



Submission to the National Transport Commission

**Examining the legal framework for the land transport of dangerous goods:
Issues Paper**

3 July 2020

Introduction

1. The National Road Transport Association (NatRoad) is pleased to make comments on the Issues Paper entitled *Examining the legal framework for the land transport of dangerous goods* (Issues Paper)¹ released by the National Transport Commission (NTC) in June 2020.
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, car carriers, as well as tankers and refrigerated freight operators.
3. This submission responds to some of the questions set out in the Issues Paper, noting, for example, that Question 1 is directed to specific businesses and questions 2 and 3 seek responses from competent authorities.

Project Scope and Problem statements

4. The Issues Paper broadly examines the framework for regulating the land transport of dangerous goods in Australia and seeks to identify specific problems that may be the subject of future reform in this area of regulation. But the scope of the current project is much narrower than this statement portrays.
5. In essence, the review is confined to the adequacy of the legal mechanisms that are used to call up the *Australian Code for the Transport of Dangerous Goods by Road and Rail* (the Code)² and looking at options to explore its consistent interpretation. The review does not look at the substance of the Code itself. The instruments which are the subject of the review are, therefore, the *Model Act on the Transport of Dangerous Goods by Road or Rail* (Model Law) and the *Model Subordinate Instrument on the Transport of Dangerous Goods by Road or Rail* (MSI).
6. The Issues Paper sets out a complex problem statement.³ But, in essence, because States and Territories have plenary power over the subject matter of the Code, inconsistent timing of changes to legislation can lead to gaps in implementation in Code requirements. This is the main problem. Feedback from members is that the vesting of regulatory authority in the States and Territories leads to inconsistency and adversely impacts productivity.
7. The NTC remarks that "some jurisdictions have not yet implemented the 2016 or 2018 transport of dangerous goods amendment packages."⁴ Tellingly "one jurisdiction has not implemented any of the amendment packages since 2008."⁵ The problem is one of lack of national uniformity especially in compliance and enforcement, despite the commitment pointed out in the Issues Paper that under the relevant Intergovernmental Agreement States and Territories commit to use their best endeavours "to align their legislation and regulations with the model laws."⁶

¹ <https://www.ntc.gov.au/sites/default/files/assets/files/NTC-Issues-Paper-Examining-the-legal-framework-for-the-land-transport-of-dangerous-goods.pdf>

² <https://www.ntc.gov.au/sites/default/files/assets/files/Australian-Code-for-the-Transport-of-Dangerous-Goods-by-Road%26Rail-7.6.pdf>

³ Above note 1 at pps11-12

⁴ Above note 1 at p12 and at p14

⁵ Above note 1 at p14

⁶ Above note 1 at p23

8. The lack of uniformity is added to because the agencies responsible for administering the law about the transport of dangerous goods by road or rail are not within the transport portfolio.⁷

How to Achieve Regulatory Consistency: Framework Choices

9. NatRoad supports a move to a single Commonwealth law, as applies to the transport of dangerous goods by sea and air.
10. Following an indication that this would be a difficult process, the Issues Paper then says:

*A review of the current legal framework for regulating the land transport of dangerous goods has shown that, in general, the issues of inconsistency relate more to different take-up dates of amendments rather than the content of the regulations themselves. While there are some regulatory variations between jurisdictions, these have minimal impact on the actual movement of dangerous goods across borders.*⁸
11. This is a difficult proposition to verify given the paucity of data about the movement of dangerous goods by road and rail. The Issues Paper quotes statistics from 2002 where it says:

*In data from 2002, dangerous goods accounted for 4 percent of total tonnes moved and 8 percent of the total tonne-kilometres travelled.*⁹
12. The necessity for research on the movement of dangerous goods and the impediments to the efficient movement of dangerous goods should be the subject of a detailed study. NTC would also be fulfilling a useful educative role by asking all competent authorities to provide data about prosecutions under the various state and territory based legislative instruments relating to the transport of dangerous goods and the offence regimes which operate in each jurisdiction.
13. The issue of national consistency must be solved. Question 4 in the Issues Paper is:

*Thinking about the available national scheme structures, what approach has the potential to best achieve national consistency with greatest efficiency for the land transport of dangerous goods in Australia?*¹⁰
14. In answer, we reiterate our stance of national uniformity through Commonwealth law. In the absence of an agreement to refer powers, then a system where an applied legislative model, along the lines maintained for the Heavy Vehicle National Law, was in operation would be the next best model.
15. The answers to questions 5 and 6 are not able to be provided as we do not have sufficient data about the operation of the laws to answer these questions.
16. The Issues Paper then discusses the utility of placing duties under the various dangerous goods statutes in the Code. It also indicates the illogical manner in which the Code is currently referenced in legislation, inclusive of an ongoing reference to the 7th edition of the Code in various State and territory instruments which the NTC notes has seen it reluctant to move to an 8th edition of the Code.¹¹

⁷ The exception is Queensland where the Department of Transport and Main Roads is the competent authority; see https://www.infrastructure.gov.au/transport/australia/dangerous/str_compauth.aspx for a complete listing of competent authorities

⁸ Above note 1 at p36

⁹ Above note 1 at p6 No material in the NTC August 2016 report about freight movements assists with an update <https://www.ntc.gov.au/sites/default/files/assets/files/Whomoveswhatwherereport.pdf>

¹⁰ Above note 1 at p37

¹¹ Above note 1 at p38

17. Question 7 asks:

*Is placing the detail of duties on parties in the Code itself a viable option to achieve clarity and consistency about parties' specific obligations or are there other approaches that should be considered?*¹²

18. Whilst placing duties in the Code has some advantages, separating the duties from the offence regimes could add to confusion. No matter the method of achieving uniformity, that process should involve a detailed analysis of each offence regime and a rationalisation of the offences for consistency undertaken.

19. Question 8 asks:

*What further could be developed to help jurisdictions implement the Code in a consistent and timely manner?*¹³

20. Adoption should be uniformly undertaken. Again, the mechanism to achieve this aim is preferably through federal legislation or a system where an applied legislative mechanism is in operation. That mechanism must extend to dangerous goods licensing as feedback received from members is that Queensland in particular will not recognise a licence issued in another State or Territory so the member must apply for a separate Queensland licence. In our understanding, members who operate in Queensland must apply for a Queensland vehicle registration for trailers in order to obtain a Queensland dangerous goods licence. This is unacceptable and at the least, the Intergovernmental Agreement should be modified to specifically deal with the issue of mutual recognition.

Consistency of Interpretation and Enforcement

21. The Issues Paper makes it clear that guidance to shape the policy intent and expected compliance requirements in this area of the law are deficient. Question 9 asks:

*What do you think is the best way to achieve uniform interpretation of Code requirements?*¹⁴

22. The Issues Paper notes that "there is no central national platform or online presence for Competent Authorities."¹⁵ There should be a means by which guidance material on topics can be agreed between jurisdictions, especially where a move to, for example, a uniform offence regime takes place. The model to emulate, we submit, is that used by Safe Work Australia where guidance material about compliance with the model work health and safety law is produced following agreement amongst the jurisdictions.¹⁶

23. Question 10 is related to question 9 and asks:

*If guidance material was created, which body should be responsible for its maintenance to ensure it remains contemporary and fit for purpose?*¹⁷

¹² Ibid

¹³ Ibid

¹⁴ Above note 1 at p39

¹⁵ Ibid

¹⁶ A good example is the guidance on what is reasonably practicable to meet a WHS duty <https://www.safeworkaustralia.gov.au/doc/how-determine-what-reasonably-practicable-meet-health-and-safety-duty>

¹⁷ Above note 1 at p40

24. The competent authorities could create such a body or the NTC could undertake the role. Industry should be an integral part of the process and should be consulted during the development of the guidance material.

Conclusion

25. The details of the transport of dangerous goods should be better understood, especially the extent of inter-state carriage. We refer to the details in paragraph 12 of this submission. Further data is essential. In addition, there is a critical need to properly identify and protect current/existing dangerous goods routes in metropolitan areas, including ensuring appropriate and adequate 'first and last mile' access through local government roads. Actions to ensure continued safe access through an increasingly congested road network that is being adversely affected by urban consolidation and by urban congestion induced by the effects of COVID-19. The results of the New South Wales dangerous goods movement study¹⁸ should therefore be carefully studied with a view to protecting dangerous goods routes in Sydney but also as a model for how other studies should be conducted.
26. Under separate communication (email dated 30 June 2020), a member of NatRoad's Board has sent the NTC a case study illustrating how the position about using tunnels in Queensland and NSW differs and how consistency with this issue would enhance productivity.
27. As has been evident from the comments in this submission, NatRoad supports whatever means are achievable to obtain national uniformity in the current context.

¹⁸ <https://www.arrb.com.au/latest-research/nsw-dangerous-goods-movement-study>