



20 January 2020
Our Ref: CCF/586 DOC20/2149

Mr Jeremy Nott
Inquiry Manager, National Transport Regulatory Reform
Productivity Commission
LB2 Collins Street East
Melbourne VIC 8003

Dear Mr Nott

NHVR'S SUBMISSION TO THE PRODUCTIVITY COMMISSION DRAFT REPORT

The National Heavy Vehicle Regulator (NHVR) welcomes the opportunity to respond to the Productivity Commission's (PC) draft paper on *National Transport Regulatory Reform* (the Draft Report).

This submission addresses the heavy vehicle related recommendations contained in the Draft Report; providing the NHVR's position in relation to each, as well as further commentary on our organisation's vision for the future.

Firstly, I would like to commend the work of the PC to date. Within a relatively short time, the PC has not only understood the complexities of the national transport regulatory environment, but developed a suite of recommendations, which, if implemented, will deliver significant reform benefits for decades to come.

Since the review was announced in May 2019, the NHVR has worked extensively with the PC to provide a thorough understanding of the NHVR's operations, while also identifying key challenges and opportunities. The NHVR remains committed to continuing to support the PC in providing relevant information and data in the finalisation of the PC's report.

With this significant review undertaken simultaneously with the review of the Heavy Vehicle National Law (HVNL), the NHVR believes we have a collective responsibility to embrace this opportunity to deliver a stronger and more flexible platform to achieve significant safety and productivity gains.

I believe it is essential that the National Transport Commission (NTC) provide sufficient time within the HVNL review to fully consider the PC's recommendations before progressing with any proposed legislative amendments.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Sal Petrocchio', is written over a light blue horizontal line.

Sal Petrocchio
Chief Executive Officer

Enc (1): NHVR Response to PC Draft Report - Heavy Vehicle Recommendations

NHVR Response to PC Draft Report - Heavy Vehicle Recommendations

Overview:

Overall, the PC recommendations align with the NHVR's future vision for better heavy vehicle regulation. Effective delivery of the recommendations will be achieved by all levels of government working together in a disciplined and consistent manner.

The NHVR administers a national system that strives to deliver consistent, streamlined regulatory services to the Australian heavy vehicle industry, reducing regulatory burden while enabling greater safety and productivity.

With a new decade having just commenced, the NHVR's number one priority remains the safety of the heavy vehicle industry and the Australian community. We believe a safer industry is a more productive one and that unsafe business practices improperly distort the market for transport services.

At a high level, key reforms the NHVR consider as central to its future vision include:

- Empowering industry and the supply chain to identify and better manage safety risks as well as acknowledging the efforts in doing so;
- Ensuring safety risks are managed in a way that reflects the needs of the person behind the wheel, not administrative processes; and
- Providing a modern and responsive access regime that recognises the benefits of safer and more productive vehicles and removes permits and delays.

Overall, the NHVR supports all heavy vehicle related recommendations in the Draft Report, noting they broadly align with the NHVR's future strategic direction, including notably:

- advocating for a less prescriptive Heavy Vehicle National Law, particularly concerning fatigue;
- effective transition of regulatory services from HVNL-participating states and territories to the NHVR;
- increasing the number of PBS vehicles in Australia's heavy vehicle fleet;
- expanding the number of freight routes covered by notices; and
- working closely with (and providing support) to road managers to open up access.

The draft PC recommendations (as well as responses to the PC's requests for additional information) are discussed in more detail below, grouped under the Draft Report theme questions.

Overarching Theme: Do we have nationally consistent regulatory regimes?

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.'

Supported by the NHVR ✓

As noted in Draft Finding 4.2 of the Draft Report, there are over 70 derogations in the HVNL, with many creating unnecessary costs and complexity for industry and regulators and contrary to the objectives of the COAG harmonisation reforms, which were agreed in 2009.

The NHVR considers that the most significant gains in achieving national consistency is through the removal of unnecessary state/territory derogations. The work of the NTC in reviewing and reforming the HVNL can reach its full potential with the commitment of COAG to introducing national consistency in the way the law operates across participating jurisdictions. If achieved, this will deliver significant benefits to industry by reducing regulatory inconsistencies and confusion.

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.'

Supported by the NHVR ✓

The NHVR strongly supports this recommendation, noting it closely aligns with the organisation's vision for delivering a consistent and streamlined regulatory environment for the heavy vehicle industry. In recent years, the NHVR has transitioned regulatory services from state and territory departments in South Australia, Tasmania, the Australian Capital Territory, and Victoria, (who officially transitioned regulatory services to the NHVR on the 8th of December 2019).

These transitions have only occurred with the strong partnerships and the continuing support of participating jurisdictions. Due diligence work is underway for the future transition of New South Wales and discussions with Queensland are continuing on agreeing a transition date.

Overarching theme: Has harmonisation of transport regulation improved safety?

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.'

Supported by the NHVR ✓

The NHVR believes educating general road users about how to drive safely around heavy vehicles is a mutual responsibility that should be shared by a wide range of parties. This includes all tiers of governments (Commonwealth, state/territory and local), the NHVR, the heavy vehicle industry, light vehicle drivers and companies that rely on heavy vehicles for passenger and road freight transport.

The NHVR also believes there are significant benefits to be achieved, particularly in terms of reach and cost effectiveness, by adopting a national approach to public education campaigns.

The Heavy Vehicle Safety Initiative (HVSIs), which is administered by the NHVR on behalf of the Commonwealth Government, has funded several public education initiatives since the program's inception in 2016, including the NHVR's current 'We need space to keep you safe' campaign.

Other HVSIs-funded initiatives (past, present and future) include:

- National Farmers Federation's *Common Roads, Common Sense* campaign
- Caravan Industry Association of Australia's *Co-Exist* campaign
- Whiteline Television's *Truckies' Top Tips for Sharing the Road* and new heavy vehicle driver/caravan education;
- Transafe WA's Safety Truck;
- Greater Bendigo City Council's *Truck Wise* program;
- Women in Trucking Australia's driver safety television campaign, and;
- Brisbane City Council's *Safer Travel Together*

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.'

Supported by the NHVR

The NHVR strongly supports this recommendation and views its adoption as a crucial component towards ensuring the focus on fatigue going forward is on managing the fatigue safety risk, rather than counting hours.

In terms of fatigue management, the NHVR believes that the HVNL review must deliver a multi-tiered approach, incorporating both risk-based and prescriptive arrangements. Those within the industry that can demonstrate effective driver fatigue risk management should face minimal interference from prescriptive requirements, whereas those who prefer to use prescriptive arrangements have the option to do so.

To achieve a risk-based fatigue management approach, the NHVR believes five (5) key reforms to the HVNL are essential:

1. Adopt fatigue risk management as the default fatigue safety object of the law;
2. Introduce a rule development power to enable the NHVR to develop standards for work and rest hours, record keeping and alternative means of compliance;
3. Remove prescriptive standards for work and rest limits and record keeping into subordinate standards;
4. Revise provisions being retained to correct any errors or inconsistencies, and;
5. Introduce a power for no-fault investigations and reporting for building knowledge.

NHVR Fatigue Monitoring Trial:

In support of this recommendation, the NHVR has been working with independent consultants and heavy vehicle operators to conduct the NHVR's Fatigue Monitoring Trial. The purpose of the trial is to assess the compatibility of fatigue/distraction detection technologies with heavy vehicle operations and develop a framework to support industry uptake of valid and reliable technology that detects fatigue and/or distraction. Fatigue and distraction detection technology/devices have the ability to identify potential incidents caused by heavy vehicle driver fatigue before they occur.

It is clear, even in these early stages that there are potential fatigue safety benefits from regulatory recognition. The Regulator believes this recognition is essential if these technologies are to be taken up by the majority of heavy vehicle operators.

Overarching Theme: Have the COAG reforms raised productivity?

DRAFT RECOMMENDATION 6.1

'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.'

Supported by the NHVR

As noted in Draft Finding 6.1, '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.'

In support of this recommendation is the \$8 million funding commitment to the NHVR (under the 2019/20 Federal Budget) to undertake a strategic local government bridge and infrastructure program focused on heavy vehicle access. The heavy vehicle framework will combine existing agency data in a common format, with a series of baseline assessments, and the option to provide more advanced assessment data upon collection. Assessment of key assets on local and regional freight routes will also assist the Commonwealth and state governments with decision making around infrastructure investment. Throughout this assessment the NHVR will be able to identify bridges and other assets on key freight routes which are in need of improvement or replacement, supporting significant productivity benefits. This program ensures council infrastructure funding programs can be directed towards the capital cost of upgrades and replacements, rather than assessments.

DRAFT RECOMMENDATION 6.2

'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.'

Supported by the NHVR

As noted in Draft Finding 6.2, the unnecessary complexity of the vehicle classifications has limited the progress of faster access approvals as it is not easily understood by industry and road managers.

For example, a livestock carrier is considered a class 2 heavy vehicle (section 136 of the HVNL). However, once operating under a livestock loading scheme, the vehicle is then considered a class 3 heavy vehicle (section 116 of the HVNL). This would require an operator to obtain both class 2 and class 3 permits for a journey.

The NHVR believes the heavy vehicle classification system should be simplified and replaced with a risk-based approach to access, based on the performance of a vehicle within an agreed envelope (i.e. freight, OSOM). Under a risk-based access regime, the NHVR may be authorised to make and use risk assessments in managing heavy vehicle access. The NHVR does not propose to diminish the authority of road managers in consenting to heavy vehicle road access. Rather, the NHVR would take a more proactive role in working with road managers – particularly by categorising access cases by risk. This would support road managers by better informing them of which are the key risks they should and need not focus on assessing to determine whether to consent to access

or not. An envelope represents a heavy vehicle type, or characteristic to which a road manager has previously consented to access on a given road. The NHVR would use that consent as a precedent in assessing other heavy vehicle types with characteristics within the precedent's 'envelope' as low risk access propositions.

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.'

Supported by the NHVR ✓

Establishing consistent approaches to data management

The NHVR agrees there should be a consistent approach to sharing of data and information that can help the Regulator deliver an intelligence-led and risk-based approach to safety.

The NHVR has established a number of systems and tools to collect national heavy vehicle compliance and monitoring data. This includes information gathered using the national safety camera network (including state and territory cameras) and compliance monitoring system as well as other key inputs such as accreditation status and registration information. This information feeds directly into the NHVR Safety and Compliance Regulatory Platform (SCRIP), which is a cloud-based system; that analyses data to produce intelligent information about the heavy vehicle industry.

Partnership is essential:

The NHVR is improving the collection and use of data to deliver a more efficient and effective compliance function and improved safety outcomes. However, this can only be achieved through partnerships with industry and government. To ensure the success of this approach, it is essential that all parties are committed to improving data quality and agreements for data collection and sharing.

As part of the HVNL Review, the NHVR has recommended to the National Transport Commission that the future HVNL should allow for greater sharing of data between industry and the NHVR to foster greater cooperation. This would allow the NHVR to understand and target the root cause of the safety and/or compliance issue, and not just the issue that manifests as a safety risk on the roads. The NHVR could then deploy authorised officers to address immediate high-risk, non-compliance and deploy other trained officers to work with industry on understanding and eliminating the root cause of problems in a more cost-effective way.

The ability to make evidence based decisions and assess performance relies on the availability of data from relevant data providers, both government and non-government. An effective data sharing model across government and industry is critical in driving productivity gains and effective regulation.

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.

Supported by the NHVR

As noted in the Draft Finding 6.5, there is scope to rapidly increase the number of gazetted routes, reducing the need for permit applications. Notices are the most efficient means of providing access compared to permits as they require only a single consent by relevant road managers that lasts for the notice duration (typically 5 years) and provides immediate access to any heavy vehicle operator complying with the notice conditions.

A key improvement achievable in the short term is for the NHVR and road managers to agree on implementing a program of low-risk heavy vehicle access enhancements. This would mean gazetting low-risk, currently permit-based heavy vehicle access movements so that they may operate under notice. Examples of these movements include:

- The large number of low risk, class 1 (OSOM) heavy vehicle movements currently administered under permit but with a history of near-uniform access approval.
- Immediately expanding PBS road networks to at least those roads under which corresponding, non-PBS heavy vehicles can already operate under notice, including:
 - All PBS Level A road networks (which limit PBS heavy vehicle lengths to those of corresponding, non-PBS variants)
 - PBS Level B road networks (which incorporate the same performance/ safety standards as for PBS Level A heavy vehicles and networks - but provide an incremental increase in vehicle length limit).

These improvements to heavy vehicle access reflect the risk-based principles proposed by the NHVR in our 'Easy Access to Suitable Routes' submission to the NTC's HVNL Review. They can be made without delay by road managers - in partnership with the NHVR.

The NHVR also has the ability to use information from the NHVR Portal to expand gazetted networks. The NHVR will start to work more closely with road managers to use trend information from applications processed through the Portal to identify potential gazetted network opportunities, including those that may not have been previously considered. Where a trend indicates significant repetitive applications and granted-consents, a substantiated case can be presented more frequently to road managers to develop notices for these vehicles.

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.'

Supported by the NHVR (clarification requested)

The NHVR supports this recommendation and already monitors compliance and administrative costs. However to avoid doubt or misinterpretation, further information is requested to be included in the final report regarding the required detail and inclusions.

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.'

Supported by the NHVR

The NHVR strongly supports this recommendation as an essential step towards creating a future regulatory model, which improves the focus on safety outcomes and reduces administration and compliance burden for industry.

As highlighted in the NHVR's submission to the NTC's Risk Based Regulation issues paper, the NHVR's everyday work is governed by the HVNL. Consequently, this puts the NHVR in a unique position in understanding the challenges created by the existing law, seeing first-hand how the law can be interpreted and applied, and how it impacts the industry and the outcomes of the broader transport task.

The largest areas of complaint from industry relate to:

1. Prescriptive fatigue regulations that don't necessarily deliver the required safety outcomes; and
2. A slow and cumbersome access decision making process that doesn't recognise the benefits of safer and more productive vehicles.

Key principles to delivering a modern legislative base that encourages and adapts to the evolving needs of industry and the road transport task; include:

- Providing a clearer mandate within the law for the NHVR to take a risk-based approach to regulatory functions;
- Simplifying the law so it can be understood and effectively used by industry, governments, regulators and enforcement agencies;
- Removing unnecessary derogations, and;
- Wherever possible, ensure administrative and regulatory details are dealt with through regulation and legally enforceable guidelines, standards, codes of practice and business rules.

These needed reforms are widely accepted by industry. However, as this recommendation notes, it is essential that the Australian Government provides a leadership role in this area to ensure this desired outcome is reached; resulting in a better HVNL for the future.

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.'

Supported by the NHVR

This recommendation closely aligns with Recommendation 4.2 (relating to the phasing out of Service Level Agreements). The PC report provides a number of examples as to why the timely transition of regulatory services to the NHVR from participating jurisdictions is a priority action towards delivering better heavy vehicle regulatory outcomes.

The NHVR is working closely with partnering jurisdictions to ensure the successful and smooth transition of services as soon as possible.

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.'

Supported by the NHVR

While the NHVR supports this recommendation, the regulator's ability to undertake the comprehensive collection and reporting of key safety risks will be dependent on a number of factors, including:

- Currently, heavy vehicle operators are not required to report serious heavy vehicle related safety incidents or crashes to the NHVR. Legislative changes (to the HVNL) would therefore be necessary to enable this requirement; and;
- The NHVR has very limited access to causal factor data and information from jurisdictional police services (following police investigations of serious heavy vehicle related crashes and incidents).

It should also be considered that ONRSR also reports on a much smaller group of organisations. The success of this recommendation would therefore be dependent upon providing the NHVR with the appropriate authority to collect the information.

Overarching Theme: Transport technology and data

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.'

Supported by the NHVR

The NHVR supports the adoption of innovative vehicle designs, including technologies designed to assist drivers to operate safely and those which can reduce noise and emissions.

Further innovation can be realised through the Performance Based Standards (PBS) Scheme, which is focused on supporting a more flexible approach to vehicle design based on how the vehicle performs, than a prescribed and restrictive vehicle combination.

We advocate for the increased harmonisation of Australian vehicle standards to allow for the latest designs from origin markets.

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.'

Supported by the NHVR

Data is essential to the effective operations of a regulatory authority and will contribute to a future state where effective multi-modal freight analysis provides productivity and safety benefits for the heavy vehicle industry. A stronger understanding of the movement of heavy vehicles across Australia's freight network will assist the development of policy that leads to greater productivity and safety benefits for the heavy vehicle industry.

Better data will support the NHVR (and other key organisations to):

- Formulate informed operational decisions;
- Improve investment decisions; and
- Increase the sophistication of performance measurement and benchmarking.

Again, leadership at the national level is essential to driving this work, which requires the partnership of all state and territory governments, as well as industry. Benefits will be delivered if the hub is set up, adopted and used properly by authorities and industry. It is essential that governments know what information is needed from industry and that this information is collected in a collaborative way.

A number of steps are required in ensuring the hub is successful, including ensuring relevant parties in the freight task agree the safety and productivity outcomes that data can help achieve; leveraging and sharing from the investment many transport companies have made in technology. It is also necessary to establish appropriate governance arrangements, which articulate how the data will be used.

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.'

Supported by the NHVR

The NHVR supports this broad recommendation, noting that the requirement of a general safety duty on parties of influence relating to autonomous transport technologies principally aligns with the current HVNL Chain of Responsibility general safety duty for related parties of influence.

Overarching Theme: A reform agenda for safer transport

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.'

Supported by the NHVR

As part of the HVNL Review, the NHVR's response to the NTC's Effective Enforcement issues paper outlined a number of approaches that would enable the NHVR to deliver a modern, agile and responsive regulatory regime.

Recognition of technology

The HVNL needs to be flexible enough to foster innovation yet simple enough for small operators to have certainty of their obligations. Over 70 percent of registered heavy vehicle operators have between one and five vehicles and may not have the capacity for significant investment in new technology. These operators will require certainty from the HVNL as to what is needed to achieve the necessary safety and compliance outcomes.

Larger operators are investing in new innovations not recognised by the current HVNL. These innovations may have better, although untested, outcomes than those specified in the HVNL. A future HVNL should allow the NHVR to incentivise innovations provided there is a pre-determined assurance mechanism between the NHVR and the operator.

For example; operators are implementing fatigue monitoring devices which are more accurate at predicting a fatigue event than simply counting and recording work and rest hours, which does not account for how tired a driver was at the commencement of a shift or any other factors that may affect a driver's level of fatigue.

Currently, innovative solutions do not allow an operator to be exempt from the provisions of the written work diary. The NHVR should have the ability to exempt or incentivise innovative operators from the administrative burden of maintaining work diaries if they share data under a pre-agreed monitoring arrangement with the NHVR.

Greater partnerships with industry

In addition to allowing incentives for industry as described above, the future HVNL should allow for greater sharing of data between industry and the NHVR to foster greater cooperation.

A simplified ability to share information between industry and the NHVR would allow the NHVR to assist industry with voluntary compliance. For example, if a pattern of low risk non-compliance was identified, the NHVR could share this information with the operator to 'nudge' them back to a compliant state. This is a much simpler and more effective method of behavioural modification than enforcement.

The NHVR could then deploy authorised officers to address immediate high-risk non-compliance and deploy other trained officers to work with industry on understanding and eliminating the root cause of problems in a more effective way.

The NHVR believes that a future HVNL should include provisions that allow the NHVR to develop guidelines, standards or business rules that set the requirements for industry to share voluntary compliance data with the NHVR.

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.'

Supported by the NHVR (More detail requested)

The NHVR supports this recommendation, noting that a defined targeted trial would be required to identify the most appropriate way for the ATSB to undertake investigations in the heavy vehicle regulatory environment. It is recommended that the final report provide more information as to how the PC foresees this role operating in relation to heavy vehicle incidents.

As part of the HVNL Review, the NHVR has recommended regular systematic assessment and investigation of safety issues to monitor the effectiveness of current controls in the regulatory framework (and identify new and emerging safety issues in heavy vehicle operations). This would include the introduction of no-fault investigations by the NHVR to build knowledge on the antecedents of heavy vehicle incidents. This proposed role of the NHVR in this area should be considered in relation to this recommendation.

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.'

Supported by the NHVR

The NHVR supports (in principle) the expansion of the ATSB's remit in this area.

Overarching Theme: A reform agenda for transport productivity

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.'

Supported by the NHVR

While the NHVR continues to work to support road managers in undertaking their role, we acknowledge that (and as noted in Draft Finding 10.1) a number of local governments are struggling to deliver timely heavy vehicle access assessments; with limitations in resourcing, data, technical skills and other factors affecting efficiency in this key area.

The NHVR is supportive of looking at options of how to best provide funding to road managers in a way that incentivises and acknowledges the efforts of road managers in making timely access decisions and the use of notices to gazette further heavy vehicle routes (where it is safe and appropriate). Under such a model, funding should be targeted to where it is most needed- increasing the technical capacity of road managers and supporting the maintenance of local roads to produce greater productivity and safety benefits.

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.'

Supported by the NHVR

As a general principle, the NHVR is very supportive of cost recovery. However, the organisation is cognisant that in some circumstances cost recovery may neither be practical or of assistance in achieving the prescribed regulatory functions and desired productivity and safety outcomes for the benefit of industry and the community (and hence the NHVR will continue to consider appropriate fee arrangements on a case by case basis). It should be noted that during 2018-19 the NHVR undertook a review of costs of a number of core service transactions based on the Australian Government Cost Recovery Guidelines to establish base lines and to gauge the cost efficiency and extend of cross subsidisation within service areas.

ADDITIONAL INFORMATION REQUESTS FROM THE PC

INFORMATION REQUEST 5.3

The Commission is seeking additional information about the situations where greater clarity is required between the operational jurisdiction of national transport regulators and workplace health and safety regulators and overlaps in their responsibilities. What options for rectification would be desirable?

NHVR response:

While workplace health and safety (WHS) and transport regulators utilise similar approaches to improve safety outcomes, the safety focus of each regulator is significantly distinct. For WHS regulators the focus is on maintaining worker health, while national transport regulators have the broader obligation to reduce public harm. Synergies exist but the responsibilities are complementary, not duplicative. Where there is potential for overlap the national transport regulators have provisions already to give primacy to WHS legislation (see for example, s 18 of the HVNL). Meeting the requirements of national transport regulators builds on, and has the benefit of, the experience of meeting the requirements of WHS regulators. On its own, meeting WHS requirements would not ensure transport industry participants have met transport obligations, or a "social licence" to operate.

The risk and likelihood of a transport worker being hurt in a crash is different to the risk that a transport activity may place on other road users and the likelihood they may be hurt due to the incompatibility of a truck with other vehicles and infrastructure that may be involved. WHS laws are generally geographically confined and many workplaces are restricted to members of the public, limiting their exposure to harm. Transport legislation recognises that obligations exist beyond the geographical boundaries of defined workplaces where regulated parties are regularly interacting with non-regulated parties (i.e. members of the public) in public places. The presence of appropriate specialist regulators with the ability to set clear, evidence-based, context specific expectations to prevent public harm is beneficial to the transport industry. In this way, specialist transport regulators can go further than WHS and provide greater guidance. In this context, the NHVR believes that there is no necessity for rectification.

INFORMATION REQUEST 9.1

The Commission is interested in further information regarding the safety implications of commercial contracts in the industries covered by the Heavy Vehicle National Law (HVNL), Rail Safety National Law (RSNL), and the Marine Safety (Domestic Commercial Vessels) National Law (MSNL). In this regard, the Commission would be interested in understanding the effectiveness of safety duties applying to various businesses through the supply chain (for example, Chain of Responsibility, Workplace Health and Safety).

NHVR response:

Many industries are covered under the HVNL, as transport activities are undertaken across many different supply chains. The question of whether safety duties add any additional value, other than that covered by WHS legislation must address the aspect of reducing public harm. Explicit safety duties in the HVNL fill the gaps for transport activities, for instance, in relation to chain of responsibility which covers engagement of staff and sub-contractors. Many of the entities regulated by the transport specific legislation would potentially not be captured as a PCBU (person conducting a business or undertaking) in the WHS legislation. The transport specific legislation also recognises the importance of upstream entities placing commercial pressure on regulated entities which can lead to decreased safety outcomes, as opposed to more immediate abilities to control and influence entities at a defined workplace with WHS legislation.

Safety duties are a proactive approach to ensure that responsibility is placed on those who have a greater level of influence over the safety of transport activities (to place a proportionate level of pressure on those who have less influence through the supply chain). The current legislation was only enacted in October 2018, and thus, it is too early to know the full extent of effectiveness of this legislation. In early 2020 however, the NHVR will investigate the implementation of safety duties and culture throughout the transport industry as part of the heavy vehicle industry safety survey.

