



Submission to the Senate Rural and Regional Affairs and
Transport References Committee

Inquiry on the importance of a viable, safe, sustainable and
efficient road transport industry

5 November 2019

LIST OF RECOMMENDATIONS

1. The transport satellite account becomes a permanently government funded activity.
2. NatRoad submits the federal Independent Contractors Act could be changed so that the proscription on undercutting Award wages was made clearer. This prohibition would have to exclude payments where the independent contractor/owner driver clearly made a commercial decision to accept a lesser rate than the Award prescription because they would otherwise be travelling empty or they were involved with a backload. Hence, informed consent to such an arrangement should override any strengthened provision. That informed consent must have been reduced to writing.
3. The Government advance its planned review of the law relating to unfair contract terms.
4. The priorities identified by Infrastructure Australia that would enhance both safety and the efficiency of the freight task should be analysed, and appropriate funding allocated to their achievement.
5. The policy framework for Heavy Vehicle Road Reform be considered by the Committee with a view to better integration of the current Government policy with other reform proposals.
6. In order that the Heavy Vehicle National Law becomes fit for purpose all Australian governments fully support the outcome of the HVNL review.
7. The Committee recommend to the federal Government that the Department of Employment, Skills, Small and Family Business liaise with NatRoad in order to ascertain what current or future funding is available to assist with the development of the training pathways outlined.
8. A dedicated authority such as the Australian Transport Safety Bureau (ATSB) be given power to promptly and fully investigate serious heavy vehicle accidents and to share the results and recommendations publicly so that all industry participants can take appropriate action to reduce the road toll.
9. The investigative organisation's role (see Recommendation 8) encompass better research on trends and causal factors about heavy vehicle road safety, such as a growing difference between the level of improvement in the safety record of heavy articulated trucks when compared with heavy rigids.
10. The federal Government introduce a mandatory code for the road transport industry under Part IVB of the Competition and Consumer Act which would address harsh payment terms in transport industry contracts inclusive of a "pay when paid" prohibition and a maximum 30 day payment provision.
11. A federal consultative mechanism structured along the lines of the Road Freight Industry Council established in NSW be put in place federally.

INTRODUCTION

1. The National Road Transport Association (NatRoad) is pleased to provide a submission on important issues about the road transport industry raised by the Committee's terms of reference.¹
2. NatRoad is Australia's largest national representative road freight transport operators' association. NatRoad represents road freight operators, from subcontractors to large fleet operators, general freight, road trains, livestock, tippers, express, car carriers, as well as tankers and refrigerated freight operators. NatRoad's principal policy focus is on the regulation of heavy vehicles that is vehicles over 4.5 tonnes.
3. More than 75 per cent of non-bulk freight is transported by road. The road freight transport industry continues to play a major role in Australia's supply chain, with the ability to provide quick and reliable door-to-door delivery nationwide. The characteristics of the industry are next discussed as they provide the context to a number of the NatRoad responses to the terms of reference. Following that discussion, we set out the individual term of reference and the accompanying NatRoad narrative. Given the breadth of the terms of reference, we raise policy matters that we believe are critical for introduction as a means of underpinning a sustainable road transport industry.

INDUSTRY CHARACTERISTICS

4. There are a number of inquiries underway at present which are analysing various industry issues. The two main reviews are of the Heavy Vehicle National Law (HVNL) being conducted by the National Transport Commission² (NTC) and an inquiry by the Productivity Commission on national transport regulatory reform.³ We attach the NatRoad submission to the Productivity Commission as Attachment A, as a number of the issues contained in the Committee's terms of reference are also being investigated by the Productivity Commission.
5. For the HVNL review, the Australian Trucking Association, of which NatRoad is a member, commissioned Deloitte Access Economics to prepare a report⁴ (Deloitte report) on various issues. Chapter 2 of that report contains an analysis of the industry's characteristics.
6. Deloitte, for example, indicate that the industry is on a growth trajectory. They state that freight growth follows Gross Domestic Product (GDP) growth, and given Australia's strong economic performance, freight is expected to grow by 26%, to around 915 billion tonne-kilometres, by 2026. Road transport is a key element of the economy.
7. The Deloitte report notes that the structure of the industry is complex and covers small operators with a single vehicle through to multinational fleet operators. The industry covers those who only operate trucks and those who provide transport across modes. The industry also covers those

¹ Terms of reference:

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport/RoadTransportIndustry/Terms_of_Reference

² <https://www.ntc.gov.au/current-projects/heavy-vehicle-national-law-review/>

³ See the terms of reference and the issues raised by the inquiry here:

<https://www.pc.gov.au/inquiries/current/transport/issues/transport-issues.pdf>

⁴ March 2019 Report available at this link:

<http://www.truck.net.au/sites/default/files/submissions/DAE%20Economic%20benefits%20of%20improved%20regulation%20in%20the%20Australian%20trucking%20industry%20March%202019%20Final.pdf>

who may not own or operate their own equipment but focus on coordination (e.g. freight forwarders).

8. The report indicates a distinction between hire and reward and so-called “ancillary” operators. These ancillary businesses are firms whose main activity is not in transport, but they have fleets to transport their own products. NatRoad has both ancillary and hire and reward members.
9. One of the data deficiencies that have been identified by the NTC in the context of charting freight movements in Australia is the number of ancillary versus hire-and-reward vehicles involved in road freight.⁵
10. At the time of the publication of the relevant report⁶ the NTC said:

It is estimated there are 42,000 operators in the road freight transport sector, ranging from single truck operators to large multi-national corporations. The overwhelming majority (98.5%) of these were engaged in road freight operations (ANZSIC 611) with the remainder in the road freight forwarding sector (ANZSIC 6642).⁷

11. Whilst the statistics are not ideal, the NTC made estimates of a number of important aspects of the industry further indicating:

Australian Jobs data from 2015 suggests that 46% of truck drivers work in ancillary businesses and 54% in hire and reward, while 22% of courier/postal deliverers work in ancillary businesses and 78% work in hire and reward.⁸

12. The Deloitte report notes a further important characteristic of the hire and reward sub-sector: subcontracting plays an important role within the hire and reward fleet. Many of these subcontractors are owner-operators with no employees. Less than 0.5% of all operators own a fleet of more than 100 trucks, and 70% have just one truck in their fleet.⁹
13. Deloitte also notes that the industry is highly competitive and stated that in “2016-17, businesses in the broader Road Transport industry had a profit margin of 9.7%.”¹⁰ This margin is surprisingly high when compared with the lived experience of NatRoad members which is that 2-3% profit margin is common, albeit not a sustainable level. This has translated to lower rates of capital expenditure than counterpart sectors overseas with the ANZ Bank noting in respect of 2017 that “capex/sales is remarkably correlated however consistently 2 per cent less than larger global peers. This helps explain why Australia's average fleet age is more than twice as old as USA (14 years v 6.5 years).”¹¹
14. The NatRoad profit margin figure, whilst anecdotal, is substantiated in context. The road freight industry has a low market share concentration. The four largest companies accounted for over 15% of industry revenue in 2015-2016.¹² But the low market concentration figure belies the market power of the major companies in the road freight industry.

⁵ NTC *Who Moves What Where- Freight and Passenger Transport in Australia* August 2016 at p16
[https://www.ntc.gov.au/Media/Reports/\(D62E6EFC-36C7-48B1-66A7-DDEF3B04CCAE\).pdf](https://www.ntc.gov.au/Media/Reports/(D62E6EFC-36C7-48B1-66A7-DDEF3B04CCAE).pdf)

⁶ Ibid

⁷ Id at p 32

⁸ Id at p 33

⁹ Above note 4 at p 13

¹⁰ Ibid

¹¹ <https://infogram.com/road-transport-1hxr4z91p93y6yo>

¹² IBISWORLD Report 14610 *Road Freight Transport in Australia* April 2016 at 18

15. This market power is reinforced by the subcontract system within the industry, mentioned earlier. Larger companies often subcontract work to smaller owner-operators. Those owner operators have little power to influence prices. The characteristics which most distinguish the owner operator area of the market are fragmentation and intense competition.¹³ A significant number face business viability issues associated with their lack of power in the market and poor profit margins. Further, these small businesses lack economies of scale and suffer increased safety and operating costs.
16. There is, despite the Deloitte report, a lack of data about the road transport sector that substantiates how the industry characteristics we have outlined translate to on-ground, measurable trends.
17. The lack of data about important transport matters has led NatRoad to support Government efforts to improve this deficiency. In October 2018 the Australian Bureau of Statistics (ABS) brought together the total contribution of transport activity across all industries in the Australian economy, through the *Australian Transport Economic Account: An Experimental Transport Satellite Account*.¹⁴
18. The importance of this development becoming a permanent feature of the data landscape was emphasised by NatRoad in our submission¹⁵ to the Productivity Commission review mentioned earlier. We refer the Committee to paragraphs 66-71 in Attachment A which, as stated earlier, is a copy of the NatRoad submission to the Productivity Commission.
19. In that submission, we noted that having data which brings together the contribution of all transport activity to the economy is essential, especially in reinforcing evidence based decision making. We submit that the Committee **recommend** that the transport satellite account becomes a permanently government funded activity.

THE IMPORTANCE OF AN ENFORCEABLE MINIMUM AWARD RATE AND SUSTAINABLE STANDARDS AND CONDITIONS FOR ALL STAKEHOLDERS IN THE ROAD TRANSPORT INDUSTRY

20. The first part of this term of reference deals with enforceable minimum award rates. There is not a single rate as implied in the expression of this term of reference. The two main modern awards that affect the road freight task are the *Road Transport (Long Distance Operations) Award 2010* (Long Distance Award) and the *Road Transport and Distribution Award 2010* (Distribution Award) (together the Transport Awards).
21. The Transport Awards are unique in their inter-action. The Distribution Award's coverage is excluded per clause 4.2 of its terms where employees are covered by the Long Distance Award "whilst undertaking long distance operations." Therefore, the Distribution Award applies to transport operations unless a long distance operation is undertaken, or another modern award applies e.g. the *Waste Management Award 2010*.
22. The phrase "whilst undertaking long distance operations" is able to be ascertained via two definitions contained in both the Distribution Award and the Long Distance Award (clause 3.1 of

¹³ Ibid

¹⁴ <https://www.abs.gov.au/ausstats/abs@.nsf/latestProducts/5270.0Media%20Release1502010-11%20to%202015-16>

¹⁵ https://www.pc.gov.au/_data/assets/pdf_file/0014/243041/sub007-transport.pdf

both). In essence, a long distance operation is one which exceeds 500 kilometres from a principal point of commencement to a principal point of destination or an interstate journey in excess of 200 kilometres.

23. As with other modern awards, the Transport Awards contain clauses about application and operation, consultation and dispute resolution, types of employment and termination of employment, classification and minimum wage rates, and hours of work and related matters. The classification system in the Transport Awards is in large part based on the particular vehicle a driver is driving in the course of employment: for example, a bicycle courier is a Grade 1 driver under the Distribution Award with most B-double drivers being classified at grade 7 under the Distribution Award. The Long Distance Award does not have the first two grades as set out in the Distribution Award; therefore, a grade 8 classification under the Distribution Award equates to a grade 6 under the Long Distance Award.
24. NatRoad is and has been involved with the long running review of modern awards currently being conducted by the Fair Work Commission. We have contributed to that process and the Transport Awards are subject to that process. The minimum award rates are established by the Transport Awards. They operate to provide an appropriate minimum safety net of enforceable conditions for the road transport industry.
25. Per section 134 *Fair Work Act, 2009 (Cth)* the Fair Work Commission has reviewed modern awards to ensure that “together with the National Employment Standards” they “provide a fair and relevant minimum safety net of terms and conditions.”
26. As with all modern awards the Transport Awards are important for the transport industry because they establish the terms and conditions of employment for most employers and employees in the transport industry. In fulfilling that function, modern awards establish the majority of minimum labour costs for an industry so they are important not only as safety net instruments but as a means to assess most of the cost of labour (items like workers compensation premiums and long service leave costs must also be incorporated into such costings.)
27. NatRoad submits that greater enforcement of the current law is required rather than new laws introduced where award wages and conditions are being undercut because of so-called independent contracting arrangements.
28. Subcontractor members of NatRoad are small business operators, not employees who require the paternalistic protection of labour laws. They want to be treated as independent operators of commercial businesses and be free to negotiate their own terms of trade. They hold fiercely to that outlook. Sub-contractors should be regulated by commercial laws rather than by laws which are built on an industrial relations perspective.
29. NatRoad is aware for example that the Transport Workers Union (TWU) has alleged that “many riders and ridesharing workers are made to become ‘independent contractors’ and as a result they are effectively paid below award rates and are denied basic benefits.”¹⁶
30. The quoted statement by the TWU ignores the protections currently available to independent contractors and to workers under the *Fair Work Act, 2009 (Cth)* (the FWA) and the *Independent Contractors Act, 2006 (Cth)* (the ICA). NatRoad commends greater enforcement of the current law in this context.

¹⁶ Transport Workers Union of Australia *Submission to the Select Committee on the Future of Work and Workers* 30 January 2018 p3

31. Sections 357, 358 and 359 of the FWA provide protections against “being made” to become an independent contractor. These are sufficient protections, albeit that they are currently being scrutinised in a process launched by the federal Government on 19 September 2019.¹⁷

32. As the Productivity Commission has noted:

Currently, there are three sections in the FW Act that are aimed at curbing the incentives for employers to instigate sham arrangements. These provisions prohibit an employer from:

- *misrepresenting an employment relationship or a proposed employment arrangement as an independent contracting arrangement (s. 357)*
- *dismissing or threatening to dismiss an employee for the purpose of engaging them as an independent contractor (s. 358)*
- *making a knowingly false statement in order to persuade or influence an employee to become an independent contractor (s. 359).*¹⁸

33. The Commonwealth has in place legislation which protects independent contractors. Indeed, the signal case showing the effectiveness of the ICA arose in the context of a transport industry matter: *Keldote Pty Ltd & Ors v Riteway Transport Pty Ltd*.¹⁹ That decision made it clear that one of the powers vested in the relevant court by the ICA was to avoid the undercutting of wages:

*Section 15(1)(c), like its predecessors, was partly designed to prevent the undercutting of wages.*²⁰

34. NatRoad supports the application of commercial law to subcontractor arrangements rather than an extension of labour law based regulation. It is important to maintain that distinction in the law. NatRoad is not, however, blind to two industry developments in the current market, developments fuelled by the highly competitive nature of the road transport industry discussed earlier.

35. NatRoad members report that appropriate training standards and barriers to entry of untrained operatives entering the industry are not in place. These developments are producing two undesirable outcomes. First, unskilled unsafe ‘operators’ are hindering the industry’s drive towards increased safety objectives and public respect. Secondly, ease of entry is allowing an oversupply of unskilled operators who are not adept at proper costing. This factor is lowering revenue levels to below sustainability for many skilled and compliant operators, particularly those who balk at accepting unfair contract terms, discussed below.

36. **Accordingly, NatRoad submits the ICA could be changed so that the proscription on undercutting Award wages was made clearer.** This prohibition would have to exclude payments where the independent contractor/owner driver clearly made a commercial decision to accept a lesser rate than the Award prescription because they would otherwise be travelling empty or they were involved with a backload. Hence, informed consent to such an arrangement should override any strengthened provision. That informed consent must have been reduced to writing.

¹⁷ See *Workplace Express Jail Time for Wage Theft Drawing Closer* 19 September 2019 which appends the AG’s Discussion Paper entitled *Improving Protection of Employees’ wages and entitlements: strengthening penalties for non-compliance* where sham contracting is discussed at p 9 et seq

¹⁸ Productivity Commission *Workplace Relations Framework Vol 2* (2015) at p813

¹⁹ [2008] FMCA 1167 (22 August 2008)

²⁰ Id at para 124

37. Sustainable conditions also require a change in the law to ensure that terms and conditions of contracts offered in particular to small business are fair. Members are increasingly concerned that contract conditions in the industry are creating unfairness and are adding to commercial pressures. These practices add to a culture that does not give safety the primary focus. NatRoad has expanded on these arguments in two submissions.
38. The first submission²¹ to the Heavy Vehicle National Law Review outlined the problem and sought a recommendation that there should be a step up in enforcement along the chain of responsibility. Customers who create, for example, unrealistic time slot requirements should be prosecuted, especially where the contract says that missing a time slot means the operator doesn't get paid but still must deliver the goods at another proximate time free of charge, a provision NatRoad has seen in contracts referred to us by members for assessment.²²
39. Operators believe that they are targeted for prosecution because it is easier for the authorities to take action against them as opposed to others who create the commercial pressures by requiring oppressive contract conditions to be met. Prosecuting those up the chain will assist with changing this outlook and also appropriately focus on those who are riding roughshod in an intensely competitive industry, as discussed earlier.
40. The second submission was in confidence to the Assistant Treasurer and is not therefore reproduced. But the arguments presented to the Assistant Treasurer are now replicated.
41. Whilst small business has had protection from unfair terms imposed by standard form contracts from 12 November 2016,²³ that protection needs to be strengthened because the current law is inadequate. Under the current law, penalties cannot be imposed against a customer for including or relying on an unfair contract term in a small business contract. An application needs to be made to a court and the court can then declare the identified unfair terms to be void and therefore not enforceable.
42. At present the Australian Competition and Consumer Commission (ACCC) or other parties can't get penalties to stop the practice of placing unfair contract terms in standard form contracts – they also can't issue infringement notices against companies that include unfair terms in their small business contracts. So, there is little reason for companies to take out these provisions from their transport contracts unless the ACCC uses scarce resources to take them to court.
43. We therefore have asked the Government to bring on a quick review of the law and to more strongly prohibit unfair contract terms. We want the introduction of penalties where unfair contract terms are placed in a contract.
44. We also said to the Assistant Treasurer that greater fairness in the industry can be brought about by the federal Government acting to introduce a mandatory code for the industry under Part IVB of the *Competition and Consumer Act 2010* (Cth) (CCA) which would address harsh payment terms in transport industry contracts inclusive of a "pay when paid" prohibition and a maximum 30 day payment provision, a matter taken up further below.

²¹ <https://www.ntc.gov.au/media/2060/ntc-issues-paper-risk-based-approach-to-regulating-heavy-vehicles-warren-clark-national-road-transport-association-natroad-may-2019.pdf>

²² Another common but unacceptable term is discussed here https://www.fullyloaded.com.au/industry-news/1909/natroad-throws-its-weight-behind-senate-probe?utm_source=Sailthru&utm_medium=email&utm_campaign=ATN%20eDM%2019%2009%202019&utm_term=list_full_loaded_newsletter is so-called "hold harmless provisions"

²³ See <https://www.accc.gov.au/business/business-rights-protections/unfair-contract-terms>

45. We would ask the Committee to **recommend** that the Government advance its planned review of the law relating to unfair contract terms and that the Government introduce a mandatory industry code so that at the least payment terms in the industry are made fair and regularised.

THE DEVELOPMENT AND MAINTENANCE OF ROAD TRANSPORT INFRASTRUCTURE TO ENSURE A SAFE AND EFFICIENT ROAD TRANSPORT INDUSTRY

46. Appropriate road infrastructure, including suitable rest areas for heavy vehicles, is a critical component of the road freight task. It is vital that key interstate freight networks are upgraded for the expected increase in freight discussed earlier and are always accessible. Australian governments are aware of the challenges that planning in this area presents.
47. The Transport and Infrastructure Council (TIC) published the *National Freight and Supply Chain Strategy*²⁴ (the Strategy) and related Action Plan²⁵ in August 2019.
48. The Strategy outlines four critical action areas building on jurisdictional freight and infrastructure plans and ongoing national reform efforts, like Heavy Vehicle Road Reform (HVRR)²⁶ and the National Road Safety Strategy.²⁷ One of those action areas is “smarter and targeted infrastructure investment.”
49. That is certainly an area where reform is required; smarter investment requires better access planning. The road access restrictions that NatRoad members face every day, can be partly attributed to the road funding model which does not link the cost of road use with road investment. It is therefore difficult for road managers to recover the full cost of supplying, maintaining or upgrading road infrastructure so that it is suitable for heavy vehicles. As a result, road managers, including local governments, restrict heavy vehicle access to protect road assets.²⁸ This is a matter addressed at length in the recent NatRoad submission on access²⁹ to the NTC in the HVNL review process mentioned in paragraph 4 above.
50. Access for heavy vehicles is a crucial area for reform. An efficient freight supply chain should be able to operate 24 hours, 7 days a week. Requiring heavy vehicles to travel only during daylight hours or in certain specified time periods over less-than-optimal routes impedes productivity, increases operating costs and adds to road congestion. The current system needs a radical overhaul because it delivers inefficient outcomes. Planning for better road infrastructure is vital but without reform of access requirements at the same time, that planning is in part defeated.
51. Government has turned its mind to better infrastructure development for the freight industry. As indicated above, TIC endorsed the National Freight and Supply Chain Strategy and National Action Plan on 2 August 2019. The Strategy and Action Plan set an agenda for integrated national action across all freight modes over the next 20 years.

²⁴ <https://www.freightaustralia.gov.au/sites/default/files/documents/national-freight-and-supply-chain-strategy.pdf>

²⁵ <https://www.freightaustralia.gov.au/sites/default/files/documents/national-action-plan-august-2019.pdf>

²⁶ https://www.transportinfrastructurecouncil.gov.au/publications/heavy_vehicle_road_reform.aspx

²⁷ <https://www.roadsafety.gov.au/>

²⁸ For example, a principle in the *Hume Region Planning for Freight Pilot* is to limit the extent of local roads used by heavy vehicles, favouring State-managed roads: http://greatershepparton.com.au/assets/files/documents/planning/freight-land-use/Hume_Region_Planning_for_Freight_Pilot_Strategy_Report.PDF

²⁹ [https://www.ntc.gov.au/Media/Reports/\(263FEC41-ED59-0B28-1957-4159764910A4\).pdf](https://www.ntc.gov.au/Media/Reports/(263FEC41-ED59-0B28-1957-4159764910A4).pdf)

52. Whilst NatRoad commends the National Action Plan's goal setting, it would be useful for TIC to prepare milestones that would indicate a timetable for achieving the aims, albeit the position that TIC would like to see achieved by 2024 is set out against each target. Linkages with Infrastructure Australia priority plans, such as the most recent plan issued in February 2019³⁰, would also assist to better clarify how the government vision for freight meshes with identified infrastructure needs inclusive of proposed costs of the relevant infrastructure.
53. By way of example, Infrastructure Australia identifies that regional road network safety improvements must occur.³¹ High-risk sections of regional roads must be upgraded. The delivery of safer road infrastructure is a critical priority having regard to the following finding by Infrastructure Australia:
- The varied quality of Australia's regional road network is resulting in a high number of crashes and fatalities. Between 2008 and 2016, 55% of road fatalities in Australia occurred in regional areas. Relative to population size, the number of fatalities in regional areas was over four times greater than for major cities over the same period.*³²
54. NatRoad submits that the Committee should **recommend** that the priorities identified by Infrastructure Australia that would enhance both safety and the efficiency of the freight task should be analysed, and appropriate funding allocated to their achievement. This submission reinforces the outcome by 2024 envisioned from Action 1.2 from the National Action Plan which is for "All levels of government to improve and upgrade infrastructure in regional and remote areas to lift regional freight productivity, access and safety across all modes and delivery of essential goods and services to isolated communities."³³
55. Acknowledging that this is the third major inquiry underway that deals with the required policies to apply appropriate reform to the road transport industry, we draw the Committee's attention to paragraphs 11 and paragraphs 17 et seq of Attachment A. In those paragraphs, we urge the better evaluation of the HVRR process, excluded from the HVNL review and forming only part of the Productivity Commission's reference unless it is not practicable for the Commission to exclude cost reflective heavy vehicle pricing policies.
56. It is too early to establish whether the HVRR policies will be considered by the Productivity Commission. However, it seems that this question will be answered in November 2019 when the Productivity Commission is due to publish a draft report on the national transport regulatory reform reference. **We would commend scrutiny by the Committee of the policies underpinning HVRR, particularly having regard to the matters raised by NatRoad in Attachment A.**

³⁰ <https://www.infrastructureaustralia.gov.au/publications/infrastructure-priority-list-2019-project-and-initiative-summaries>

³¹ Id at p44

³² Ibid

³³ Above note 25 at p 8

THE REGULATORY IMPACT, INCLUDING THE APPROPRIATENESS, RELEVANCE AND ADEQUACY OF THE LEGISLATIVE FRAMEWORK, ON ALL STAKEHOLDERS IN THE ROAD TRANSPORT INDUSTRY

57. The Deloitte report mentioned in paragraph 5 of this submission sets out the developments which led to the HVNL being established.³⁴
58. The Deloitte report then shows how the promise of a single administering body and greater heavy vehicle safety and efficiency gains have not been fully achieved.³⁵ That is in part due to the design of the HVNL and the slow development of appropriate and effective policies.
59. This deficiency is mainly attributable to the way the HVNL has been implemented, especially at the State and Territory level. The HVNL is implemented by means of an applied law scheme, supported by regulations and other instruments. The law is introduced by Queensland and applied by all other participating jurisdictions (as their own state or territory law with their own specific derogations from the Queensland model); Western Australia and the Northern Territory do not participate.
60. The HVNL has been implemented in this way because the Commonwealth doesn't have the power to make laws with respect to road, rail and intermodal transport under the Australian Constitution. The HVNL is enforced by state and territory police and authorised officers of the National Heavy Vehicle Regulator and its delegates (with complete delegation to the NHVR having only occurred to date in South Australia, Tasmania and the ACT). But the manner in which the police and the road authorities enforce the law is not consistent, a matter explored in NatRoad's first submission to the HVNL review.³⁶
61. The HVNL review currently underway shows that the HVNL is not fit for purpose. It is vital that it is reformed to ensure that the law does not remain unresponsive and difficult to change, so that the HVNL is not another barrier to the efficient conduct of the road transport industry. **We submit that the Committee should recommend that all Australian governments fully support the outcome of the HVNL review so that the law becomes fit for purpose.**

THE TRAINING AND CAREER PATHWAYS TO SUPPORT, DEVELOP AND SUSTAIN THE ROAD TRANSPORT INDUSTRY

62. NatRoad considers that there is a need to allocate much greater industry and government resources to the issues associated with training and the development of career pathways.
63. A survey commissioned by Volvo Group Australia identified that employers find it difficult to recruit not just the quantity but particularly the quality of drivers needed. 52 per cent reported having issues attracting the quantity of drivers needed and 82 per cent had problems attracting the quality of drivers they expect.³⁷

³⁴ Above note 4 at p16-18

³⁵ Introduced at p 19 and then developed in detail in the balance of the report

³⁶ Above note 21

³⁷ *Professional Truck Driver Shortage: How driver availability impacts the transport industry & Australian society*, Volvo Group Australia, May 2016

64. This survey and others³⁸ consistently indicate strong support for improved driver training comprising a nationally recognised qualification combined with supervised on-the-job experience.
65. A key finding of the recent Austroads Review of the National Heavy Vehicle Driver Competency Framework³⁹ is that licencing regulators place value on practical experience in requirements for young drivers wishing to obtain a car licence. However, the same value is not applied to heavy vehicle licensing. Although there is a time-based requirement for the gaining or upgrading of a heavy vehicle licence, there is no prerequisite to have driven a heavy vehicle prior to that assessment.
66. A perhaps, unintended, but additional impact of this time-based requirement for heavy vehicle licensing is that it delays the natural progression of a young but otherwise highly competent driver in certain license categories. This is frustrating for those who would like to work in road transport, and potential drivers are more likely to change to a profession that offers faster job progression and earlier access. Licensing laws must be reviewed so that they better reflect the acquisition of skills and competencies.
67. There is a long-held belief in the industry that genuine competency in all facets of the driving task requires time and experience. This is why road transport operators value practical experience. This preference for practical experience is influenced by the industry's lack of confidence in the current training and assessment process. If the training process delivered a "job ready" driver attitudes will change.⁴⁰
68. However, investing in training and supervised experience is expensive, and with the low profit margins being experienced in the industry, discussed earlier, many operators have not been prepared to or are unable to make this investment.
69. An additional consideration is that while the training packages available (Certificates II, III and IV in Driving Operations) are nationally recognised qualifications, the inconsistent approach to delivery and unit selection (due to the program design primarily being driven by the particular Registered Training Organisation (RTO)) means that many operators view these qualifications as unreliable and ineffective in providing transferable core/baseline skill sets.
70. Further, insurers do not take the qualification into consideration when pricing a policy and operators generally do not believe there is any transferable benefit or increased business confidence in employing someone who holds these qualifications.
71. The heavy vehicle driver shortage is widely recognised as a significant challenge facing the road freight transport sector. The average age of current heavy vehicle drivers is around 53 years with a mere 15 per cent of drivers under the age of 30. With the road freight task expected to grow in the manner expressed in paragraph 6 of this submission and with older drivers retiring from the workforce, this problem will be compounded unless urgent action is taken.
72. While it might seem counter-intuitive to raise the bar on driver training and licensing at a time when road transport operators are grappling with a long-term, chronic driver shortage, it will eventually help the industry to attract more, and better qualified people.

³⁸ Truck Driver Skills: A survey of the Transport Industry, TAFE NSW, May 2016

Austroads Research Report, Review of the National Heavy Vehicle Driver Competency Framework, 2018

³⁹ Austroads Research Report, Review of the National Heavy Vehicle Driver Competency Framework, 2018

⁴⁰ Ibid

73. Part of the difficulty in attracting young drivers is that the occupation is not seen as a professional position and career pathways are not well developed or understood. The mapping of career paths is nearly non-existent despite the varied nature of the industry and multitude of potential roles ranging from yard hand and driver to compliance officer and general manager.
74. A properly founded career pathway is a series of connected education and training strategies and support services that enable individuals to secure industry relevant certification and obtain employment within an occupational area and to advance to higher levels of future education and employment in that area. For the road transport industry this process is currently inadequate and must be reviewed.
75. A Career Pathway for the road transport industry should include:
- Alignment of secondary and postsecondary education with workforce development systems;
 - Rigorous, sequential, connected, and efficient curricula, that “bridge” courses to connect basic education and skills training and integrate education and training;
 - Multiple entry and exit points;
 - Financial support or flexibility to accommodate the demands of the labour market in order to allow individuals to meet their ongoing financial needs and obligations;
 - Specific focus on local workforce needs, aligned with the skill needs of the industry sectors important to local, regional or state economies, and reflective of the active engagement of employers;
 - Curriculum and instructional strategies appropriate for adults, that make work a central context for learning and work readiness skills;
 - Credit for prior learning and other strategies that accelerate the educational and career advancement of the participant;
 - Services that have among their goals a focus on secondary and postsecondary industry recognised credentials, industry specific employment, and advancement over time in education and employment within the industry; and
 - Being founded upon and managed through a collaborative partnership between government, industry representatives, employers, education providers, and other industry stakeholders.
76. In an industry first, NatRoad in collaboration with PACCAR and the PACCAR Dealer Network announced its ‘Future-Ready’ program at the 2018 NatRoad Annual Conference.
77. One of the aims of the Future Ready program is to turn heavy vehicle operation into a nationally recognised trade. While there are many hurdles to overcome in making this a reality, in January 2019, NatRoad submitted a proposal to the Transport and Logistics Industry Reference Committee to develop a nationally recognised apprenticeship training model for heavy vehicle operators and included a proposed structure for a new qualification: Certificate III in Professional Driving.
78. NatRoad’s proposal for an apprenticeship style program would provide a school leaver with a progressive, experience-based grounding in the industry, leading to a combination heavy vehicle licence at around 20 years of age. In order to utilise this critical pathway employers must be willing to support the employment of young newly licensed drivers and licensing must be coupled with a robust training framework.

79. The apprenticeship program is designed to introduce standardised industry-led training without being employer or stream specific. It would also ensure that drivers are more prepared to meet and accommodate the changes occurring in the road transport industry with skills that are transferable to other roles within the transport and logistics sector, thereby offering drivers a more certain career path.

80. The Transport and Logistics Skills Forecast 2018 identified the following skills as the most important for the Transport and Logistics workforce over the next three to five years:

- Compliance
- Health and safety
- Driving
- Operational
- Digital

81. These priorities align with our proposal and reflect feedback from heavy vehicle operators when asked what they see as essential skill sets for drivers. Each year of training would include units covering the following areas:

- **Health and Safety** – given the high-risk nature of the road transport industry, it is essential that all drivers are able to ensure their own safety and that of other road users. Reducing the number of incidents involving heavy vehicles is a key concern of all state and territory road safety strategies. Safe, professional drivers will also improve the image of the industry.
- **Compliance** – the road transport sector is highly regulated with heavy vehicle regulations designed to increase safety and protect road infrastructure. Heavy vehicle drivers who fail to understand these regulatory requirements can be individually penalised with heavy fines as well as risk exposing themselves and others to death or serious injury.
- **Driving** – Licensing across each year will ensure organisations have a working asset, the driver shortage is being minimised and the progressive learning cycle is occurring with a building of ability and confidence.
- **Customer Service/Business Strategy** – Drivers are the face of a business and of the road transport industry alike. A customer centric mindset is critical to ensure sufficient self-promotion and a positive impact on end users. Equipping drivers with a business understanding that highlights the important role each driver plays in their company is also an important element to the training matrix.
- **Clerical** – Documentation and record keeping requirements are increasing due to the new Chain of Responsibility requirements and are also important business practices in the movement of goods. Drivers need to understand what documents are needed and how to process forms including delivery dockets, work diary records, permits and incident reports.
- **Mechanical** - Employers require a basic mechanical ability of their drivers given the remote nature and varied working hours undertaken. Professional drivers need to be able to rectify minor mechanical problems competently. At a minimum, drivers should be able to relay critical information to the manager ensuring minimal down time and reduced risk to the general public.
- **Technology** – digital literacy skills are needed to use new technologies and interpret data.

82. The above combination of themes ensures a gradual building of capability and practical skill sets as the trade progresses, inclusive of preparation for an increasingly digital era. Member feedback is that the training must deliver practical 'hands on' skills.
83. The skills acquired are in a progressive manner that would allow the apprentice to build capability and confidence and allows the employer to systematically introduce new tasks to the driver's role as the years progress and licenses are obtained successfully. The flow of units permits the employer to gain value from their staff member early and builds a solid foundation for a long-term candidate who brings worth to their organisation. Acquisition of the relevant skills of this kind should be bolstered by adding the newly framed occupation to the skills shortage list by occupation administered by the Department of Employment, Skills, Small and Family Business.
84. NatRoad believes that building on this project should involve both government and industry funding. **NatRoad would ask that the Committee recommend to the federal Government that the Department of Employment, Skills, Small and Family Business liaise with NatRoad in order to ascertain what current or future funding is available to assist with the development of the pathways outlined.**
85. Having government backing for the pathways envisaged would enhance confidence in a trusted, nationally recognised and effective training program. Other benefits of this proposal include:
- Better recognition of competency
 - More comprehensive driver training encompassing the full scope of skills
 - Increasing driver diversity
 - Increasing employment opportunities for school leavers
 - Shifting negative perceptions of truck drivers to show the industry as it is now, not as it has been.

THE SOCIAL AND ECONOMIC IMPACT OF ROAD-RELATED INJURY, TRAUMA AND DEATH

86. NatRoad has a strong commitment to improving road safety. Even one death on the road is too many. NatRoad's policies on road safety have been set out in detail in Attachment A.
87. As set out in paragraph 37 of Attachment A, road safety data should enable benchmarks to be prepared that in turn enables measurement of actual performance improvements in road safety against appropriate targets.
88. NatRoad believes also that further qualitative analysis of crashes involving heavy vehicles is needed. It is NatRoad policy that a dedicated authority such as the Australian Transport Safety Bureau (ATSB) be given power to promptly and fully investigate serious heavy vehicle accidents and to share the results and recommendations publicly so that all industry participants can take the appropriate action to reduce the road toll.
89. That role could also encompass better research on trends and causal factors, such as a growing difference between the level of improvement in the safety record of articulated trucks when

compared with heavy rigids.⁴¹ However, the newly created Office of Road Safety⁴² could subsume that task into its function described as being “the primary policy advisor to the federal ministers for road safety on matters related to delivering safe roads, vehicles, speeds, and people, and will draw together interdisciplinary expertise and experience to learn, share and channel effort towards proven approaches to reducing national road trauma.”⁴³

90. We submit that the Committee should **recommend** the establishment of a dedicated heavy vehicle crash investigative authority as a matter of urgency.

EFFICIENT COST-RECOVERY MEASURES FOR INDUSTRY STAKEHOLDERS, INCLUDING SUBCONTRACTORS

91. We refer to the discussion at paragraph 44 of this submission about the recommended introduction of a mandatory code for the road transport industry under Part IVB CCA.
92. In this context, NatRoad notes the findings of Australian Small Business and Family Enterprise Ombudsman (ASBFEO) in her final report entitled *Inquiry into the effect of the Road Safety Remuneration Tribunal’s Payments Order on Australian small businesses*.⁴⁴ Recommendation 11 in that final report is:

Given the strong support of owner drivers, the Australian Small Business and Family Enterprise Ombudsman should inquire into ways to reduce payment terms for owner drivers as part of its Inquiry into Payment Terms.

In that final report ASBFEO also records that:

*Payment terms and payment timeframes was a prominent issue in the small transport business industry. Owner drivers reported that they are, on the whole, reliable account payers and they were unanimous regarding an imbalance in payment structure in the industry.*⁴⁵

93. In the context of the evidence then received by ASBFEO and noted in the prior paragraph, the 30 day payment requirement was the only redeeming feature of the Road Safety Remuneration Tribunal’s (RSRT) regulatory framework. It was otherwise a disaster, as is evident from the ASBFEO final report.
94. In an industry which has a high proportion of small business operators who maintain their businesses on tight margins, discussed earlier in this submission, cash flow is king. Our members inform us that late payment increases financial and administrative costs, reduces the potential for investment, damages business relationships and adds to business uncertainty and failure.

95. Indeed, the ASBFEO encapsulated the trends that members discern where she stated that:

⁴¹ Explored in detail in the NatRoad paper referenced here <https://www.natroad.com.au/resources/increasingsafety-road-transport-towards-zero>

⁴² <https://www.infrastructure.gov.au/roads/safety/>

⁴³ Ibid

⁴⁴ The report considered the impact of the Payments Order of the Road Safety Remuneration Tribunal in the months leading up to commencement of the Payments Order as well as during its operation and after its abolition.

<http://www.asbfeo.gov.au/sites/default/files/documents/RSRT%20Payments%20Order%20Inquiry%20Report%20-%20FINAL.pdf>

⁴⁵ Id at 48

(S)mall businesses were more frequently falling victim to the unscrupulous payment practices of some big businesses and governments: 'From stipulating unfair payment terms in contracts, to simply not honouring agreed payment times, a number of big businesses are effectively treating the little guys as banks by forcing them to provide interest free-loans in the form of late paid or unpaid invoices'.⁴⁶

96. Member feedback is that extended payment terms provisions in contracts is not just an issue confined to smaller trucking operations. In the past, the industry generally worked on the basis of a 30 day payment from end of month. For example, for all work carried out in (say) January, payment would be made in the first week of March. This averaged about 45-50 days in payment terms. This was generally acceptable and seemed to be the norm for most industries (not just the road freight industry).
97. As the industry became more reliant on computer based accounting packages, it became common for payment terms to be 30 days from the date of invoice, payable weekly. So for invoices issued for (say) the week ended 15 January, payment would be received on about 20 February. Given the invoicing was undertaken weekly, payment would be received each week (as the 30 day period rolled around). Again, this appears to be an acceptable basis for payment.
98. However, member feedback shows that it is now becoming more common for larger businesses which seek to have freight contracts filled (often companies with overseas based parents) to require payment terms of up to 90 days from the end of the month plus 7 days, i.e. averaging up to 110-120 days from when the work was carried out. With these extended payment terms, road freight businesses are expected to carry a greater amount of debt and risk, with the consequences of a greater likelihood of business failure should the large customer default on the contract or further delay payment beyond the contracted date. This development also favours larger road freight operators which are generally more likely to have the capacity to fund the debt created or to fund the weekly wage and fuel costs which comprise the majority of operators' costs in the industry.
99. Member feedback is that voluntary protocols would be insufficient to solve the problem of extended payment terms.⁴⁷ Accordingly, NatRoad submits that a mandated code along the lines previously outlined in this submission is highly desirable.
100. This policy stance reflects Recommendation 12 from the ASBFEO inquiry which is as follows:
- The Australian Small Business and Family Enterprise Ombudsman recommends that the Department of the Treasury and the Australian Competition and Consumer Commission work with the industry to investigate developing a Code of Conduct for the road freight industry under the Competition and Consumer Act 2010 (Cth).⁴⁸*
101. Accordingly, we submit that the Committee **recommend that the federal Government** introduce a mandatory code for the road transport industry under Part IVB of the CCA which would address

⁴⁶ <http://www.skynews.com.au/business/business/national/2016/11/16/small-businesses-owed-over--26b.html>

⁴⁷ Substantiated in J Wiggins *Carnell urges notice for slow-paying contractors* Australian Financial Review 24 September 2019 p17 and p22 which makes the point that the Business Council of Australia (BCA) has a supplier payment code which commits signatories to pay suppliers within 30 days. The article speaks of one BCA member pushing out payment times to 65 days. The member the subject of the article is one of 60% of BCA members who have not signed the voluntary code.

⁴⁸ Above note 38 at p6

harsh payment terms in transport industry contracts inclusive of a “pay when paid” prohibition and a maximum 30 day payment provision.

THE IMPACT OF NEW TECHNOLOGIES AND ADVANCEMENTS IN FREIGHT DISTRIBUTION, VEHICLE DESIGN, ROAD SAFETY AND ALTERNATIVE FUELS

102. We refer to paragraphs 51 et seq of Attachment A that addresses the issue of vehicle design, particularly the issue of newer heavy vehicles being safer.
103. Attachment B is the NatRoad submission dated 28 August 2018 to the Transport and Public Works Committee of the Queensland Parliament in respect of its inquiry into transport technology. That submission sets out the NatRoad policies that relate to many aspects of this term of reference. We note that the Committee will report to the Queensland Parliament in June 2020.

THE IMPORTANCE OF ESTABLISHING A FORMAL CONSULTATIVE RELATIONSHIP BETWEEN THE ROAD TRANSPORT INDUSTRY AND ALL LEVELS OF GOVERNMENT IN AUSTRALIA

104. We note that the Transport Satellite Account work undertaken by the ABS, discussed earlier, showed the importance of road freight transport to the Australian economy. As mentioned at paragraph 69 of Attachment A:
 - Transport accounted for \$77 billion (4.6 per cent) of GDP in 2015-16;
 - Transport was integral to day to day activities in other industries which added a further \$45.3 billion (2.7 per cent) of GDP;
 - Transport activity accounted for one million (8.6 per cent) of total employed persons in the economy in 2015-16; and
 - Road transport generated \$137.2 billion in economic output. 60.6% of this was in-house transport activity, with for-hire transport activity contributing 39.4%.
105. The importance of the road freight task is recognised in New South Wales where NatRoad is represented on the Road Freight Industry Council that meets regularly with the transport portfolio Ministers. It is recommended that a similar body be established so as to have regular and planned meetings with federal Ministers on the growing agenda for the road freight industry that will be expanded further following the outcome of the current inquiry and the inquiries by the Productivity Commission and the National Transport Commission discussed earlier.
106. There would be merit in limiting membership of the relevant federal Ministerial consultative group to membership organisations that could provide feedback through elected officials. Those representatives are charged with proposing members’ views and therefore are more likely to provide authentic on ground feedback about policy proposals.