



NATIONAL ROAD TRANSPORT ASSOCIATION

Submission to the National Heavy Vehicle Regulator

Performance Based Standards 2.0

17 February 2023

Executive Summary:

The National Heavy Vehicle Regulator (NHVR) Discussion Paper, “Performance Based Standards 2.0”, is a mixed bag.

While the National Road Transport Association believes many aspects of the reforms proposed are an improvement on current arrangements, reducing regulator and members’ costs and expanding as-of-right access to agreed networks need to be high priorities.

The NHVR has heard the industry message that the regulatory and administrative burden the access regime imposes has caused innovation to stagnate, and there is no path for PBS vehicles to exit the PBS scheme into the ‘as-of-right’ fleet.

NatRoad understands the paper’s focus on notices and appreciates that governing legislation prevents the NHVR from amending PBS standards or network access guidelines without reference to the National Transport Commission (NTC).

But the PBS scheme needs to be changed to deviate from traditional regulated requirements, subject to confidence in performance and safety. We need a scheme founded on performance requirements, not prescriptive requirements.

NatRoad has members who have spent significant amounts in having PBS vehicles designed and approved, only to be forced to store this costly equipment at the depot because route access has not been granted.

This is a disincentive to the rollout of PBS vehicles generally and hampers industry efficiency.

NatRoad supports the rapid development of a fast-tracked PBS approval for heavy vehicles built with safety features (such as side underrun protection, blind-spot sensors, electronic stability control, and anti-lock brakes) to allow a maximum vehicle width of up to 2.6 metres as-of-right access to the road network.

This reform will assist with uniformity of manufacturing standards of overseas vehicles, even if the vehicles needed to meet the relevant PBS straight-line tracking standard and non-width related ADRs.

NatRoad supports any move that allows manufacturers to take on assessor and certifier functions to minimise time and cost barriers to the industry.

NatRoad also backs the NHVR proposal for a High Performance Fleet as a separate, quasi-prescriptive heavy vehicle category, allowing mature PBS vehicles to transition out of the PBS scheme.

Having a designated High-Performance Fleet could achieve this, although allowing further access without requiring a permit is NatRoad’s preferred path.

Introduction

1. The National Road Transport Association (NatRoad) is pleased to respond to the National Heavy Vehicle Regulator's (NHVR) Discussion Paper entitled *Performance Based Standards 2.0*¹ (Discussion Paper).
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, tankers, and refrigerated freight operators.
3. During the ongoing Heavy Vehicle National Law (HVNL) review being conducted by the National Transport Commission (NTC), NatRoad has called for reform of the Performance Based Standards (PBS) regime. Accordingly, we welcome the opportunity to comment on the Discussion Paper to reinforce the aim of the NHVR in publishing the Discussion Paper as expressed thus:

*(To) ensure it (the PBS scheme) continues to promote innovative, yet robust, approaches to heavy vehicle safety and productivity while reducing regulatory, administrative and cost barriers for the NHVR and its stakeholders.*²

4. We also agree with the initial observation in the Discussion Paper that feedback from industry was received that sought changes to the PBS scheme, a matter expressed in NatRoad's HVNL submissions and encapsulated in the Discussion Paper:

*Industry has told the NHVR that because the regulatory and administrative burden, innovation has stagnated, access continues to be an issue, and there is no path for PBS vehicles to exit the PBS scheme into the 'as-of-right' fleet.*³

5. Accordingly, NatRoad agrees with the PBS 2.0 aim of reviewing the PBS scheme to provide options for increasing industry uptake, accelerating growth, and enabling innovation in the PBS fleet. Much of this work has already been traversed by the Productivity Commission in its National Transport Regulatory Reform report. We especially commend the analysis of access reform in that report. NatRoad, in particular, supports Recommendation 7.5 from that report as follows:

RECOMMENDATION 7.5 – EXPANDING AS-OF-RIGHT HEAVY VEHICLE ACCESS NETWORKS The Council of Australian Governments should direct road managers (including the state road authorities) to work with the National Heavy Vehicle Regulator to expand key freight routes covered by notices, allowing as-of-right access for larger vehicle types. The focus of this work should include expanding gazetted access networks for:

- *vehicles approved through the Performance-Based Standards (PBS) scheme (including PBS B-doubles, A-doubles and B-triples), at least to match the networks for the equivalent non-PBS vehicles*
- *types of vehicles for which permit applications are almost universally approved. Road managers should upgrade road infrastructure to allow heavy vehicle access where the benefits exceed the costs. Where road network constraints prevent heavy vehicle access,*

¹ [Performance Based Standards 2.0 Discussion Paper \(nhvr.gov.au\)](https://www.nhvr.gov.au/Performance-Based-Standards-2.0-Discussion-Paper)

² *Ibid* p 6

³ *Ibid*

*road managers should ensure that there are adequate truck stops and logistics centres to allow larger vehicles to be broken down into smaller combinations.*⁴

6. NatRoad has previously communicated to the NHVR that when PBS approval is being considered, access routes for the particular type of approval should be formulated and agreed upon. NatRoad has several members who have commented that they go to great expense and trouble designing and having PBS vehicles approved, only to have costly equipment stored at the depot because route access is not granted. This discourages the rollout of PBS vehicles and detracts from the industry's efficiency. Hence, synchronising access and technical requirements in the PBS scheme is a NatRoad priority, a matter we reinforce in the following discussion.
7. Regarding the Productivity Commission Recommendation set out above, section 3 of the Discussion Paper states that the access reform proposed is out-of-scope for the Discussion Paper's ambit. We note the details of what is and is not in scope for the current project set out in section 3. In short, from the Discussion Paper, the current review is a "holistic review of its technical, administrative, operational, commercial or technological elements."⁵ Despite the limitations, NatRoad underlines that access reform and the advancement of the Productivity Commission's recommendation remain the priority area for change for NatRoad.
8. We now comment on the issues raised in the Discussion Paper and respond to the questions posed. However, more systemic reform along the lines of the Productivity Commission's recommendation must be made. We will continue to press these issues in the context of the HVNL review and seek NHVR's support.

Systemic Issue: Change is Difficult Because of Poor Legislation

9. NatRoad is sympathetic to the fact that because of the terms of the governing legislation, the NHVR cannot amend the PBS scheme Standards or network access guidelines independently of the NTC. So, while the NHVR undertakes activities to support change, it can only effect change by referring those changes to the NTC.⁶
10. Arising from the substance expressed in the prior paragraph and given other PBS inflexibilities, the Discussion Paper indicates that there should be a premise for the PBS scheme to deviate from traditional regulated requirements, subject to confidence in performance and safety. NatRoad agrees that the scheme should be founded on performance, not prescriptive, requirements.

The Questions

11. Arising from a detailed discussion around the issues described in the last two paragraphs, the Discussion Paper then asks three questions, each now addressed. The question is set out in italics, followed by the NatRoad answer in standard script.
12. **Question 1** *The NHVR suggests that it should take responsibility for owning and maintaining the Standards and Vehicle Assessment Rules and the Performance Based Standards – Network Classification Guidelines. The NHVR proposes two options, described below. Is there an option that you prefer and why? Is there an option that the NHVR has not considered? Refer to section 5.2.1 for further detail. • Option 1: The NTC retains ownership and responsibility but may delegate responsibility to the NHVR. Decisions continue to be made by ITSOC for minor*

⁴ Id at p 224

⁵ Above note 1 p 10

⁶ Outlined at Id p 11-15

changes, and Ministers for major changes. • Option 2: The HVNL, its subordinate regulations, section 21 of the Standards and Vehicle Assessment Rules should and section 5 of the Performance Based Standards – Network Classification Guidelines be amended to introduce a tiered approval process. The NHVR has full ownership and responsibility. Minor changes are decided by the NHVR Board. Major changes continue to be decided by responsible Ministers via ITSOC.

13. NatRoad supports a modified Option 2. We believe it is sometimes difficult to draw a line between “minor” and “major.” How that distinction would be made is unclear. NatRoad believes that the NHVR Board should be vested with the authority to change any element of the PBS scheme subject to a prior, formally required consultation period with the industry. We suggest an exposure period to the industry of 21 days before implementing a change. Under this proposal, the NHVR Board would be required to consider feedback received from the industry and document how it responded to that feedback. There should also be an obligation to publish the feedback and how that was dealt with.
14. **Question 2** *The NHVR suggests that an accelerated process be established to update the Standards to ensure PBS vehicles remain at the forefront of innovation. Any interested stakeholder may initiate this process, must be supported by a robust and rigorous proposal and engagement process, and PAG should provide an advisory function. Do you support this approach (why/why not)? Is there an option the NHVR has not considered? Refer to section 5.2.2 for further detail.*
15. NatRoad believes that the process outlined should be adopted. It fits the position we put about Question 1, i.e., vesting more responsibility in the NHVR Board and industry. NatRoad members with suggestions for innovation should be permitted to develop and submit a proposal for consideration by the NHVR and other industry stakeholders.
16. **Question 3** *The NHVR suggests the adoption of interim standards to temporarily enable field testing of technology not already in the PBS scheme. What are your thoughts on the soundness of this concept and how interim standards could potentially be developed (particularly in reference to the below aspects). Refer to section 5.2.3 for further detail. • The proposal development process and governance arrangements • Decision-making and risk management framework • Liability and responsibility (e.g. if a crash occurred) • How an interim standard would transition to permanent inclusion in the PBS scheme.*
17. Rightly, the HVNL allows PBS vehicles to receive exemptions from several prescriptive regulations in the Discussion Paper.⁷ This question centres on the proposition:

The HVNL and supporting regulations could be amended to further expand the list of exemptions offered to PBS vehicles, where it can be shown that safety performance will not suffer as a result.
18. NatRoad supports expanding exemptions from prescriptive regulation and making the scheme more reflective of performance-based criteria. The criterion that “safety performance will not suffer” would need to be made more objective, and the responsibility vested in the engineer who certifies that an exemption should be granted. NHVR should rely on that private sector input.
19. The Discussion Paper also indicates that the NHVR can approve PBS designs that do not comply with one or more Standards under the Standards and Vehicle Assessment Rules, which is a

⁷ Above note 1 p 15

rare occurrence. But that power and the exemption issue mentioned above leads the Discussion Paper to say:

The NHVR sees this premise as an opportunity to accelerate the testing and inclusion of new technologies in the PBS scheme. An interim standard could temporarily enable field testing of technology not already in existing Standards.

20. NatRoad believes that developing an interim standard is optional, and NHVR should assist in transitioning the scheme to a truly performance-based system. In this context, reliance by the NHVR on an engineer's certificate that the proposed technology meets particular performance criteria about safety should be sufficient for PBS approval to be granted. NHVR can then monitor the performance of the specific vehicle with a view (where necessary) of seeking changes to the Standards on a permanent or interim basis, dependent on external expertise. Engineer's certificates are, after all, a means of satisfying the load restraint criteria where one of the prescriptive or described means of restraining a load is not adopted. The performance requirements of the law guide the engineer in that context, and NatRoad submits that the same approach should be adopted in a revised PBS scheme.
21. **Question 4** *Is a single notice, speaking to many templates, schematics and networks, an appropriate approach to access for PBS and PBS like vehicles? Is there an alternative approach that has not been considered? Refer to section 6.4 for further detail.*
22. As this submission indicates, access is the priority issue for NatRoad. Question 4 is the first question about the Discussion Paper's content about access. Underlying question 4 is the worthwhile objective of introducing a new template approach for a broader range of potential vehicle types to be provided access under notice. The intent is to make it quicker and easier for PBS and PBS equivalent vehicles to obtain road access. The template approach may achieve that aim. But the notice process is inefficient and cumbersome, with road managers imposing many road and travel conditions that hinder efficiency and add complexity to the notices. Whilst NatRoad supports the proposal, it does not go far enough in reforming PBS access.
23. **Question 5** *The Access and Transition Framework pursues two complementary streams, comprising four potential pathways, to deliver industry network access for PBS and PBS-like vehicles. These streams and pathways intend to avoid PBS processes as much as practicable within the boundaries of the current HVNL, or what could be achieved with changes to the HVNL. Are there other reasonable pathways that have not been considered? Refer to section 6.4 for further detail.*
24. The complexity of the relevant part of the Discussion Paper reflects the complexity of the notice system and the current scheme's rigidity, especially regarding access. Again, NatRoad submits that more fundamental reform of access requirements is necessary so that the Productivity Commission's recommendation, highlighted earlier, can be implemented.
25. **Question 6** *The NHVR is proposing a High Performance Fleet as a separate, quasi-prescriptive category of heavy vehicle, providing the opportunity for mature PBS vehicles to transition out of the PBS scheme. Do you support the transition of PBS vehicles out of the PBS scheme? Is there a particular pathway that you support? Is there a pathway that you would not be willing to support? Please justify your response. Refer to section 6.5 for further detail.*
26. The proposal is supported. NatRoad has had feedback that some customers are assured about the freight task being undertaken by PBS-approved vehicles. This has meant that members would want recognition that their particular vehicle has the same status as a PBS-approved combination. Having a designated High-Performance Fleet could achieve this aim. Greater

levels of access without requiring a permit is NatRoad's preferred path. The Discussion Paper notes that an "opportunity exists to broaden permit-less access for safe and productive vehicles (e.g. under a notice developed with, and consented to, by road managers)."⁸ The extent to which road managers would agree to this position should be explored with their representatives and then developed so that permits are phased out.

27. **Question 7** *At what point do you believe PBS vehicles should transition out of the PBS scheme, if at all? How should that decision be made, and what role should the PAG, road authorities and road managers have in this process? Refer to section 6.5.1 for further detail.*
28. NatRoad notes that the Discussion Paper concludes that because of the variety and complexity of PBS vehicles, "the NHVR will work with governments and industry to develop a transparent methodology to identify and prioritise PBS vehicle designs that may be able to transition out of PBS and into the HPF fleet."⁹ First, the transition from PBS should be to a recognised HPF system, and this would assure customers and others that transitioned vehicles were of a high safety and performance standard. Secondly, part of the process should involve PBS-type approval being issued for individual units rather than a nominated combination and for those units to be able to be interchanged so that they could be split and reconfigured in multiple ways. PBS combinations should be able to substitute component vehicles that meet the same design and build specifications. The agreement of stakeholders of the kind mentioned in the question to that substitution as an element of the next stage of reform would assist this process.
29. **Question 8** *Do you agree that additional PBS scheme processes should be digitised in the NHVR Portal to further improve the PBS approval process? What enhancements could be made that the NHVR has not already delivered or mentioned in this Discussion Paper?*
30. A narrow focus on the elements of digitisation set out in the Discussion Paper may assist, but more fundamental reform is required. Member feedback is that the assurance system is overly complex with a heavy bureaucratic focus. It is NatRoad policy that certifiers should not be required. Manufacturers should be able to self-certify that the build is as per the approved design. This would be a simple step and eliminate cost and delay. So, PBS manufacturers would be authorised to self-certify that the vehicles they build comply with the relevant design, as they do for vehicles that comply with the Australian Design Rules. This issue is taken up further below.
31. **Question 9** *Would the barriers to participation in the PBS scheme be mitigated if PBS approval processes performed by the NHVR were delegated to assessors, certifiers and/or manufacturers? Why/why not? Refer to section 7.2 for further detail.*
32. As is plain from the answer to question 8 in paragraph 30, NatRoad answers this question in the affirmative. We endorse this statement from the Discussion Paper:

Enabling manufacturer self-assessment and self-certification – that is, enabling them to take on assessor and/or certifier functions – would help minimise time and cost barriers to industry. It would also facilitate creation of competition in the PBS marketplace, foster collaboration and innovation (e.g. via manufacturer consortia), facilitate uplift of base capability across the PBS stakeholder cohort, and improve options and service delivery levels to industry.¹⁰

⁸ Above note 1 at p 22

⁹ Ibid

¹⁰ Above note 1 at p 26

33. **Question 10** *Do you agree with the list of potential responsibilities that the NHVR could delegate to other PBS stakeholders? Why/why not? Are there others that the NHVR has not considered? Refer Figure 10.*
34. As far as possible, the scheme's administration should be vested in the private sector with reliance on manufacturers' certification and independent engineer's reports, as mentioned in paragraph 20 above, introduced as a reform.
35. **Question 11** *Do you agree with the phasing in section 7.2.1 and section 7.2.2? Fundamentally, are the below appropriate 'enablers' for external delegation of responsibilities from NHVR to other PBS stakeholders? Why/why not? How else could delegation work? Refer to section 7.2.1 for further detail.*
- *Establishing contractual obligations and associated penalties for non-conformance.*
 - *Increasing the minimum eligibility requirements to undertake additional responsibilities.*
 - *Amending the Rules to specify and describe the broader range of responsibilities.*
 - *Establishing more robust application, review and approval process for appointment to undertake broader responsibilities.*
 - *Undertaking more stringent audits of assessors and certifiers, including associated documentation and procedures (predetermined schedules and random). The level of risk, past performance, and nature of responsibility will influence the type and frequency of audits.*
 - *Stakeholders that do not meet minimum standards, and continue to fail to do so after improvement notices and plans are initiated, will be terminated (relative to the severity and frequency of the risk and behaviour). This aspect not only relates to additional responsibility, but base responsibilities and expectations of all assessors and certifiers under the various PBS Rules – this is already a contractual obligation.*
36. NatRoad does not believe a new penalty regime should be instituted. Contractual requirements and the monitoring of the meeting of those requirements should be sufficient. The civil liability attending breach of contract should be adequate rather than a mindset that punishes participants with criminally based fines/offences.
37. **Question 12** *Do you agree that a minimum level of demonstrated quality of work, performance and capability is required to undertake an assessment or certification function in the PBS scheme? Why/ why not? Refer to section 8.2 for further detail.*
38. Prequalification for various roles may be required, but NatRoad would favour any system being one of negative licensing. That is, those who are qualified (including as a manufacturer) would bear civil liability confirmed via contractual arrangements. Suppose there was evidence (via a limited monitoring period) that the PBS vehicle needed to meet the required and certified performance standards. In that case, the participant could be excluded until further evidence of suitable qualifications and proper scheme application was gathered. Another failure would lead to exclusion.
39. **Question 13** *Is the NHVR's proposed scaled approach to auditing and penalties, commensurate to activity and risk, appropriate – in particular relating to improvement notices and plans, and potential termination of ability to participate as an assessor or a certifier. Why/why not? Refer to section 8.2 for further detail.*
40. We have already rejected a focus on penalties. NatRoad supports delegating as many decision-making functions as possible to the private sector. This step would enhance the aim of PBS 2.0 to the sharing of responsibility for PBS and would markedly reduce the regulatory burden.
41. **Question 14** *Are the objectives and principles for the PBS scheme and PBS 2.0 appropriate? How could they be improved? Has appropriate consideration been given to these in the proposed improvements to the PBS scheme?*

42. Many aspects of the reforms proposed are an improvement on current arrangements. The central focus should be on reducing both regulator and members' costs. Further, whilst we understand the focus on notices, as-of-right access to agreed networks must be more to the fore in reform. NatRoad supports the rapid development of a fast-tracked PBS approval for heavy vehicles built with safety features (such as side underrun protection, blind-spot sensors, electronic stability control, and anti-lock brakes, to name a few) to allow a maximum vehicle width of up to 2.6 metres as-of-right access to the road network. This reform would primarily assist with uniformity of manufacturing standards of overseas vehicles even if the vehicles needed to meet the relevant PBS straight-line tracking standard and non-width related ADRs.
43. **Question 15** *What is your preferred option for how the PBS scheme should be managed into the future? Are there any other options the NHVR has not considered and how would they work?*
44. The answer to this question takes us back to the Productivity Commission's access recommendation mentioned earlier in this submission and NatRoad's emphasis on the devolution of as many scheme aspects as possible to the private sector.
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