



NATIONAL ROAD TRANSPORT ASSOCIATION

Submission to the National Transport Commission

Effluent and load restraint – Discussion Paper

6 July 2018

Introduction

1. The National Road Transport Association (NatRoad) is pleased to make comments on the Discussion Paper entitled *Effluent and load restraint*¹ released by the National Transport Commission (NTC) in May 2018.
2. NatRoad is Australia's largest national representative road freight transport operators' association. NatRoad represents road freight operators, from owner-drivers to large fleet operators, general freight, road trains, livestock, tippers, express car carriers, as well as tankers and refrigerated freight operators.
3. As sought by the NTC, NatRoad now provides feedback on possible amendments to the Heavy Vehicle National Law (HVNL) to:
 - clarify the application of chain of responsibility duties for parties in the livestock supply chain, and
 - allow for minor, incidental and unavoidable (in any practical sense) effluent spills that do not compromise the overriding safety objectives of the load restraint provisions.

Load Restraint Requirements

4. The Discussion Paper notes that the livestock supply chain is different to the movement of other types of freight. As noted at page 4 of the Discussion Paper "Due to the live nature of animals, it is inevitable that they will release bodily fluids over the course of the journey." In NatRoad's understanding, livestock can lose up to 5% of their weight during transit. Higher levels of loss (up to this percentage level) occur where feed and water curfews are not implemented prior to transport.
5. The Discussion Paper also notes that the loss of animal effluent was not included in the 2004 version of the Load Restraint Guide and was not intended to be a load type that could be restrained.
6. The 2018 Load Restraint Guide² (not mentioned in the Discussion Paper) contains useful guidance³ but does not assist with the issues set out in the Discussion Paper.
7. The Discussion Paper has a focus on load restraint and the consequences of effluent spills. It does not analyse potential breaches of other statutes such as the various State and Territory environmental protection statutes.
8. As noted in the Discussion Paper, the current provisions of the Heavy Vehicle National Law (HVNL), particularly section 115, when strictly applied, means any load spillage or leakage is evidence of a load restraint breach and could lead to prosecution. With the structure of the current law, that responsibility now falls on the driver of the vehicle.
9. In this context, Option 3 in the Discussion Paper (together with the changes proposed regarding chain of responsibility discussed below) should be introduced.

¹ [https://www.ntc.gov.au/Media/Reports/\(1CCC24A8-6323-D721-7EDE-91988513EC70\).pdf](https://www.ntc.gov.au/Media/Reports/(1CCC24A8-6323-D721-7EDE-91988513EC70).pdf)

² [https://www.ntc.gov.au/Media/Reports/\(9E12B22A-6156-41B0-F382-136A34520AF8\).pdf](https://www.ntc.gov.au/Media/Reports/(9E12B22A-6156-41B0-F382-136A34520AF8).pdf)

³ Id pages 133-135

10. Option 3 would sensibly introduce a practical protection against prosecution where the part of the load that has been released has no safety or environmental impact.
11. Option 3 would lead to the situation where the HVNL would be amended to provide that the minor, incidental and unavoidable escape (in any practical sense), release or discharge of part of a load in circumstances such as a minor spillage of effluent does not constitute an offence under section 111 HVNL, the provision which imposes liability for breach of loading requirements.
12. Whilst this solution would obviously fall short of a holistic strategy to deal with effluent control and disposal, it is a common sense approach that would simply solve the legal issue identified where minor spills of effluent (or water or dust) occur during a journey.

Chain of Responsibility: Broad Reform Sought

13. The Discussion Paper raises the question of the utility of the current test of who is a party in the chain of responsibility.
14. The current definition of party in the chain of responsibility does not clearly apply to supply chain parties such as those who prepare livestock for transport.
15. While persons who feed animals may inadvertently be captured by chain of responsibility laws because of other activities (e.g. loading, consigning etc.), the law does not clearly apply consistently to the activity of preparing livestock for transport.
16. NatRoad considers that the way in which a party in the chain of responsibility is defined in the *Heavy Vehicle National Law and Other Legislation Amendment Act 2016* (Amendment Act) will not rectify this problem.
17. Option 1 in the Discussion Paper would specifically capture a person who prepares live animals for transport because those persons would be directly identified in the HVNL definition of party in the chain of responsibility. This would mean that a person who prepares live animals for transport would be included in all chain of responsibility provisions relating to shared responsibility for safety of the heavy vehicle. The addition of this category of persons to the list of parties in the chain of responsibility is a solution to the problem identified in the Discussion Paper but is not consistent with NatRoad's policy of broadening those captured by the chain of responsibility.
18. NatRoad notes that the Discussion Paper (at page 8) says: "This option is consistent with the intent of the chain of responsibility reforms, which are designed to ensure that any party in a position to control and influence on-road behaviour is identified and held accountable." It is from this broader test that the basis of reform should be developed.
19. NatRoad rejects the idea of expanding the specific list of those who are statutorily defined as parties in the chain of responsibility, inclusive of the proposed Option 1.
20. The principal way in which we submit that improvements in the safety of drivers and the public could be enhanced and the problem isolated in the Discussion Paper solved, is by way of further strengthening of chain of responsibility laws beyond the welcome first steps in the Amendment Act. The Amendment Act, imposing new obligations along the chain, is expected to commence from 1 October this year in all jurisdictions that have adopted the HVNL.
21. The changes involve a new chapter of regulation directed at chain of responsibility parties

and the principle of shared responsibility. They include a proactive primary duty on chain of responsibility parties to ensure the safety of transport activities. This primary duty supplements the current provisions where parties are only liable once breaches are detected. The new provisions also include a 'due diligence' obligation on executive officers of entities with a primary duty and prohibit requests and contracts that would cause a driver or chain of responsibility party to breach fatigue requirements or speed limits. However, the definition of a 'party in the chain of responsibility' under the HVNL limits the primary duties to specific persons and does not capture everyone who influences or controls the safety of transport activities in the supply chain, inclusive of those who, for example, do not apply the required feed and water curfews prior to the transport of livestock.

22. We submit that the HVNL should be amended to encompass all parties in the chain of responsibility who have "influence or control" over the transport task. This change would align with the extent of the duty owed to workers whose activities in carrying out work are influenced or directed by the person under the harmonised work, health and safety legislation. Whilst currently the duty under that law is expressed to cover the discharge of the duty to "the extent to which the person has the capacity to influence **and** control the matter", we have urged⁴ the current review inquiry into the harmonised WHS laws⁵ to adopt the broader test of "influence **or** control."
23. Ultimately, we would like to see both the HVNL and the harmonised WHS laws underpinned by an expanded duty holder list defined by reference to those who have influence or control over the transport task and workplace health and safety, the object of the laws as indicated in the Discussion Paper. We believe that this change would effect reform in the industry that would advance safety and incorporate into the chain of responsibility parties who currently escape liability such as those identified in the Discussion Paper.

Conclusion

24. NatRoad supports the Discussion Paper's Option 3.
25. NatRoad urges broader reform to chain of responsibility laws than set out in the Discussion Paper. But given that broader view we support extension of CoR responsibilities to those preparing livestock for transport.
26. The NTC should additionally consider a broader inquiry into effluent management in the transport process. The inquiry should at the least consider the adequacy of disposal facilities that are used to discharge material accumulated in effluent containment tanks, the extent of the installation of effluent containment tanks in the livestock transportation fleet and potential incentives to encourage their installation, the extent of and legal consequences of the unlawful dumping of livestock effluent and solutions to deal with that issue.

⁴ NatRoad submission to the Review dated 26 April 2018

⁵ <https://www.safeworkaustralia.gov.au/law-and-regulation/model-whs-laws/review-model-whs-laws>