 that is collected, just \$3.20 represents road damage costs over 20km, under 20 per cent of the increased toll rate.

Similarly, calculations about the road wear damage appear based on heavy vehicles carrying their maximum allowable weight. For heavy vehicles which are not carrying their maximum allowable weight, and other types of heavy vehicles, the actual cost would be lower. The National Transport Commission has reported that a significant proportion of heavy vehicles operate at below their mass limits,²⁸ and there are several heavy vehicle

²⁵ These reasons given for the truck toll multiplier are taken from NSW Legislative Council, October 2017, [Road tolling in New South Wales](#), 79, 80.

²⁶ Cost calculation is based on work by the Australian Road Research Board and West Australian Local Government Association (2015, Calculating the cost of road wear on local roads) and Austroads (March 2012, Preliminary methodology for estimating cost implications of incremental loads on road pavements).

²⁷ Westlink M7, [Toll pricing](#), accessed 6 November 2019.

²⁸ National Transport Commission, [Increasing heavy vehicle volumetric load capacity without increasing mass limits discussion paper](#), February 2017, 7

operational uses which result in vehicles carrying weight lower than the maximum allowable, including palletised mixed freight, white goods groceries and cars.²⁹

Historical traffic figures show no significant diversions of heavy vehicle traffic as a result of the multiplier at this rate

Governments have a responsibility to the wider community to demonstrate greater transparency on this point. Vehicle diversions, at whatever level, are increasing congestion, exacerbating community impacts from heavy vehicles on local streets and increasing emissions (by not taking the most direct route). They suggest that urban road networks are not working as efficiently as they could, which in light of the increasing congestion costs cited in the 2019 Australian Infrastructure Audit, represent a failure of transport policy.

Additionally, if governments actually believe this argument then there is no need for truck bans on alternative routes to the tolled routes. Heavy vehicles are increasingly being forced to use new toll roads, such as NorthConnex in Sydney.

Due to the higher operating costs of heavy vehicles, the value of the time savings are greater

Heavy vehicle tolls have a significant impact on trucking operators. Independent evidence to the Australian Senate reported that smaller trucking operators are less able to use their fleets (or single vehicle) to convert travel time savings to direct benefits for their companies. Smaller operators are also very sensitive to costs and road pricing.³⁰

Toll Group have assessed the value for money proposition of some of these toll roads. An analysis of a Victorian based customer found that toll charges have doubled, increasing by half a million dollars since 2017. Despite this significant increase, travel time savings were either minimal to non-existent. Additionally, an assessment of 12 routes showed that fees had increased by 100 per cent and failed to delivered travel time savings, which actually increased by 1.3 per cent.³¹

If the heavy vehicle toll multiplier reflected the actual monetary gains to operators, then operators would be incentivised to utilise the roads. There would be no need for truck bans on alternative routes.

Instead, new toll roads are increasingly applying truck bans on alternative routes. That these are considered necessary is an illustration that the multiplier is not reflective of its economic value.

²⁹ National Transport Commission, [Increasing heavy vehicle volumetric load capacity without increasing mass limits issues paper](#), September 2016, 11.

³⁰ Thompson, Associate Professor Russell, Australian Senate, Operations of existing and proposed toll roads in Australia 3 August 2017 transcript, 11.

³¹ Toll Group, information provided to the ATA, 2019.

Larger vehicles require greater road space

This is a simplistic, incorrect view that does not justify a three times multiplier toll charge. When you consider the space requirement between travelling vehicles a typical heavy vehicle is not equal to three light vehicles. An articulated truck is equivalent to approximately 1.2 to 2 light vehicles when travelling, inclusive of spacing between vehicles.³²

Independent reports

The 2017 NSW parliamentary inquiry into road tolling recommended that the NSW Government should identify and publish the evidence supporting its decision to toll heavy vehicles three times that of light vehicles.³³ This has not occurred.

Similarly, the Victorian Auditor-General's report on the CityLink Tullamarine Freeway widening project in Melbourne found that:

- The audited agencies were unable to justify the substance of the arguments for the tolling of goods vehicles as the preferred funding approach, and that they did not provide a full and objective assessment of a range of alternative funding options
- The private sector proponent (Transurban) will contribute \$850 million and is expected to recover an equivalent toll revenue stream worth approximately \$3.2 billion up to 2035
- For unsolicited proposals, the private sector is likely to be focused on its own commercial interests in generating a proposal
- The April 2015 business case did not describe the potential disadvantages of making commercial vehicles bear the majority of the project cost through increased tolls and how this affects commercial vehicle productivity.³⁴

Increasing the cost of business

IA suggests that negative sentiments about tolls are driven by a lack of understanding. Instead, for heavy vehicle tolls negative sentiment is driven by the lack of justification of the toll multiplier and the impact on the cost of business. Heavy vehicle tolls are not a simple application of user pays – trucking operators are overpaying and are increasingly forced to use the asset as a result of government regulation.

Higher tolls cannot always be passed on to customers. A regional operator (who incurs tolls in Brisbane and on the Toowoomba range crossing) reports that it is difficult enough to get

³² ATA analysis of a convoy of 10 articulated six axle heavy vehicle combinations, with vehicle spacing, and the light vehicle convoy equivalent for the same road space. To get up to a 2 times equivalency you need to reduce travel speeds to about 30 or 40km/h, with only a one second spacing between vehicles. Higher speeds and safer spacing between vehicles reduce the number of light vehicles compared to heavy vehicles. Using larger heavy vehicle combinations would reduce the total number of trucks required and reduce the road space required to move the freight task.

³³ NSW Legislative Council, October 2017, [Road tolling in New South Wales](#), xi.

³⁴ Victorian Auditor-General's Report, [Applying the High Value High Risk Process to Unsolicited Proposals](#), August 2015, xii, xiii, 15, 38.

rate rises from customers to offset increasing wages and that they're unable to pass on toll road costs.³⁵

Even larger operators cannot always pass these significant costs on. Toll Group advise that toll road charges cost them an annual \$15 million to \$20 million and due to the competitive nature of the industry that increases often have to be absorbed.³⁶

Need for independent regulation of infrastructure access charges

The IA audit states, in relation to landside port charges, that the challenge for government will be to know if and when a regulatory response is required.³⁷ This point has already arrived.

The ACCC has reflected on the strong financial motives for governments to structure privatisation processes in order to maximise the sale price of their assets, and that as a result, governments have little incentive to closely examine whether the market structure and regulatory arrangements that will apply post-privatisation are conducive to competition and appropriate outcomes.³⁸

This is true of toll road concessions and landside port charges. The incentive for state governments is to reduce the upfront cost of new road infrastructure without giving full consideration to the long-term outcomes for competition, urban connectivity and costs for businesses and other road users.

Private toll road owners and state governments have been increasing toll road charges on heavy vehicles whilst avoiding a fair distribution of increases with light vehicles. At the same time, toll roads are increasingly becoming a monopoly asset for heavy vehicle traffic, with NorthConnex in Sydney being accompanied by truck bans on alternative routes.

The ACCC decision not to oppose the Transurban consortium bid for the acquisition of WestConnex³⁹ illustrates the inability of the current regulatory framework to provide constraints on using heavy vehicle tolls as a revenue raising mechanism, above and beyond the level required for cost recovery.⁴⁰

This lack of a competitive or regulatory constraint on heavy vehicle charges for accessing infrastructure also applies to landside port charges. Stevedores have increased the burden on trucking operators through significant increases in landside port charges.

³⁵ Information provided directly to the ATA, 2019.

³⁶ Toll Group, information provided to the ATA, 2019.

³⁷ Infrastructure Australia, June 2019, [An Assessment of Australia's Future Infrastructure Needs: The Australian Infrastructure Audit 2019](#), 333.

³⁸ Sims, Rod, [How did the light handed regulation of monopolies become no regulation?](#) Speech to the Gilbert + Tobin Regulated Infrastructure Policy Workshop, 29 October 2015.

³⁹ ACCC, [ACCC will not oppose Transurban consortium WestConnex bid following undertaking](#), 30 August 2018.

⁴⁰ ATA, [Submission to ACCC review – proposed acquisition of WestConnex](#), 31 May 2018, 4 & 5.

ACCC Chair Rod Sims has commented that infrastructure fees imposed by stevedores on transport companies have gone up a lot more than costs have gone up, and that apart from increasing profits it is unclear what rationale there is for the increased charges.⁴¹

Surcharge increases introduced in 2017 have ranged from \$20 to \$30 per container, and in some cases have increased twice within the one year. DP World imposed a surcharge in Sydney of \$21.16 per container in early 2017, and then almost doubled the charge to \$37.65 per container from 1 January 2018.

Dramatic increases to these surcharges continue to spread, with DP World announcing a 447 per cent increase to commence in 2020 at Fremantle Port.⁴² The ACCC has reported that in 2018-19 the revenue generated by stevedores from infrastructure charges increased by 63 per cent to \$267 million.⁴³

As stated by the NSW Government, the legislation governing the port access charges for Port Botany reflects the pricing principles adopted by the Council of Australian Governments. However, as reflected in the concerns of the trucking industry in 2012 and the lived experience since, this approach has failed to constrain cost increases.

In 2012, ATA NSW, the predecessor organisation to Road Freight NSW, raised serious concerns about the 2012 NSW legislation to lease Port Botany to a private operator.

ATA NSW said that the legislation needed protection for trucking operators against price gouging:

The potential for a new owner of the ports to impose crippling fees on our industry is of significant concern, and one that appears to have been overlooked in the drafting of this legislation.

The impact of these potential charges on small to medium operators was also a concern:

The survival of these businesses is jeopardised if a new port owner decides to impose onerous fees and charges on these small businesses.

ATA NSW also said:

The potential for major impacts on trucking operators is a serious threat. Our industry operates on tight margins, and additional fees and charges are impossible to pass on to customers while maintaining competitiveness. The introduction of additional fees and charges will cause some operators to cease trading, causing increased unemployment and reducing productivity on the port.⁴⁴

⁴¹ Rod Sims as quoted by Ewin Hannan, [Spotlight on stevedores over hikes in charges](#), The Australian, 9 April 2018.

⁴² ATN, 6 November 2019, [DP World in 447 per cent hike for land transporters](#).

⁴³ ACCC, [Container stevedoring monitoring report](#), October 2019, 5.

⁴⁴ ATA NSW submission as quoted by the Hon Adam Searle MLC, in debate on the [Ports Assets \(Authorised Transactions\) Bill 2012](#), NSW Legislative Council Hansard, 21 November 2012

The NSW Government and the then NSW Treasurer made a number of commitments in relation to the proposed sale:

The Government will retain oversight of all regulatory matters such as those relating to price, the environment and the handling of dangerous goods.⁴⁵

The NSW Treasurer also stated:

...the Bill provides for a transparent pricing regime consistent with the principles adopted by the Council of Australian Governments. This includes regular reporting obligations to the Minister and the opportunity to refer any price issues to the Independent Pricing and Regulatory Tribunal for review. Third, the infrastructure charge, which the member for Maroubra raised, is subject to robust government oversight, including the price monitoring regime. The bill provides that the new port operator must provide details to the Government regarding the details of the infrastructure project, the basis of the charge, the persons required to pay and the time frame of the charge.⁴⁶

The ACCC has commented on the Competition and Infrastructure Reform Agreement, as agreed by the Australian, state and territory governments in 2006. This agreement sets out the introduction of price monitoring for significant infrastructure facilities, as a first step where the potential introduction of price regulation may be required.

The intent of these reforms to provide a pathway to price regulation, when required, has not been fulfilled. Stronger pricing principles are needed for significant infrastructure to transition from price monitoring to price regulation when monitoring has proven to be ineffective.

The ACCC also state that the privatisation of monopoly or near monopoly assets, without appropriate pricing controls, can result in the transfer of market power and economic rent extraction to private hands.

Many infrastructure assets, such as toll roads and ports, have legislated or natural monopoly characteristics. The introduction of truck bans on alternative routes is increasing the monopoly status of toll roads. **The ACCC has stated that price monitoring (such as what applies to port access charges) has little or no longer-term impact on the conduct of monopoly infrastructure owners.**⁴⁷ The ACCC is clearly right, with Patrick co-owner Qube dismissing the ACCC's price monitoring as part of its "annual 'kick a stevedore' day."⁴⁸ The existing price monitoring approach is being dismissed by stevedores, who continue to roll out significant increases.

As stated by the ACCC, private owners can operate assets more efficiently and at a lower cost than government owners. But privatisation should promote economic efficiency and not obtaining the maximum proceeds from the sale of the asset. This requires an effective regulatory framework, which does not currently exist.

⁴⁵ The Hon Mike Baird MP, 17 October 2012, [Ports Assets \(Authorised Transactions\) Bill 2012 second reading](#), NSW Legislative Assembly Hansard.

⁴⁶ The Hon Mike Baird MP, 17 October 2012, [Ports Assets \(Authorised Transactions\) Bill 2012 second reading](#), NSW Legislative Assembly Hansard.

⁴⁷ Sims, Rod, [How did the light handed regulation of monopolies become no regulation?](#) Speech to the Gilbert + Tobin Regulated Infrastructure Policy Workshop, 29 October 2015.

⁴⁸ Wiggins, J. "ACCC cracks whip on stevedoring fee hikes" Australian Financial Review, 7 November 2019, 20.

Due to the conflict for state governments between their role as a regulator and their own financial motives, **the ATA recommends that heavy vehicle charges for accessing toll roads and ports should be included in the future independent heavy vehicle price regulator, as part of the Heavy Vehicle Road Reform program.**

4. Reform: infrastructure investment and heavy vehicle access

The ATA recommends that governments should undertake significant reforms to infrastructure investment and heavy vehicle access, including:

- **Fundamental reforms to road access decisions under the Heavy Vehicle National Law**, as recommended by the ATA submission on access to the HVNL review⁴⁹
- **Transitioning the National Land Transport Network (NLTN) to a gazetted A-Double High Productivity Freight Vehicle (HPFV) network.** The Australian Government should provide national leadership on achieving road freight productivity gains by establishing HPFV access as an outcome from NLTN investments. This should commence HPFV access to the Hume Highway, to ensure the value of the existing investment in this corridor is maximised
- **Use of corridor and investment strategies to guide infrastructure upgrades. A strategy should be in place for each NLTN and major freight route by 2024⁵⁰**
- **Ensuring future infrastructure investments:**
 - **Adopt safe roads principles and design and minimum road safety standards**
 - **Adopt the Austroads guidelines on the provision of heavy vehicle rest areas.**⁵¹ The NLTN and major freight routes should be immediately assessed against the guidelines to identify gaps in service provision
 - **Require productivity projects to be linked to improvements in as-of-right heavy vehicle access.** Projects that are funded to provide better access should be tied to delivering this outcome
 - **Ensure government infrastructure contracts deliver safe and financial sustainable business outcomes.** Contractors should be required to pay their supply chains within 30 days and deliver construction truck safety standards.⁵²

⁴⁹ ATA, August 2019, [Submission to HVNL review on easy access to suitable routes issues paper](#).

⁵⁰ For example, the [ATA submission on the development of the Newell Highway corridor strategy](#), April 2019, makes recommendations about the need for a national corridor investment strategy, 8, 9.

⁵¹ For further information see [ATA submission on the development of the Newell Highway corridor strategy](#), April 2019, 6.

⁵² For further information on truck safety accreditation for infrastructure construction contracts see [ATA submission to the Inquiry into the National Road Safety Strategy](#), March 2018, 6-8.

5. Reform: infrastructure business case assessment

The ATA strongly supports reforms by governments to improve the transparency of infrastructure project assessment and in particular the improved use of business case assessment by Infrastructure Australia.

The ATA recommends that this process should be strengthened by:

- Adopting willingness to pay valuation of safety costs, including injury costs⁵³
- Inclusion of connectivity, social and economic development outcomes for regional and remote projects⁵⁴
- Increased support for business case development, including for regional projects
- Strengthening the legislative requirements for business cases to be prepared and published before infrastructure funding can be committed.

6. Reform: upgrading rural, regional and remote road infrastructure

The audit establishes the need to upgrade rural, regional and remote road infrastructure.

Additionally, the Australian Livestock and Rural Transporters Association (ALRTA), an ATA member association, has highlighted the chronic under investment in rural and regional roads and the resulting impact on heavy vehicle access and the ability to capture the economic benefits of agricultural growth.⁵⁵

Ultimately our freight networks will work best when they are connected. **The ATA recommends that governments should:**

- **Invest in improving the standard of key rural freight roads**, including the ALRTA recommendation of a national fund to deliver a minimum service level standard on rural freight roads⁵⁶
- **Deliver the regional road safety improvements project** identified by Infrastructure Australia in the 2019 Infrastructure Priority List⁵⁷
- **Deliver funded investment strategies, with timelines, to seal additional remote routes**, such as the full length of the Tanami Road and the Outback Way
- **Improve the flood resilience of regional and remote freight corridors**, including the Great Northern Highway.

⁵³ For further information see [ATA submission to the Inquiry into the National Road Safety Strategy](#), March 2018, 5, 6.

⁵⁴ For further information see [ATA submission to the Inquiry into National Freight and Supply Chain Priorities](#), July 2017, 11, 12.

⁵⁵ ALRTA, October 2019, [Submission to Senate inquiry on the Importance of a Viable, Safe, Sustainable and Efficient Road Transport Industry](#), 11-13.

⁵⁶ *Ibid*, 14.

⁵⁷ Infrastructure Australia, February 2019, [Infrastructure Priority List](#), 44.

7. Reform: heavy vehicle economic reform

The ATA recommends that the Heavy Vehicle Road Reform agenda should focus on:

- **Establishing an independent regulator to set heavy vehicle charges**, ensuring that independent regulation extends to heavy vehicle toll road and landside port charges
- **Development of the National Service Levels Standards Framework should include productive heavy vehicle access and rest areas as key customer outcomes.** The SLS should be expressed numerically, designed to provide a basis for independent oversight of road expenditure and identify infrastructure gaps in the road network
- **Establish road funds** to provide sustainable, reliable funding that allows longer term decision making, including for road maintenance
- **Deliver monthly registration payment options for heavy vehicles**⁵⁸
- **Any policy proposal to change the heavy vehicle road user charge from a fuel-based charge to a distance-based charge should be subject to a rigorous, independent and transparent benefit-cost analysis.** This should include an assessment of the impacts on different industry sectors.

8. Reform: integrated land use and transport planning

Trucking operators experience the disconnect between land use planning, transport planning and heavy vehicle access as an additional cost of doing business.

New industrial and logistics areas are not always connected with investments in road infrastructure to access those precincts, and even if they are, proactive and timely decisions to gazette as-of-right heavy vehicle access to these zones are often not a priority.

Additionally, the ATA is concerned that some local governments seek to add a mix of road uses (such as shared walkways, bicycle lanes and recreational facilities) that then impact and restrict the operations of existing transport businesses located in logistics areas. Whilst planning for active transport modes is important, it needs to be safe in its interaction with heavy vehicles and we ultimately also need to plan for safe, efficient and productive movement of heavy vehicles.

Local governments have to meet a number of existing planning obligations. As an example, NSW local governments have legislated responsibilities to produce local strategic planning statements, which set out a vision for land use over 20 years, the character and values that are to be preserved and how change will be managed. The statements implement actions in regional and district plans and the council's own priorities developed under local government legislation. Ultimately, the statements are intended to shape how development controls evolve over time.⁵⁹

⁵⁸ For further information see [ATA submission on National Transport Regulatory Reform](#), June 2019, 32, 33.

⁵⁹ NSW Department of Planning and Environment, [Guide to the updated Environmental Planning and Assessment Act 1979: Part 3 – Strategic Planning](#), accessed 13 August 2019.

However existing planning instruments are effectively incomplete, as they fail to link to and fail to plan the connections between land use and heavy vehicle access.

As part of their wider land use planning obligations, local government and road managers should be required to produce a heavy vehicle access strategy. These strategies should link land use with providing better, more productive heavy vehicle access, and how road managers will proactively plan and invest to enable the productive delivery of Australia's freight task.

This would better link new logistics developments with road access, and councils would need to consider the impact of other strategies and planning actions on heavy vehicle access.

Failure to plan for heavy vehicle access risks increases in vehicle movements and associated impacts on local communities. These are issues that should be managed through the land use planning system, not by imposing additional regulatory burdens on trucking operators.

9. Reform: urban congestion

The audit also identifies the challenges of growing urban congestion, especially for our fastest-growing cities and the impact on urban freight.

The ATA recommends that governments should:

- **Invest in the productivity and optimisation of the urban road network and deliver the Roads Network Optimisation Program** identified by Infrastructure Australia in February 2016. This program would include works such as optimising traffic flow through intersection treatments, traffic light sequencing, clearways and incident management⁶⁰
- **Plan and deliver urban access for high productivity freight vehicles**, including links to logistics zones and freight routes. The NSW Heavy Vehicle Access Policy Framework for Sydney motorways is one example. The ATA's Truck Impact Chart clearly illustrates that the road space requirements to move a set freight task reduces with the use of high productivity freight vehicles⁶¹
- **Not impose higher toll road charges on high productivity freight vehicles and end the practice of increasing the truck toll multiplier.** HPFVs reduce total truck movements, and higher charges discourage their use. This principle should also apply to any proposals for a congestion charge. The Grattan Institute's recommendation to implement congestion charges in Sydney and Melbourne (with higher charges for heavy vehicles) assumes that heavy vehicles take up more space on the road, accelerate more slowly and thus cause more congestion. But this analysis does not appear to account for the actual travelling road space requirements for trucks and cars or how many truck movements would be required if the urban freight task was to be moved in smaller, light commercial vehicles⁶²

⁶⁰ Infrastructure Australia, February 2019, [Infrastructure Priority List](#), 46.

⁶¹ ATA, March 2018, [Truck impact chart](#).

⁶² Grattan Institute, 2019, [Right time, right place, right price](#), 14.

- **Not implement urban road design solutions which constrain productive freight movements.** For example, the Grattan Institute has recommended the introduction of narrower traffic lanes⁶³ which would have potential impacts on accessibility for high productivity freight vehicles and on increasing heavy vehicle width. Increasing heavy vehicle width to 2.6m is a necessary policy reform for international harmonisation of vehicle standards and reducing emissions from refrigerated vehicles⁶⁴
- **Not impose unnecessary curfews and regulatory restrictions on truck movements,** which may result in increased truck movements over longer, less direct routes. These restrictions are usually an attempt to mitigate community impacts from heavy vehicles, which usually are a result from failing to integrate land use planning and heavy vehicle access
- **Not create unrealistic expectations around the ability for night deliveries to handle the urban freight task.** Night delivery trials and proposals do not often adequately consider:
 - The safety issues involved in night operations, due to the increased risk of fatigue related crashes
 - Willingness and cost for customers to open at night to receive deliveries
 - Planning restrictions, truck curfews and the impact on local community amenity of night operations. Increasing residential densities and mixed-use development in and around commercial tenancies decrease the likelihood of community acceptance of night deliveries.

Ultimately urban congestion is largely the result of light vehicle movements and governments will need to implement solutions involving land use planning, transport planning, public transport investments and road infrastructure upgrades which address specific urban needs.

⁶³ Grattan Institute, 2019, [Why it's time for congestion charging](#), 21.

⁶⁴ ATA, October 2019, [Submission to expert panel consultation on low cost abatement](#), 6.

RECONCILIATION OF THE DRAFT PC RECOMMENDATIONS WITH THIS SUBMISSION

Draft Recommendation	ATA response	Relevant section and recommendations of this submission
<p>PC DRAFT RECOMMENDATION 4.1</p> <p>The Transport Infrastructure Council should request that the National Transport Commission undertake a review of significant derogations from the Heavy Vehicle National Law and the Rail Safety National Law, with the aim of reducing regulatory inconsistency.</p> <p>The Council of Australian Governments should commit to altering or removing derogations, or altering the national laws, to achieve best practice regulation.</p>	<p>Intent supported, but derogations should be reduced through the current HVNL review.</p> <p>Draft recommendation should be amended in line with ATA recommendation 4.</p>	<p>Section 6</p> <p>Recommendation 4</p>
<p>PC DRAFT RECOMMENDATION 4.2</p> <p>The national regulators should phase out Service Level Agreements (SLAs) with State and Territory agencies by absorbing these functions at the earliest opportunity.</p> <p>Where there is a business case to use SLAs with third parties, those parties should act under the direction of the national regulators to ensure consistent decisions across jurisdictions.</p>	<p>Supported</p>	<p>Section 8</p>
<p>PC DRAFT RECOMMENDATION 5.1</p> <p>State and Territory governments should seek to improve general road users' understanding of driving safely in the vicinity of heavy vehicles through education and enforcement measures.</p>	<p>Strongly supported</p>	<p>Section 9</p>
<p>PC DRAFT RECOMMENDATION 5.2</p> <p>The Council of Australian Governments should amend the Heavy Vehicle National Law to give the National Heavy Vehicle Regulator (NHVR) greater scope to provide concessions from prescribed aspects of fatigue management regulation, where the NHVR is satisfied that more effective systems of fatigue management are in place, such as technology enabled management systems, and/or accredited management systems.</p> <p>Driver fatigue laws should continue to set outer limits on driving hours.</p>	<p>Intent supported, in line with ATA recommendation 5.</p>	<p>Section 6</p> <p>Recommendation 5</p>

<p>PC DRAFT RECOMMENDATION 6.1</p> <p>Local governments should share engineering expertise and agree to consistent access arrangements for shared roads. The Australian Government should work with states and territories to encourage this collaboration. States and territories should report to the Council of Australian Governments in early 2020 on the status of this work.</p>	Supported	Section 7
<p>PC DRAFT RECOMMENDATION 6.2</p> <p>The Australian Government should seek simpler heavy vehicle classifications through the National Transport Commission's review of the Heavy Vehicle National Law for the purposes of access decisions. Additionally, the National Heavy Vehicle Regulator should provide more detailed and effective guidelines to road managers.</p>	Supported	Section 7 Recommendation 8
<p>PC DRAFT RECOMMENDATION 6.3</p> <p>The National Heavy Vehicle Regulator should continue improving its data management processes, including how data are stored, integrated, analysed and reported.</p>	Supported	Section 8
<p>PC DRAFT RECOMMENDATION 6.4</p> <p>The Council of Australian Governments should direct road managers (including the state road authorities) to work with the National Heavy Vehicle Regulator to rapidly expand key freight routes covered by notices and allowing as of right access for larger vehicle types. The focus of this work should include:</p> <ul style="list-style-type: none"> • expanding the networks available for heavy vehicles with performance characteristics equivalent to B doubles (including Performance Based Standards (PBS) level 2A and 2B B doubles) and type 1 and 2 road trains (including PBS equivalents) • where there are classes of vehicles for which permit applications are almost universally approved, developing notices covering these vehicles • meeting infrastructure requirements such as truck stops and logistics centres near major urban centres, allowing larger vehicles to be broken down into smaller units where required by urban road network constraints. 	Supported	Section 7 Recommendation 9

<p>PC DRAFT RECOMMENDATION 6.5</p> <p>The National Heavy Vehicle Regulator, the Office of the National Rail Safety Regulator and the Australian Maritime Safety Authority should monitor the compliance and administrative costs created by the national regimes and report on the level and change in these costs in periodic (say 3 yearly) reporting. The first report should be published in 2020 to establish benchmark costs.</p>	Supported	Section 8
<p>PC DRAFT RECOMMENDATION 7.1</p> <p>The Australian Government should lead efforts through the Transport and Infrastructure Council to reform the Heavy Vehicle National Law. It should encourage State and Territory governments to remove prescriptive material from the legislation and to include an explicit mandate for the National Heavy Vehicle Regulator to take a risk based approach to its functions.</p>	<p>Supported, with modifications.</p> <p>The HVNL should adopt a three-tiered legislative structure.</p> <p>Accreditation under the HVNL should be amended so that the NHVR regulates certification scheme providers but does not run one itself.</p>	<p>Section 6</p> <p>Recommendation 2</p> <p>Recommendation 5</p> <p>Recommendation 6</p> <p>Recommendation 7</p>
<p>PC DRAFT RECOMMENDATION 7.2</p> <p>The Transport and Infrastructure Council should agree to have all regulatory functions still held by participating jurisdictions transferred to the National Heavy Vehicle Regulator no later than 1 January 2022.</p>	Supported	Section 8
<p>PC DRAFT RECOMMENDATION 7.3</p> <p>The Transport and Infrastructure Council should direct the National Heavy Vehicle Regulator to undertake the comprehensive collection and reporting of key safety risks and outcomes, similar to the Office of the National Rail Safety Regulator's annual Rail Safety Report.</p>	Supported, but should be undertaken by the Office of Road Safety.	Section 8

<p>PC DRAFT RECOMMENDATION 8.1</p> <p>The Australian Government should amend the Australian Design Rules and in service vehicle standards to allow for new transport technologies, including automated technologies, with proven productivity or safety benefits. The Australian Government should aim for national and international consistency of laws and standards where practicable, and accept safety devices adopted in other leading economies. The Council of Australian Governments should investigate whether a 'deemed to comply' approach would be practical for some technologies.</p>	<p>Supported.</p> <p>AEBS should be mandated for new heavy vehicles.</p>	<p>Section 12</p>
<p>PC DRAFT RECOMMENDATION 8.2</p> <p>The Australian Government should co operate with stakeholders including Transport Certification Australia when developing the National Freight Data Hub. The Hub should include a regulatory framework for the collection, storage, analysis and access of transport data, including telematics data. This framework should specify the data access powers of regulators, enforcement agencies and accident investigation bodies, and should enable these bodies sufficient access to undertake their respective tasks, while protecting privacy and confidentiality.</p>		<p>Section 12</p>
<p>PC DRAFT RECOMMENDATION 8.3</p> <p>The Australian Government should impose a general safety duty on all parties with a significant influence over the safe operation of autonomous transport technologies. The creation of a general safety duty should not preclude the use of prescriptive rules where the assessed risks are high.</p>	<p>Supported</p>	<p>Section 12</p>
<p>PC DRAFT RECOMMENDATION 9.1</p> <p>Governments (and their agencies) and industry should consider how best to harness logistics and telematics data to improve incentive based safety regulation, with the aim of influencing behaviours that increase safety and productivity.</p> <p>Governments and regulators should aim to facilitate the adoption of technologies by operators to generate and share data by:</p> <ul style="list-style-type: none"> • providing legal assurances about the acceptable use of such data • clarifying the value proposition to individual operators of their participation in data sharing regimes. 		<p>Section 12</p>

<p>PC DRAFT RECOMMENDATION 9.2</p> <p>The Australian Government should direct the Australian Transport Safety Bureau (ATSB) to undertake a defined, targeted trial of incident investigation for heavy vehicles, with adequate additional resourcing for the task. Subject to the successful outcome of the trial, the Government should amend the <i>Transport Safety Investigation Act 2003</i> to confirm investigation of incidents involving heavy vehicles as a function of the ATSB.</p>	Strongly supported	Section 5 Recommendation 1
<p>PC DRAFT RECOMMENDATION 9.3</p> <p>The Australian and State and Territory Governments should:</p> <ul style="list-style-type: none"> • formalise the role of the Australian Transport Safety Bureau to investigate all serious incidents involving domestic commercial vessels, and agree a funding model to support this role • agree to a funding model to enable the Australian Transport Safety Bureau to adequately carry out its established role in the investigation of rail safety incidents. 	Strongly supported	Section 5 Recommendation 1
<p>PC DRAFT RECOMMENDATION 9.4</p> <p>The remit of the Australian Transport Safety Bureau should be extended to include any incident where autonomous technologies at or above SAE level 3 autonomy may have been involved.</p>	Strongly supported	Section 5 Recommendation 1
<p>PC DRAFT RECOMMENDATION 10.1</p> <p>The Council of Australian Governments should provide support to ensure local government has the financial and technical capacity to deliver its role as asset manager for local roads. Transparency and accountability of performance should accompany any additional support, particularly with respect to processing times for access permits and the use of notices to gazette heavy vehicle routes.</p> <p>This should be pursued in the context of broader changes under the Heavy Vehicle Road Reform agenda.</p>	Conditionally supported	Section 7

<p>PC DRAFT RECOMMENDATION 10.2</p> <p>The national regulators (particularly the National Heavy Vehicle Regulator and the Australian Maritime Safety Authority) should move towards cost recovery arrangements in line with the Australian Government Cost Recovery Guidelines. Consistent arrangements across the three transport regulators will eliminate the risk of distorting intermodal choices.</p>	<p>Revise in light of the industry's funding for the NHVR through the regulatory component of heavy vehicle charges.</p>	<p>Section 8 Recommendation 12</p>
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