



NATIONAL ROAD TRANSPORT ASSOCIATION

**Submission to the National Heavy Vehicle Regulator**

**Livestock Supply Chain Review**

**17 April 2020**

## Introduction

1. The National Road Transport Association (NatRoad) is pleased to make comments on the paper entitled *Improving Awareness and Practices in the Livestock Supply Chain* (Issues Paper).<sup>1</sup>
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 takes an approach which is not related to answering the questions posed in the Issues Paper. Instead, we focus on the need for the law to be better understood by and implemented by some of the parties in the supply chain. Transport operators should not be the primary target for prosecution for breaches where other parties' conduct contributes to an offence such as a mass breach.
4. As with other aspects of the chain of responsibility (COR) laws, operators have become increasingly concerned that they are not operating as intended. Instead these laws have become another mechanism by which administrative costs are loaded on to transport operators at the same time as drivers and operators appear to be the main target for prosecutions.
5. In this submission, therefore, we repeat the NatRoad call for reform of the COR laws that we have made in the context of the current Heavy Vehicle National Law review.<sup>2</sup>

## What is proposed and what is the NatRoad stance?

6. The Issues Paper indicates that "The task of transporting livestock throughout the supply chain is complicated by competing economic priorities of different participants looking to maximise their investment."<sup>3</sup> Yet it is the role of COR laws to ensure that those along the supply chain cannot place unreasonable burdens on other parties as a means of bolstering their return on investment at the expense of others, particularly the safety of others. We view the discussion in the Issues Paper from that perspective.
7. We agree with the comment in the Issues Paper that:  
*The (animal welfare) standards and the HVNL are aligned in the concept of shared responsibility, and both require participants in the livestock supply chain to manage their obligations.*<sup>4</sup>
8. Accordingly, there should not be a shying away from shared liability. That liability attends the shared obligations where an offence is committed. Operators in the industry are largely price takers, however the way that rates are currently being lowered by some parties in the chain leaves ethical operators in the cold. The Issues Paper acknowledges this problem:  
*Owner operators or smaller livestock operators are more susceptible to pressure from other participants in the supply chain to carry the load on offer or risk losing future work if they do not transport what is being requested.*<sup>5</sup>
9. The Issues Paper also acknowledges what is NatRoad's central concern, set out in paragraph 4 of this submission:

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<sup>1</sup> <https://www.nhvr.gov.au/files/202003-1129-improving-awareness-and-practices-in-the-livestock-supply-chain-issues-paper.pdf>

<sup>2</sup> See in particular this submission [https://www.ntc.gov.au/submission\\_data/561](https://www.ntc.gov.au/submission_data/561)

<sup>3</sup> Note 1 at p7

<sup>4</sup> Ibid

<sup>5</sup> Id at p9

Transport operators have the most exposure to HVNL breaches, as drivers are the most likely to be intercepted.<sup>6</sup>

10. The current situation is that education of those further up the chain must occur and, following that education campaign, enforcement of those other than drivers/operators should be targeted to sheet home the need for compliance. That should be accompanied by the law reform we recommend.
11. Separately from that campaign, NatRoad would welcome NHVR advocacy for re-shaping the COR laws. The NatRoad stance is that the HVNL should be further amended to encompass all parties in the COR who have ‘influence or control’ over the transport task. This change from ‘influence and control’, and the articulation of parties who are listed as exercising that control, 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 urged the review inquiry into the harmonised WHS laws to adopt the broader test of ‘influence or control’ but unfortunately that suggestion was not taken up.
12. 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. We believe that this change would effect reform in the industry that would advance safety and incorporate into the COR parties who currently escape liability, e.g. digital platforms, vehicle repair businesses, owners of saleyards (as opposed to operators). It would reinforce the intent of the primary duty which is, of course, that each party, in the COR for a heavy vehicle, must ensure, so far as is reasonably practicable, the safety of the party’s transport activities relating to the vehicle.
13. We emphasise that the enforcement of enhanced COR obligations would be critical to the success of the reform measure, as it is with a better response to the current law.

#### **Saleyards: Greater compliance needed**

14. We take the example of those who operate saleyards as illustrative of the NatRoad stance.
15. Saleyards play a vital role in the economies of regional Australia as well as being a major source of export revenue. Livestock saleyards are purpose-built facilities at which livestock are unloaded, sold and reloaded and where they should be weighed or, at the least, an estimate of their weight made by personnel experienced in selling livestock by weight.
16. The infrastructure that comprises a saleyard is fundamentally designed to handle the movement of animals and accommodate heavy vehicles. Member’s deliveries to and from saleyards form an important part of the rural freight task. We support upgrades of saleyard facilities so all parties in the COR can properly discharge their duties. The responsibility for the provision of saleyard infrastructure rests with the owner of the facility. Yet the question arises as to whether they are a loading manager for the purposes of the prescriptive duties that apply in the manner in which the COR laws currently apply. NatRoad’s broadened test would ensure that they were part of the network of those responsible where safety issues related to the nature of the facilities in place, e.g. the provision of weigh bridges and/or scales.
17. We reiterate that the definition of a ‘party in the COR’ under the HVNL limits the primary duties to specific persons<sup>7</sup> and does not capture everyone who influences or controls the safety of

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<sup>6</sup> Ibid

<sup>7</sup> A party in the chain of responsibility for a heavy vehicle is limited to:

transport activities in the supply chain. A reform to make this the appropriate test would, together with the other measures we have proposed, strengthen the application of the law and require all parties with responsibility to act accordingly.

## **Conclusion**

18. There should be a targeted, funded education campaign about COR responsibilities aimed at all parties in the livestock chain. That campaign should be followed by increased enforcement measures.
19. Enforcement is also a critical issue in the context of the COR laws more generally. The way the new enforcement regime is applied is a highly important element in its success. Parties must know that enforcement up the chain is likely and therefore regulators must allocate enough resources to this aspect of the law and publicity must be given to successful prosecution of those in the chain who are not transport operators or drivers who are, as acknowledged in the Issues Paper the current likely targets for enforcement. The prosecutions of those other than transport operators and drivers must be given publicity so that the industry is aware that prosecutions of those up the supply chain are being undertaken. Otherwise COR laws will not succeed and will continue to act in a manner which is unfair to transport operators.
20. COR laws need reform. We urge NHVR to support NatRoad's proposed reforms.

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- If the vehicle's driver is an employed driver – an employer of the driver
  - If the vehicle's driver is a self-employed driver – a prime contractor for the driver
  - An operator of the vehicle
  - A scheduler of the vehicle
  - A consignor and consignee of any goods in the vehicle
  - A packer of any goods in the vehicle
  - A loading manager; and
  - A loader and unloader