

Submission to: Productivity Commission

Title: National Transport Regulatory Reform
Issues Paper

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Contents

1. About the Australian Trucking Association.....	3
2. Summary of recommendations.....	3
3. Introduction.....	5
4. Safety outcomes.....	6
5. Productivity outcomes.....	7
6. National framework for safety and productivity.....	10
7. Reforming the HVNL.....	13
8. Access for a modern, safer, more productive and better-connected road freight network.....	16
9. Heavy vehicle safety accreditation.....	26
10. Vehicle standards, automation and assessment of safety benefits.....	28
11. Incentivising business investment.....	30

ATA CONTACT

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1. About the Australian Trucking Association

The Australian Trucking Association is the peak body representing the 50,000 businesses and 200,000 people in the Australian trucking industry.

2. Summary of recommendations

Recommendation 1

The Productivity Commission should assess the policy options for better collection of heavy vehicle road crash statistics, to better inform the safety outcomes from reform and the reasons for those changes.

Recommendation 2

Reforms to improve road freight productivity must go beyond the current Performance Based Standards framework and deliver productivity gains for road freight which does not have predictable volumes or long lead times.

Recommendation 3

The Productivity Commission should assess the 'national plate' registration system and identify reforms to fix the system's defects and deliver better outcomes for industry.

Recommendation 4

The Productivity Commission should assess the policy options for the Commonwealth to drive improvements in access for more productive vehicles on interstate road transport routes, following the closure of the Federal Interstate Registration Scheme.

Recommendation 5

The HVNL should not be extended to WA and the NT to protect the productivity of local trucking operators.

Recommendation 6

Harmonisation and productivity between the HVNL and WA/NT should focus on resolving specific productivity issues to the highest common denominator and developing mutual recognition agreements to reduce the cost of multiple accreditations.

Recommendation 7

The role of the Australian Transport Safety Bureau should be extended to provide independent, no-blame, safety investigations for road crashes involving heavy vehicles.

Recommendation 8

The new HVNL should adopt a three-tiered structure, including enforceable orders and standards and improvements in corporate governance, oversight and accountability.

Recommendation 9

Reform of the HVNL access system should include:

- Recognising that local roads are part of a wider network.
- Enforceable standards and orders.
- External review.
- Ability for local government to delegate their access decision-making role.
- Acknowledging precedents in access decisions.
- Extending the period and applicability of authorisation.
- Process improvements and reduced processing timeframes.
- Reforming assurance by telematics.
- Expanding as-of-right access.

Recommendation 10

The Heavy Vehicle Road Reform agenda should be refocused with a stronger focus on increasing productivity by improving the provision of roads. This should include:

- Setting clear and measurable service level standards.
- Ensuring revenue from heavy vehicle charges is allocated to the provision of service level standards that benefit heavy vehicle road users.
- Improving the selection, assessment and planning of road funding projects with a focus on delivering national service level standards.
- Establishing an independent economic regulator for setting heavy vehicle charges, including toll road and landside port charges.
- Continuing to set charges on a network basis, to ensure the entire road network and regional areas are appropriately funded.

Recommendation 11

Privatisation of infrastructure assets should promote economic efficiency and not obtaining the maximum proceeds from the sale of the asset, with independent regulation of the ongoing prices set for utilisation of the asset.

Recommendation 12

Better access for a modern, safer, more productive and better-connected road freight network should be delivered by:

- Improving the access decision making process under the HVNL.
- Commitment by governments to identify, plan and deliver a more productive road freight network.
- Supply side road funding reform to improve the provision of road infrastructure, incentivise the provision of freight access for local government and provide independent price regulation of infrastructure charges.
- Selecting the right policy mechanism for the right policy objective.

Recommendation 13

Competitive neutrality should be applied to the NHVAS and heavy vehicle safety accreditation.

Recommendation 14

The Australian Government should include all new rigid trucks in the decision to mandate stability control.

Recommendation 15

The Australian Government should mandate AEBS for new heavy vehicles.

Recommendation 16

Governments should use willingness to pay in assessing proposed policy actions and infrastructure investments with a safety benefit.

Recommendation 17

Governments should phase out stamp duties on the purchase of heavy vehicles.

Recommendation 18

The Australian Government should implement a mandatory payments code for the trucking industry under Part IVB of the Competition and Consumer Act (CCA) to address the payment terms issues facing small trucking businesses, pay when paid arrangements, alternative dispute resolution and customer terms and conditions for compliance systems.

Recommendation 19

State and territory governments should implement a monthly registration payment option for heavy vehicles.

3. Introduction

The Australian Trucking Association welcomes the Productivity Commission inquiry into national transport regulatory reform.

These national transport regulatory reforms, as instigated by the Council of Australian Governments in 2008-09 with inter-governmental agreements signed in 2011, resulted in the establishment of the National Heavy Vehicle Regulator (NHVR) and the Heavy Vehicle National Law (HVNL).¹

The Australian Trucking Association supported the intent of the then proposed HVNL in 2011, although with extensive recommended amendments.²

In 2018, strong safety amendments to the HVNL came into force which delivered key reforms that had been strongly advocated for by the ATA.³

Additional to this inquiry, key work, review and reform development is underway as part of the HVNL review being undertaken by the National Transport Commission (NTC), the development of the Freight and Supply Chain Strategy and Heavy Vehicle Road Reform.

To inform this review work, the ATA commissioned Deloitte Access Economics to report on the economic benefits of improving regulation in the trucking industry. This [Deloitte Access Economics report](#) provides a strong assessment of how the reforms have failed to lift the industries productivity as intended.

The ATA's detailed recommendations for reforming the HVNL will be made through the NTC HVNL review reform process and are not repeated in detail in this submission. However, the HVNL is central to the national regulatory framework and broad ATA recommendations for reforming the HVNL are included. There are a number of additional and complementary reform areas which the ATA recommends that the Productivity Commission should also closely consider.

The ATA's focus for this submission is on regulatory reforms that apply to heavy vehicles. Other parts of the national reforms (such as maritime and rail safety) are not considered.

The Productivity Commission raises the possibilities for further integration and the intermodal nature of transport. **Ultimately, transport reform should prioritise all modes being safe and efficient.** Proposals to support modal shift by making other modes of transport less efficient must be rejected.

¹ The Hon Josh Frydenberg MP, Treasurer, 5 April 2019, [Terms of Reference for the Productivity Commission inquiry into National Transport Regulatory Reform](#)

² ATA, 6 May 2011, [Submission to the National Transport Commission: Draft HVNL and Regulatory Impact Statement](#), 13.

³ ATA, 28 September 2018, [Media Release: Innocent till proven guilty](#).

4. Safety outcomes

There has been significant progress on making our roads safer. Figures prepared by the Centre for Automotive Safety Research for the ATA show that the rate of fatal articulated truck crashes fell 80 per cent between 1982 and 2015, despite the enormous growth in the number of trucks on the road.

In March 2019, the Bureau of Infrastructure, Transport and Regional Economics reported that in the 12 months ending in March 2019 that there were 147 fatal crashes involving heavy trucks, with 84 involving articulated trucks and 69 involving heavy rigid trucks.

Across all heavy trucks this represents an average 2.1 per cent per annum reduction across the last 10 years, or 4.1 per cent for the past 3 years. For articulated trucks it is 4 per cent average per annum reduction for the last 10 years, and 5.7 per cent for the last 3 years. These figures include both HVNL and non-HVNL jurisdictions.⁴

Road safety statistics show that in over 80%⁵ of fatal multi-vehicle crashes involving heavy vehicles the fault is not assigned to the heavy vehicle. Despite these statistics, learning to share the road with trucks is not a significant consideration in Australian light vehicle driver education.

It is difficult to itemise to what extent changes in safety outcomes, or the lack thereof, is attributable to the national regulatory reforms and the HVNL and NHVR. It is likely that a combination of factors has contributed to the reduction in fatal crashes, including the national reforms, and improvements in infrastructure, business practices, vehicle technology and safe driver behaviour.

There is a need for better crash investigation and collection of crash statistics. Crash investigation will be further discussed in the section on a national framework for safety and productivity.

Recommendation 1

The Productivity Commission should assess the policy options for better collection of heavy vehicle road crash statistics, to better inform the safety outcomes from reform and the reasons for those changes.

⁴ Table 1, Fatal Crashes, [Fatal heavy vehicle crashes Australia quarterly bulletin \(Jan-Mar 2019\)](#), Bureau of Infrastructure, Transport and Regional Economics, 2.

⁵ [BITRE Heavy truck safety: crash analysis and trends](#)

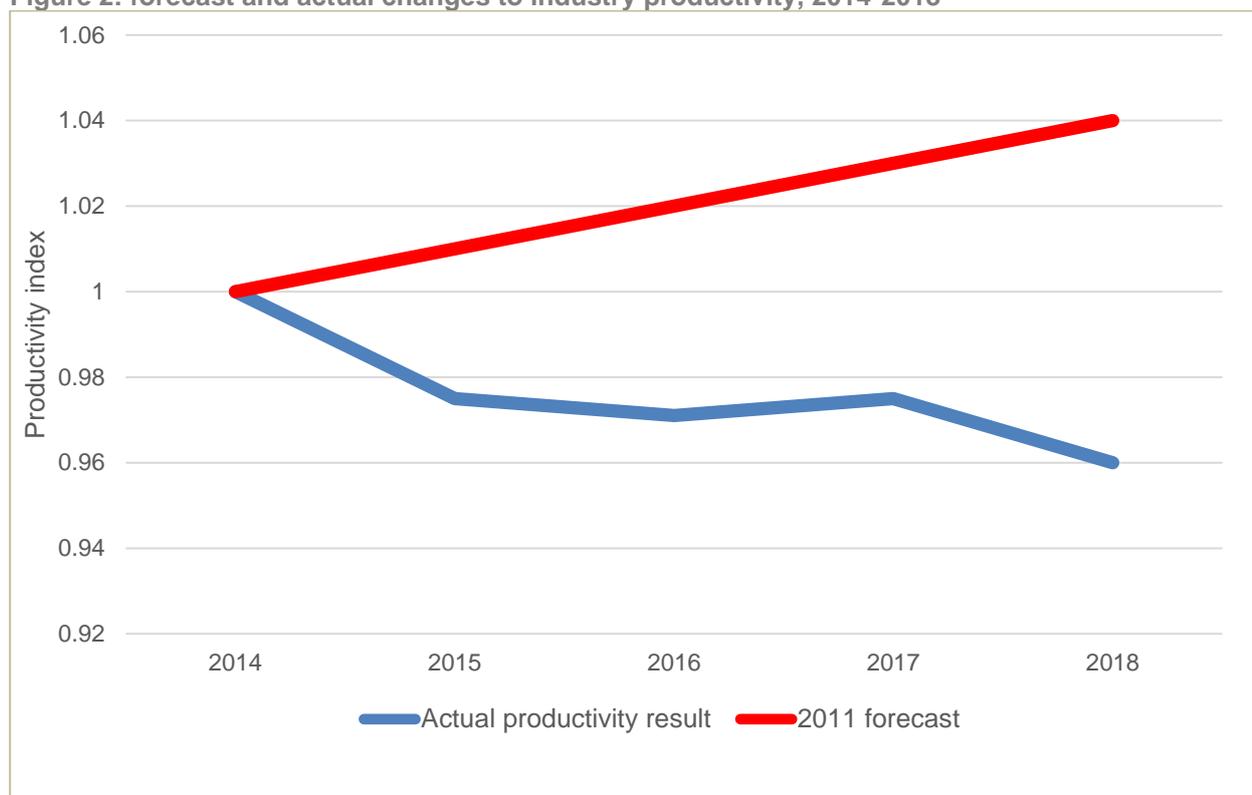
5. Productivity outcomes

In 2011, the HVNL was predicted to deliver up to \$12.4 billion in economic benefits. Most of the benefits were to be made in gains from harmonisation of restricted access vehicles, higher mass limits and intelligent access program regulations.⁶

As stated by the NTC at the time, implicit in the benefit calculation was the assumption that the new decision-making framework would promote access.⁷

However, the reality of what has been achieved by the reforms has fallen significantly short of these commendable objectives. The productivity of the transport, postal and warehousing sector has fallen steadily since the law came into force in 2014.⁸

Figure 2: forecast and actual changes to industry productivity, 2014-2018



Source: Deloitte Access Economics.

In contrast, the success of the B-double in lifting the industry’s productivity between 1971 and 2007 should be considered. During this time, the trucking industry productivity increased six-fold due to the uptake of the B-double and other high productivity vehicles. It has been estimated that in the absence of productivity improvements over this period nearly 150,000 articulated trucks, in addition to the 70,000 registered for use in 2007, would have been required to undertake the 2007 articulated truck freight task.⁹

There have been other successes. The NTC’s 2017 discussion paper on assessing the effectiveness of the PBS scheme found an average 24.8 per cent productivity gain across

⁶ Deloitte Access Economics, March 2019, [Economic benefits of improved regulation in the Australian trucking industry](#), 17.

⁷ NTC, September 2011, [HVNL Regulation Impact Statement](#), 57.

⁸ Deloitte Access Economics, *ibid*, 21.

⁹ Bureau of Infrastructure, Transport, and Regional Economics, 2011, *Truck productivity*, pixy

commodities carried by PBS vehicles and estimated savings of \$65 million in road maintenance for 2015-16 and 94 million litres of fuel in 2016.¹⁰

Additionally, the NHVR's harmonisation work has produced some positive outcomes, especially when national notices provide greater access.

In late 2018 the Australian Government announced new rules for transporting hay and fodder which provided greater harmonisation and less reliance on permits.¹¹

However these minor improvements in approaches to access have failed to lift industry-wide productivity. With reference to the productivity outcomes of the PBS scheme, the restrictive nature of the scheme, limited road access, and long lead times have the practical effect of the scheme not being suitable for a significant part of the road freight task that does not have predictable freight volumes or sufficient lead time for PBS approval.¹² **The productivity gains from these reforms have been minor, albeit not properly measured.**

Recommendation 2

Reforms to improve road freight productivity must go beyond the current Performance Based Standards framework and deliver productivity gains for road freight which does not have predictable volumes or long lead times.

Case study: increased regulatory burden resulting from the national transport regulatory reforms

A large livestock carrier which operates primarily in Queensland and New South Wales, and a member of the Australian Livestock and Rural Transporters Association, has experienced an increase in regulatory burden as a result of the national transport regulatory reforms.

The business maintains approximately 70 class 2 permits for various routes, relating to B-doubles, road trains and B-triples.

In Queensland, prior to the national reforms, the operator would apply directly to the state department for permits. These were usually granted for a period of three years and local councils were generally not consulted in the process for granting the permit.

Following the establishment of the NHVR, the permits are now issued for only a one-year period and the process of consulting local councils has significantly increased the time it takes to have the permit approved.

The 70 permits are 'rego specific,' which means each permit must be amended to include the registration of each new vehicle the operator may add to their fleet. The business purchases about 20 new trucks each year.

The business has estimated it takes about an hour to amend a permit to add a new vehicle, resulting in an approximate annual cost of \$70,000 (cost time at \$50 an hour).

The business is currently working to consolidate the permits into 'master permits' that include all routes. These would still need to be amended to add in new routes, and to add in new vehicles.

¹⁰ NTC, August 2017, Assessing the effectiveness of the PBS scheme: discussion paper, 1.

¹¹ ATA, 20 September 2018, [Media release: Helping the trucking industry help farmers](#).

¹² ATA, 9 October 2017, [Submission to the NTC: Assessing the effectiveness of the PBS scheme](#), 5

The Federal Interstate Registration Scheme

The success of the B-double would suggest that access-dependent productivity gains require specific focus and actions on driving an improved and more accessible road network for high productivity freight vehicles (HPFV).

As an example, the Australian Government successfully used the former Federal Interstate Registration Scheme (FIRS) to improve heavy vehicle productivity. Higher mass limits were only introduced in Victoria and NSW after they were introduced for FIRS vehicles.¹³ FIRS was important for allowing the national use of B-double combinations, following legislative changes in 1991.

When introducing the *Interstate Road Transport Amendment Bill 1991* the then Minister for Land Transport, the Hon Robert Brown MP, stated:

The objective of this reform is to develop a land transport system that is competitive between modes, is more efficient in its allocation of resources, achieves greater operational productivity and promotes harmonised road transport regulations.

The Federal Government recognises the considerable productivity, safety and environmental benefits offered by B-doubles. The introduction of B-doubles on a national basis is therefore an integral part of the Government's reform strategy.¹⁴

The then Federal Opposition supported the introduction of B-doubles:

The Interstate Road Transport Amendment Bill 1991, as it is now presented, will allow B-doubles-doubled-bottomed trailers or, to the uninitiated, a prime mover with two trailers hitched-to operate under the Federal interstate registration scheme on designated routes. At long last, this means that these trucks will be able to operate right around Australia.¹⁵

The Opposition also criticised the regulatory barriers which had prevented greater B-double use:

The operation of B-doubles under the Federal interstate registration scheme will obviate the need to obtain State permits-to date, a cumbersome and expensive, repetitive exercise.¹⁶

The clear intent behind the 1991 Australian Government reforms to FIRS was to improve trucking industry productivity, safety and environmental outcomes through allowing the use of high productivity vehicles for interstate trade. The outcome was a complete success.

The Australian Government considered disbanding FIRS in 2006 but decided to retain the scheme to give the Australian Government the capacity to participate in the road regulation reform process by offering an alternative to the state registration system.

In 2009 the Australian Government announced a policy intent to close FIRS upon the introduction of a national registration system for heavy vehicles. The 2011 *Intergovernmental Agreement on Heavy Vehicle Regulatory Reform* envisaged that FIRS would be repealed by late 2012, with a one-off stamp duty exemption for FIRS vehicles transferring to state registration. In May 2018, federal Parliament passed legislation that closed FIRS, ignoring an ATA recommendation to once again use the scheme to incentivise productivity growth. The resulting registration system is administered by the states and territories, who also receive the revenue.

The ATA and its members recommend that the Productivity Commission should further assess the establishment of the current 'national plate' registration system and its defects.

¹³ Moore, B and M Starrs, "Road transport reform in a federal system." Paper delivered at the 18th Australasian Transport Research Forum, 1993. 2.

¹⁴ Brown MP, the Hon Robert, 30 May 1991, [Second Reading: Interstate Road Transport Amendment Bill 1991](#), 4494.

¹⁵ Senator Chapman, 16 August 1991, [Second Reading: Interstate Road Transport Amendment Bill 1991](#), 571.

¹⁶ Ibid, 571.

Further background on FIRS is available in the [ATA's October 2017 submission on the future of the Federal Interstate Registration Scheme](#).

Implementation of the 2011 agreement on heavy vehicle reform in relation to FIRS has only achieved the removal of a mechanism for incentivising productivity and overseen the introduction of a national plate system that does not provide an optimal national registration system.

Recommendation 3

The Productivity Commission should assess the 'national plate' registration system and identify reforms to fix the system's defects and deliver better outcomes for industry.

Recommendation 4

The Productivity Commission should assess the policy options for the Commonwealth to drive improvements in access for more productive vehicles on interstate road transport routes, following the closure of the Federal Interstate Registration Scheme.

6. National framework for safety and productivity

The NTC has described the purpose of the HVNL as ensuring that a heavy vehicle operates safely while delivering an efficient service.¹⁷

National harmonisation

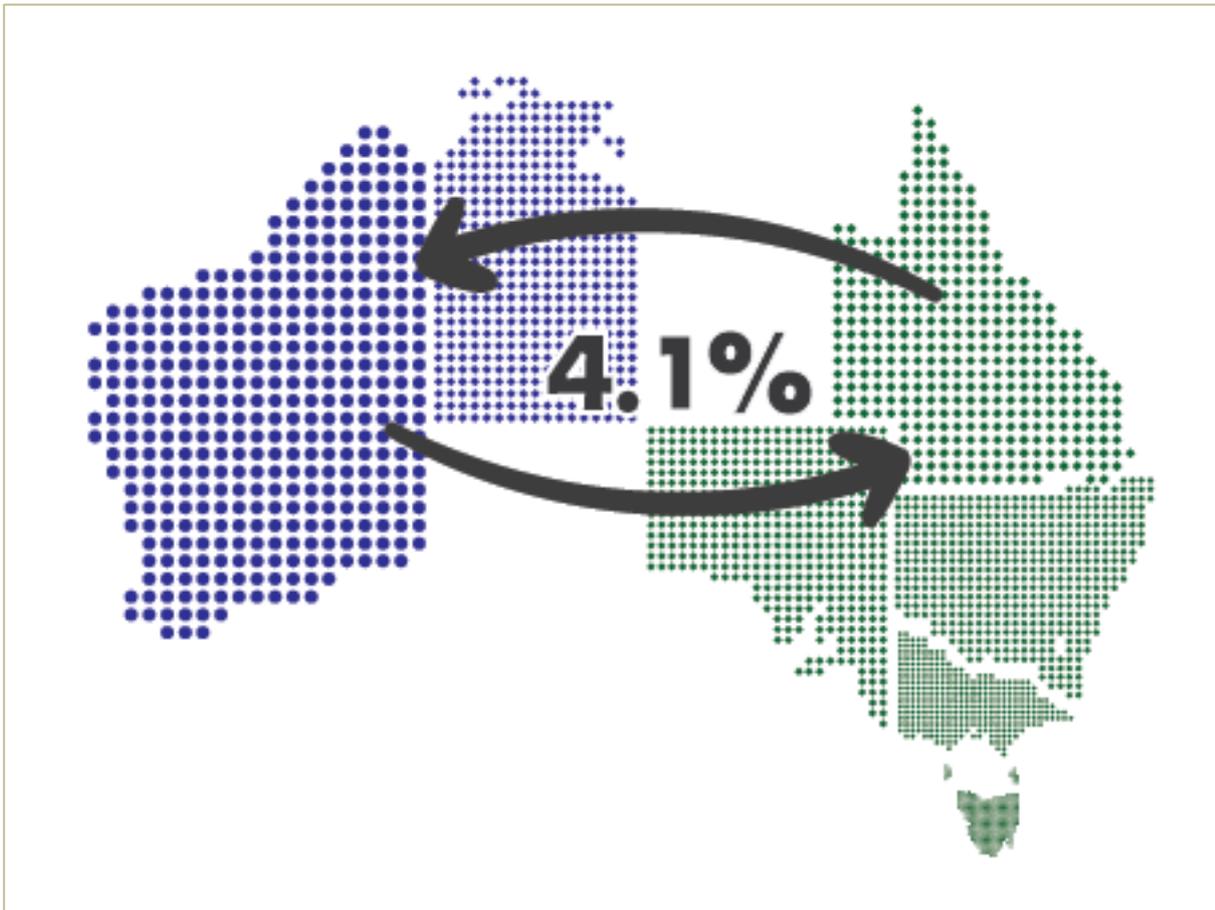
Efficiency and productivity do not in themselves depend on one national regulatory system. Instead, a national framework that prioritises safety and productivity can incorporate more than one regulatory system.

Consistency between participating and non-participating jurisdictions of the HVNL is an important goal. Figure 1, however, shows that only **4.1 per cent** of Australia's total road freight task in tonne-kilometre terms occurs between WA/NT and the HVNL jurisdictions.¹⁸ It follows that the economic gains from achieving national consistency would be small. They could even be negative, if striving for consistency reduced the productivity of the WA and NT industries.

¹⁷ NTC, March 2019, A risk-based approach to regulating heavy vehicles, 9.

¹⁸ Unpublished BITRE O/D data in tonne-kilometre terms, 2017-18. The ATA would like to thank BITRE for its assistance.

Figure 1: Inter-system road freight as a share of total tonne-kilometres, 2017-18



Source: BITRE.

Instead, most of the economic gains from truck law reform would come from:

- eliminating or at least minimising the inconsistencies between HVNL jurisdictions, inclusive of those recently introduced via the new registration system (such as garaging requirements)
- reducing red tape and increasing productivity for all operators within the HVNL jurisdictions, including intrastate operators, without compromising safety.

In the short term, the inconsistencies between the WA/NT and HVNL systems could best be addressed through:

- bottom-up negotiations about specific productivity issues, rather than seeking to impose consistency from the top
- the development of mutual recognition agreements to reduce the cost of holding the multiple accreditations that interstate operators need to operate in Western Australia. This process could also be used to resolve the issues with s 245 of the HVNL, which are to be addressed as part of the HVNL review.¹⁹

Additionally, analysis of the potential end states of Heavy Vehicle Road Reform by Deloitte found that a higher proportion of the estimated benefits would flow to the eastern states as a result of better access already existing in Western Australia, South Australia and the Northern Territory.²⁰

WA and the NT already benefit from better road access for more productive vehicles. This productivity benefit needs to be protected in any future reforms.

¹⁹ NTC, [HVNL fatigue issues consultation report](#), July 2018. 9.

²⁰ Deloitte Access Economics, 30 June 2017, Economic analysis of potential end-states for the heavy vehicle road reform, xviii.

Recommendation 5

The HVNL should not be extended to WA and the NT to protect the productivity of local trucking operators.

Recommendation 6

Harmonisation and productivity between the HVNL and WA/NT should focus on resolving specific productivity issues to the highest common denominator and developing mutual recognition agreements to reduce the cost of multiple accreditations.

A stronger safety and investigative framework

Reducing road crashes involving heavy vehicles requires a commitment to understanding the causes of crashes, and to take action on reducing these causes.

Presently road accidents are investigated by police and/or the coronial system. Whilst this system may meet the needs of the legal and insurance systems, it is not achieving the reduction in road crashes that Governments should be seeking.

The existing investigation system is not suitable to the need to investigate the causes of the accident with relevant experts, including where technology and software needs investigation. This will be an increasing issue as the level of automation in vehicles increases.

In contrast, the Australian Transport Safety Bureau (ATSB) conducts independent investigation of transport crashes and other safety occurrences in the aviation, marine and rail modes of transport. Lessons arising from ATSB investigations are used to reduce the risk of future accidents and incidents through the implementation of safety action by industry and the Government.

The ATSB also seeks to improve safety and public confidence in those transport modes by pursuing excellence in safety data and research and fostering safety awareness, in addition to independent investigation of accidents.

The ATSB is an independent statutory agency that is separated from transport regulators, policy makers and service providers. It is not a function of the ATSB to apportion blame or to provide a means for determining liability.

As stated by the ATSB, no blame does not mean no responsibility. It means that disciplinary action and criminal or liability assessment are not part of an ATSB safety investigation and should, if necessary, be progressed through separate parallel processes. **Introducing ATSB investigations of heavy vehicle road crashes would not replace the existing police and/or coronial system.**

Currently, the ATSB functions to improve safety and public confidence in Australia's transport system, except for roads, which impacts the daily lives and safety of the wider community. A heavy vehicle crash on a railway level crossing would potentially trigger an ATSB investigation, but one 10 metres down the road would not.

It is critical that ATSB-style investigations are conducted by an independent agency and are not included in the role of existing agencies involved in heavy vehicle regulation such as the NHVR.

Recommendation 7

The role of the Australian Transport Safety Bureau should be extended to provide independent, no-blame, safety investigations for road crashes involving heavy vehicles.

7. Reforming the HVNL

The HVNL is more than twice the size of the RSNL and the model WHS Act.²¹ It is highly prescriptive. Even straightforward amendments to the primary legislation take more than a year to progress through the Transport and Infrastructure Council and the Queensland Parliament.²²

The primary legislation is supported by five sets of regulations and a host of guidelines, approvals, policies and manuals of uncertain legal standing.

Australia has the fifth largest freight task in the world. Road freight is essential to the Australian economy. It is vital that we have clear and modern legislation in place. The trucking industry is diverse. It ranges from businesses with one truck to international logistics chains; from livestock transporters that never leave rural areas to local delivery trucks that never leave the cities.

The NTC's risk-based approach issues paper points out that many smaller operators prefer prescriptive rules that provide certainty. Many operators, however, now have comprehensive safety management systems, some backed by technological solutions. Despite their systems, these operators are required to comply with the prescriptive rules – particularly on fatigue – as well.

The ATA's vision for the new HVNL is a law that has:

- **primary safety duties and executive officer due diligence obligations for all regulated parties.** These duties require businesses to take a systematic and thoughtful approach to safety, which could be through formal safety management systems.
- **simplified and more flexible prescriptive rules**, particularly on fatigue, for operators whose business practices and risk profile do not warrant more complex systems. In developing the simplified rules, the review should apply a filter to the law to retain only the rules that provide tangible safety benefits and those administrative requirements that are essential to delivering those benefits.
- a **separate, voluntary, safety-based system** for operators that need even more flexibility. Operators in this system would need to be accredited under an approved accreditation scheme. The NHVR would regulate scheme providers (including private sector providers like TruckSafe) and auditors. Operators in any approved accreditation scheme would be entitled to appropriate concessions from the prescriptive rules. The system would recognise the efforts of operators that adopt a systematic approach to safety, possibly by using proven technology solutions.
- a **completely different approach to enforcement.** There is a perceived lack of action by road agencies and the regulator on serious breaches of the law, including by off-road parties. There is too much focus on fishing expeditions against compliant operators, work diary errors and low risks that cannot be controlled.²³ Operators and customers that invest large amounts of time and money to meet their obligations are forced to compete against firms whose business model is to avoid being caught.

As part of this new approach to enforcement, the recourses and protections for regulated parties need to be improved.

- a more streamlined and integrated approach to **heavy vehicle access and productivity** to deliver the productivity gains that the industry and customers need.

The HVNL would need to be substantially redrafted to deliver this vision, although some key elements – most notably chapter 1A of the current law – would be retained.

²¹ NTC, March 2019, 33.

²² NTC, March 2019, 36.

²³ For example, see NTC, [Effluent and load restraint: consultation report](#), July 2018. 3.

A new, three-tier structure for the HVNL

The ATA considers that adopting the sound legislative practice of moving as much regulatory detail as possible to regulations or legislative instruments would help address issues with the HVNL.

In our view, the new HVNL should be restructured as follows:

- the **primary legislation** would comprise the amended version of Chapter 1A; other key offences such as the s 93 prohibition on speed limiter tampering; overarching principles about enforcement, sanctions, reviews and appeals; corporate governance; and regulation and order/rule making powers.
- the **regulations** would provide more detail, including sanctions for lesser regulatory offences.
- There would be a new tier of **orders and standards**, which would be made by the regulator. To the extent they needed to be retained under the proposed risk management model, the current guidelines, policies and manuals would be remade as legislative instruments in this tier. The orders and standards would generally be disallowable. All persons exercising powers under the HVNL (including police and local governments) would be required to comply with them.

There would continue to be a key role for registered industry codes of practice and accreditation schemes under this new structure.

Industry codes would continue to be developed by industry and considered by the NHVR against registration standards.

The NHVR would also be responsible for developing registration standards for accreditation schemes and auditing registered schemes against those standards. Operators in registered schemes would all be able to access appropriate concessions.

Corporate governance, oversight and accountability

The legislative model we are proposing would increase the workload and discretion of the regulator. This increase in the regulator's authority would need to be matched by corresponding improvements in its corporate governance, oversight and accountability.

The ATA and its members would only support the adoption of a three-tier model if these reforms were adopted.

A statutory consultation and best practice regulation obligation

We propose that the new HVNL should include a two-part consultation and best practice regulation obligation:

- a statement of principle that the NHVR must consult, where appropriate, with government, commercial, industrial, consumer and other relevant bodies and organisations
- a specific requirement that the NHVR must comply with COAG policies on best practice regulation, including on competitive neutrality.

Strengthening the role of the NHVR board

The functions of the board should also be amended to include:

- ensuring the NHVR complies with the consultation and best practice regulation obligation proposed in this submission and, more broadly
- ensuring the NHVR complies with policies agreed by responsible ministers or COAG.²⁴

Board membership and skills

Given that the ATA proposes a substantial increase in the NHVR board's responsibilities and workload, it would be appropriate to:

- increase the size of the board from five to nine, and
- require that at least two of those members have recent experience operating a truck or bus business, either as a director or as an employee. Consistent with the recommendations of the Uhrig review, the members would not be appointed as industry representatives but as individuals for their experience and judgement.²⁵

Limiting delegation powers

Section 683 of the HVNL enables the chief executive officer to delegate his or her powers (other than the power of delegation) to:

- (a) an appropriately qualified member of the staff of the Regulator; or
- (b) the chief executive of an entity, or a department of government, of a participating jurisdiction.

The proposed change to the structure of the law would require changing these delegation powers.

In the ATA's view, the power to make instruments or standards should only be delegable to a member of the staff of the Regulator. It may be appropriate to limit the delegation of these powers to SES equivalent officers.

Requirements on persons exercising powers

An ongoing issue with the HVNL is that NHVR policies and guidelines are not binding on all the individuals and organisations who have authority under the law.

Under our proposed approach, many of the current policies and guidelines would become legal instruments. It is essential that all individuals and organisations with powers under the law be required to exercise their powers in accordance with those instruments, as well as the NHVR's other policies.

Parliamentary scrutiny

The HVNL adoption legislation in each participating jurisdiction provides that the parliament of the jurisdiction can disallow national regulations made under the HVNL as if they were regulations of that jurisdiction.

The disallowance provisions only apply to national regulations and not to guidelines, policies or standards made under the law.

²⁴ For example, see *National Health Reform Act 2011* (Cth), s 5 and s 133.

²⁵ Uhrig, J et al. [Review of corporate governance of statutory authorities and office holders](#). June 2003, 98.

In the ATA's view, the use of third tier legislation in the new HVNL would need to be matched by an increased level of parliamentary scrutiny.

As a result, third-tier legislation made under the law should be disallowable in the same way, for example, that orders and standards issued by CASA are disallowable.

Further detail on these issues are available in the [ATA's submission in response to the first issues paper of the HVNL review](#).

Recommendation 8

The new HVNL should adopt a three-tiered structure, including enforceable orders and standards and improvements in corporate governance, oversight and accountability.

8. Access for a modern, safer, more productive and better-connected road freight network

Better heavy vehicle access is central to the original projected economic gains from introduction of the HVNL and NHVR, it is central to the projected economic gains by Deloitte's 2019 analysis of regulatory reform and it is central to the benefits cited for other reforms and in particular Heavy Vehicle Road Reform.

The June 2019 NTC issue paper *Easy access to suitable routes* provides an overview of the HVNL access system and a number of the identified issues and inefficiencies with the system.

This submission will not seek to detail how the access system currently works; this background is available in the NTC paper. However, some of the identified issues and inefficiencies of the system are discussed below as they represent key weaknesses and need for improvement from the national transport regulatory reforms.

The NTC summarises these issues as including:

- The current system results in too many permits, delays for operators and inconsistent outcomes.
- Even when journeys are low risk or routes pre-approved, where risks are already known, operators still need to apply for permits.
- Matching vehicle classes to networks for access is complicated. Road managers do not necessarily have a high degree of expertise with heavy vehicle classifications which can complicate and protract access decisions.
- The decision-making process is prescriptive and inflexible. There are many opportunities for parties to lose sight of or delay a permit application.
- The access decision-making process challenges road manager resources and they are unable to delegate this role.
- Only the NHVR's access decisions are subject to external review. There's no provision for external review of decisions made by road managers.
- There are challenges outside the HVNL, including slow third-party approvals and inconsistent pilot and escort arrangements.²⁶

²⁶ NTC, June 2019, [HVNL review issues paper: Easy access to suitable routes](#), 37.

Volume of permits

The NTC identifies that there are approximately 46,000 permits issued in HVNL jurisdictions.²⁷

This is an extensive regulatory burden to place on industry and cannot be described as a successful outcome of the national regulatory reforms. Creating a high administrative burden for accessing the road network undermines any attempt to improve productivity.

The NTC also identify that a notice removes the need for permit applications and provides a higher level of access certainty. The NHVR has been leading work on delivering notices, which would be expected to continue to reduce the reliance on permits.

Whilst the process of developing notices involves negotiation with road managers, more certainty and consultation on the priorities for this work, with an indicative timeline, would be welcomed by the ATA. The ATA understands that the NHVR maybe considering work in this area and we strongly encourage them to proceed in this direction.

Reform in this area would also be advanced by clarification of what slows down the development of notices by the NHVR, and if these issues can be mitigated as part of the HVNL reform process.

Low-risk permits and pre-approved routes

The NTC paper identifies that the NHVR has worked with road managers to develop pre-approvals for agreed routes, which reduces the administrative burden for the NHVR and relevant road managers. However, whilst this process reduces delays it still places an administrative and regulatory burden on trucking operators, requiring a permit application to authorise road access.²⁸

In these cases, road managers already know that the route is suitable but still require a permit application.

The NTC paper states that notices present road managers with challenges, as there are few options to monitor road use. Permits are seen as giving greater control over access²⁹ and helping road managers understand what heavy vehicle movements are occurring. Access decisions are also linked to protecting public amenity, including issues of noise and congestion.³⁰

Decision making process

The NTC also captures a number of flaws with the decision-making process, which is prescriptive and inflexible. These include:

- The trucking operator does not have full visibility of how their permit application is progressing. They have to rely on requests for more information, which can involve back and forth communications.
- The road manager has to request more information from the operator via the NHVR.³¹
- Third party consents slow down decision-making.³²
- The inability to properly appeal access decisions, with no external review of decisions made by road managers.³³
- Decision making timeframes can extend beyond the 28 days provided to road managers under the HVNL, with no mechanism in place to resolve delays which extend beyond this period or to impose any time limits on ultimate decision-making.

²⁷ Ibid, 39.

²⁸ Ibid, 43.

²⁹ Ibid, 39.

³⁰ Ibid, 17.

³¹ Ibid, 45.

³² Ibid, 48.

³³ Ibid, 48.

Inconsistent decisions and route assessments

Central to industry's concerns about the decision-making process is also the application of inconsistent decisions and route assessments.

The NTC identifies that there is no consistent route assessment process applied by road managers, with use of the *Restricted Access Vehicle Route Assessment Tool* not mandatory and inconsistent criteria used when assessing routes.³⁴

The NHVR's *Approved Guidelines for Granting Access* are also not used consistently.³⁵ Even though road managers are required, by law, to have regard to the guidelines, they are not currently available on the NHVR website (as of the end of June 2019).

The reasons for access refusal also illustrate clear deficiencies with the system. Independent reports have found:

- Consent decisions from local government road managers often lack evidence of risks to infrastructure.³⁶
- Road managers can use grounds in the HVNL without compelling reasons, such as refusing access for risks to safety without specifying or substantiating what those risks are.
- Statements don't always include what access is available if risk-mitigation conditions were applied; for example, if reduced mass or a route variation would be accepted. Instead, operators need to make multiple applications to establish what would be accepted.³⁷

Local government

The Productivity Commission issues paper reports that the HVNL elevated the practical role of local government as decision makers.³⁸ Whilst some do this job well, issues such as inconsistent decisions and route assessments and the failure of the HVNL to deliver the intended productivity gains illustrate that it is not being delivered to the standard that is required for a modern, 21st century economy.

The NTC has identified that local governments face a number of challenges and constraints. The elevation of local government's role under the HVNL has led to an increased burden, with one council in Melbourne going from 10 road access requests per year before the HVNL, to more than 50 a week and well over 3,000 in the first year under the HVNL.³⁹ This would be an administrative challenge for any organisation.

A local government project has also estimated that \$30 billion was needed to renew and replace ageing infrastructure, with assets deteriorating from wear and tear at an estimated rate of \$5.5 billion per year.⁴⁰

The HVNL also requires local government to make consent decisions, but they do not have the ability to delegate this role.⁴¹

It is important to recognise that heavy vehicles pay for their use of the road network, through the fuel-based road user charge and registration charges. These charges are not hypothecated and are not linked to service provision. There is no clear link from this funding to local governments, who do not necessarily receive the funds to pay for heavy vehicle access.

³⁴ Ibid, 45.

³⁵ Ibid, 49.

³⁶ Queensland Audit Office, June 2016, [Heavy vehicle road access reforms. Report 20: 2015-16](#), 4.

³⁷ Austroads, February 2018, Local road access for High Productivity Freight Vehicles, 31, 70.

³⁸ Productivity Commission, May 2019, [National Transport Regulatory Reform Issues Paper](#), 22.

³⁹ NTC, June 2019, HVNL review issues paper: Easy access to suitable routes, 46.

⁴⁰ Australian Local Government Association, November 2018, [National State of the Assets: Roads and community infrastructure report](#), 1, 55.

⁴¹ NTC, June 2019, HVNL review issues paper: Easy access to suitable routes, 47.

Ultimately resolving these issues and delivering better access for a modern, safer, more productive and better-connected road freight network will require reforms to the HVNL in addition to complementary, additional measures.

Improving the access decision making process under the HVNL

Recognising that local roads are part of a wider network

Whilst incorporating the importance of the role of local government as road managers, it is also important to recognise that this forms part of wider road network and local government does not make decisions in isolation.

The NTC access paper asserts that the trucks don't stop if access for more productive vehicles is denied. Instead, the same amount of freight moves through the same route, on more trucks, at higher cost, higher safety risk and with higher environmental and amenity impacts.⁴²

Whilst it should be acknowledged that the level of freight may slightly decrease, due to increased costs reducing the competitiveness of this economic activity, the broad principle is an important one.

As a consequence, a local government refusing access can impact other parts of the road network (beyond the roads they specifically manage) with more trucks, higher cost, higher safety risk and higher environmental and amenity impacts. The decision to protect amenity in one location may cost it in another.

As such, it is reasonable to impose enforceable standards on granting access on the role of local government decision-makers as their decisions have ramifications beyond their own road network.

Enforceable standards and orders

As discussed in the section on reforming the HVNL, the ATA proposes that the new HVNL should incorporate a new three-tier structure. The third tier would be a new tier of orders and standards, which would be made by the regulator. Current guidelines, such as the NHVR's *Approved Guidelines for Granting Access* would be remade as legislative instruments in this tier. The orders and standards would generally be disallowable. All persons exercising powers under the HVNL (including local governments) would be required to comply with them.

External review

As decision makers would be bound by enforceable standards, their decisions would also need to be subject to external review to ensure they act within those standards.

The NTC reports that reviews of road manager decisions were restricted to internal reviews only due to the concern that road managers would restrict as-of-right access rather than incur the potential cost of challenges to access decisions.⁴³ It will be important to structure the detail of the access guidelines to protect against this potential approach, such as a justification requirement for access refusals.

⁴² Ibid, 59.

⁴³ Ibid, 48.

Ability for local government to delegate their access decision-making role

At the same time as increasing the obligations on local government to make access decisions as part of a consistent, evidence-based process, the new HVNL should provide local government with the ability to delegate their role as access decision makers. Where local government may not be able to perform their role under the HVNL, there needs to be a mechanism to resolve this lack of capacity.

Acknowledging precedents in access decisions

The NTC has proposed that the new HVNL should seek to maximise the applicability and scope of all access decisions and acknowledge precedents.⁴⁴

The ATA supports this intent, acknowledging that implementation would need to guard against access being refused in order to prevent the setting of a precedent.

Local government would maintain the ability to manage road assets when conditions change. The NTC points out that permits can be cancelled.⁴⁵

Extending the period and applicability of authorisation

The NTC also propose that authorisations should apply for longer periods, if not ongoing, and that they should apply to equivalent vehicle combinations (and not be limited to specific combinations).

The ATA supports this intent. Work by the Queensland Trucking Association with the Queensland Government illustrates the potential gains from such an approach. On 27 June 2019, it was announced that the Queensland Government would extend permit durations for Class 1 Oversize Overmass vehicles to 12 months, reducing the frequency for which operators need to apply for permits. This is estimated to save industry more than \$1 million in fees and 3,300 hours in paperwork.⁴⁶

Process improvements and reduced processing timeframes

The process of permit applications should be improved to deliver:

- Visibility for operators about the status of their application.
- Reduced timeframes for decision making, with extensions requiring justification. The NTC reports that many road managers respond consistently within seven days.⁴⁷
- Introduction of a mechanism to resolve applications where the road manager does not respond or does not meet required timeframes.
- A single online mapping resource for route planning. This will require a shift in the legal mapping resource that operators can rely on from individual jurisdictions to the NHVR.
- Establishing a trigger point where the NHVR must review the status of unresolved applications. This could be accompanied by the new mechanism for resolving applications where the road manager does not respond, does not meet required timeframes and/or does not meet the standards for approving access.

⁴⁴ Ibid, 60.

⁴⁵ Ibid, 42.

⁴⁶ The Hon Mark Bailey, Minister for Transport and Main Roads, Queensland Government, 27 June 2019, [Media Release: Permit reform to boost heavy vehicle industry](#).

⁴⁷ NTC, June 2019, HVNL review issues paper: Easy access to suitable routes, 45.

Reforming assurance by telematics

The NTC also identifies an option of providing road managers with greater assurance of asset management through telematics; that is, knowledge of what is being moved on their roads. This would have the intent of reducing reliance on individual permit authorisations as a mechanism for understanding what is being moved on the local road network.

Due to the complexity and pace of change with technology, it is important that the new HVNL is not prescriptive on this front, and that it does not repeat the mistakes of the Intelligence Access Program (IAP).

The Bureau of Infrastructure, Transport and Regional Economics (BITRE) has been working on a road freight telematics data collection project, under the National Infrastructure Data Collection and Dissemination Plan. The project voluntarily collects telematics data from participating trucking operators and provides output in a de-identified form.

The ATA supported a pilot of the project in 2016, and since 2017, BITRE is reported to be developing an ongoing collection program. Statistical outputs were intended to be released in 2018, although this is yet to occur.

Governments should invest further in this project to more closely consider its potential application, as it may provide a framework for broader reforms to provide better, real-time information about infrastructure use.

For example, road managers could offer a broader as-of-right access network to operators who join the voluntary telematics road freight program.

Expanding as-of-right access

The NTC states that the new HVNL should expand general access of the road network as far as reasonable.⁴⁸ Lowering the number of access decisions will lower the costs of delay and processing.

Recommendation 9

Reform of the HVNL access system should include:

- Recognising that local roads are part of a wider network.
- Enforceable standards and orders.
- External review.
- Ability for local government to delegate their access decision-making role.
- Acknowledging precedents in access decisions.
- Extending the period and applicability of authorisation.
- Process improvements and reduced processing timeframes.
- Reforming assurance by telematics.
- Expanding as-of-right access.

⁴⁸ Ibid, 60.

Commitment by governments to identify, plan and deliver a more productive road freight network

Ultimately the best framework, legislation and process can be established for improving access, but if the commitment from decision makers does not exist to broaden the network then the results will not deliver the anticipated economic gains.

The experience of the national transport regulatory reforms and the HVNL illustrate this point strongly, where anticipated gains based on improved access have not been delivered as anticipated.

As an example, the existing HVNL allows for road authorities in participating jurisdictions to step in if needed on access decisions.⁴⁹ The NTC states that jurisdictions can over-ride local government access decisions, or step in when decisions are made. Despite this ability, road authorities are reluctant to exercise the power.⁵⁰

An alternative approach is illustrated in the success of the B-double and the use of the former FIRS framework to develop a more productive road network, as discussed in the section of this submission on productivity outcomes. In the case of FIRS, the Australian Government used the policy mechanism to drive expanded access. The mechanism only drove expanded access when there was commitment to utilise it, illustrated by the lack of FIRS-initiated access improvements after the B-double success story.

Ultimately, access improvements are only possible with the commitment of decision-makers to achieve a better network. Decision-makers need to identify, plan and deliver a more productive road network.

The NTC identify the need for road managers to make proactive access decisions. This includes using current and planned land use data, transport analysis and strategy, with a view to pre-conditioning routes for access.⁵¹

As an example, the NSW Heavy Vehicle Access Policy Framework provides a strategic approach to heavy vehicle access in NSW for both state and council roads. It sits within the overall strategic planning framework of the Future Transport 2056 Strategy and the NSW Freight and Ports Plan.⁵² Released in September 2018, it is too early to assess how successful the policy will be in terms of delivery, especially for local council roads. The ATA notes that the planning proposal for a new St Marys intermodal facility in Western Sydney appears to rely on access for semi-trailers and B-doubles, and does not align with the future intent for a PBS 2B standard network in Sydney.

Existence of a plan, no matter how well intentioned, will not deliver better access if it does not translate into outcomes for actual developments.

Supply side road funding reform to improve the provision of road infrastructure

A hesitation for local road managers to grant access can be based on the wear and tear of roads resulting from heavy vehicle traffic. An attempt to manage, and potentially prolong the need for maintenance results in a lack of access.

However, heavy vehicles pay for their use of the road network through the fuel-based road user charge and registration charges. That this funding is disconnected from local roads is a problem with the supply of road funding.

⁴⁹ Ibid, 48.

⁵⁰ Ibid, 48.

⁵¹ Ibid, 62.

⁵² NSW Government, September 2018, Moving more with less: The NSW Heavy Vehicle Access Policy Framework, 4.

Defining, cataloguing and delivering national road service standards would be complementary to proactively identifying, planning and delivering a more productive road network.

It would assist in providing the right road infrastructure in the right places, as funding could be directed to rectifying gaps in the network that proscribe heavy vehicle access.

Service level standards should also be linked to access and funding. Identification of a route at a particular service level standard should be tied with as-of-right access for an appropriate heavy vehicle combination and funding to the road manager for maintenance to that standard. Considering the need to expand as-of-right access in the network, implementation of service level standards is a critical reform.

Recommendation 10

The Heavy Vehicle Road Reform agenda should be refocused with a stronger focus on increasing productivity by improving the provision of roads. This should include:

- Setting clear and measurable service level standards.
- Ensuring revenue from heavy vehicle charges is allocated to the provision of service level standards that benefit heavy vehicle road users.
- Improving the selection, assessment and planning of road funding projects with a focus on delivering national service level standards.
- Establishing an independent economic regulator for setting heavy vehicle charges, including toll road and landside port charges.
- Continuing to set charges on a network basis, to ensure the entire road network and regional areas are appropriately funded.

Independent regulation of infrastructure charges

The ACCC has reflected on the strong financial motives for governments to structure privatisation processes in order to maximise the sale price of their assets, and that as a result, governments have little incentive to closely examine whether the market structure and regulatory arrangements that will apply post-privatisation are conducive to competition and appropriate outcomes.⁵³

This is true of toll road concessions. The incentive for state governments is to reduce the upfront cost of new road infrastructure without giving full consideration to the long-term outcomes for competition, urban connectivity and costs for businesses and other road users.

Private toll road owners and state governments have been increasing toll road charges on heavy vehicles whilst avoiding a fair distribution of increases with light vehicles. At the same time, toll roads are increasingly becoming a monopoly asset for heavy vehicle traffic, with NorthConnex in Sydney being accompanied by truck bans on alternative routes.

The New South Wales Government has progressively increased the truck toll multiplier to three times the car toll on new and renegotiated toll road concession agreements.

In Queensland, the truck toll multiplier on the Logan and Gateway motorways will progressively increase to 3.46 times the car toll once the Logan Enhancement Project is completed. In Victoria, the toll for heavy vehicles using CityLink increased by up to 125 per cent to fund the CityLink-Tullamarine widening project.⁵⁴

⁵³ Sims, Rod, [How did the light handed regulation of monopolies become no regulation?](#) Speech to the Gilbert + Tobin Regulated Infrastructure Policy Workshop, 29 October 2015.

⁵⁴ ATA, [Submission to ACCC review – proposed acquisition of WestConnex](#), 31 May 2018, 2.

The ACCC decision not to oppose the Transurban consortium bid for the acquisition of WestConnex⁵⁵ illustrates the inability of the current regulatory framework to provide constraints on using heavy vehicle tolls as a revenue raising mechanism, above and beyond the level required for cost recovery.⁵⁶

This lack of a competitive or regulatory constraint on heavy vehicle charges for accessing infrastructure also applies to landside port charges. Stevedores have increased the burden on trucking operators through significant increases in landside port charges.

ACCC Chair Rod Sims has commented that infrastructure fees imposed by stevedores on transport companies have gone up a lot more than costs have gone up, and that apart from increasing profits it is unclear what rationale there is for the increased charges.⁵⁷

Surcharge increases introduced in 2017 have ranged from \$20 to \$30 per container, and in some cases have increased twice within the one year. DP World imposed a surcharge in Sydney of \$21.16 per container in early 2017, and then almost doubled the charge to \$37.65 per container from 1 January 2018.

As stated by the NSW Government, the legislation governing the port access charges for Port Botany reflects the pricing principles adopted by the Council of Australian Governments. However, as reflected in the concerns of the trucking industry in 2012 and the lived experience since, this approach has failed to constrain cost increases.

In 2012, ATA NSW, the predecessor organisation to Road Freight NSW, raised serious concerns about the 2012 NSW legislation to lease Port Botany to a private operator.

ATA NSW said that the legislation needed protection for trucking operators against price gouging:

The potential for a new owner of the ports to impose crippling fees on our industry is of significant concern, and one that appears to have been overlooked in the drafting of this legislation.

The impact of these potential charges on small to medium operators was also a concern:

The survival of these businesses is jeopardised if a new port owner decides to impose onerous fees and charges on these small businesses.

ATA NSW also said:

The potential for major impacts on trucking operators is a serious threat. Our industry operates on tight margins, and additional fees and charges are impossible to pass on to customers while maintaining competitiveness. The introduction of additional fees and charges will cause some operators to cease trading, causing increased unemployment and reducing productivity on the port.⁵⁸

The NSW Government and then NSW Treasurer made a number of commitments in relation to the proposed sale:

The Government will retain oversight of all regulatory matters such as those relating to price, the environment and the handling of dangerous goods.⁵⁹

⁵⁵ ACCC, [ACCC will not oppose Transurban consortium WestConnex bid following undertaking](#), 30 August 2018.

⁵⁶ ATA, [Submission to ACCC review – proposed acquisition of WestConnex](#), 31 May 2018, 4 & 5.

⁵⁷ Rod Sims as quoted by Ewin Hannan, [Spotlight on stevedores over hikes in charges](#), The Australian, 9 April 2018.

⁵⁸ ATA NSW submission as quoted by the Hon Adam Searle MLC, in debate on the [Ports Assets \(Authorised Transactions\) Bill 2012](#), NSW Legislative Council Hansard, 21 November 2012

⁵⁹ The Hon Mike Baird MP, 17 October 2012, [Ports Assets \(Authorised Transactions\) Bill 2012 second reading](#), NSW Legislative Assembly Hansard.

The NSW Treasurer also stated:

...the Bill provides for a transparent pricing regime consistent with the principles adopted by the Council of Australian Governments. This includes regular reporting obligations to the Minister and the opportunity to refer any price issues to the Independent Pricing and Regulatory Tribunal for review. Third, the infrastructure charge, which the member for Maroubra raised, is subject to robust government oversight, including the price monitoring regime. The bill provides that the new port operator must provide details to the Government regarding the details of the infrastructure project, the basis of the charge, the persons required to pay and the time frame of the charge.⁶⁰

The ACCC has commented on the Competition and Infrastructure Reform Agreement, as agreed by the Australian, state and territory governments in 2006. This agreement sets out the introduction of price monitoring for significant infrastructure facilities, as a first step where the potential introduction of price regulation may be required.

The intent of these reforms to provide a pathway to price regulation, when required, has not been fulfilled. Stronger pricing principles are needed for significant infrastructure to transition from price monitoring to price regulation when monitoring has proven to be ineffective.

The ACCC also state that the privatisation of monopoly or near monopoly assets, without appropriate pricing controls, can result in the transfer of market power and economic rent extraction to private hands.

Many infrastructure assets, such as toll roads and ports, have legislated or natural monopoly characteristics. The ACCC has stated that price monitoring (such as what applies to port access charges) has little or no longer-term impact on the conduct of monopoly infrastructure owners.⁶¹

As stated by the ACCC, private owners can operate assets more efficiently and at a lower cost than government owners. But privatisation should promote economic efficiency and not obtaining the maximum proceeds from the sale of the asset. This requires an effective regulatory framework.

Recommendation 11

Privatisation of infrastructure assets should promote economic efficiency and not obtaining the maximum proceeds from the sale of the asset, with independent regulation of the ongoing prices set for utilisation of the asset.

Selecting the right policy mechanism for the right policy objective

Access decision-makers should also commit to selecting the right policy mechanism for achieving the intended public policy goal, which may not actually be the heavy vehicle access system.

Some of the intended outcomes from managing access, especially around managing impacts on amenity and congestion, may be better mitigated by other public policy mechanisms.

Urban congestion is largely a result of light vehicle traffic – yet state governments and local councils do not seek to mitigate congestion by capping the number of light vehicles to use a particular part of the road network.

Similarly, knowledge on light traffic volumes, critical to planning road upgrades is also not managed by capping and managing individual vehicle movements. Such an approach would be a blunt, outdated and unfair approach to public policy.

⁶⁰ The Hon Mike Baird MP, 17 October 2012, [Ports Assets \(Authorised Transactions\) Bill 2012 second reading](#), NSW Legislative Assembly Hansard.

⁶¹ Sims, Rod, [How did the light handed regulation of monopolies become no regulation?](#) Speech to the Gilbert + Tobin Regulated Infrastructure Policy Workshop, 29 October 2015.

Decision-makers need to identify what the public policy goal, issue or question is, and then select the best mechanism.

Other options can include:

- Proactive incorporation of freight needs in transport and land use planning.
- Measures to incentivise the use of newer heavy vehicles (including location specific measures), which would mitigate issues around noise, emissions and number of truck movements (if more productive combinations are allowed).
- Investing in voluntary telematics programs to provide aggregate truck movements for infrastructure planning.
- Implementing traffic surveys where specific infrastructure requirements need detailed understanding of how that infrastructure is being used.

Recommendation 12

Better access for a modern, safer, more productive and better-connected road freight network should be delivered by:

- Improving the access decision making process under the HVNL.
- Commitment by governments to identify, plan and deliver a more productive road freight network.
- Supply side road funding reform to improve the provision of road infrastructure, incentivise the provision of freight access for local government and provide independent price regulation of infrastructure charges.
- Selecting the right policy mechanism for the right policy objective.

9. Heavy vehicle safety accreditation

Reform is needed to reduce the compliance burden faced by trucking businesses and drivers.

For example, one mid-sized national trucking business estimates that its staff are required to manage 14 different industry, standards or customer audit processes, most covering the same issues. This proliferation of audits requires some 40 days of staff time per year to manage.

The new HVNL must reduce the regulatory burden on businesses, without compromising safety.

Competitive neutrality

Australian Government policy is that government business activities should not enjoy any net competitive advantages simply by virtue of public sector ownership. This is to ensure market competition drives efficient production by the lowest cost business.⁶²

Governments committed to implement competitive neutrality regimes in the 1995 *Competition Principles Agreement*, which was enhanced by the 2006 *Competition Infrastructure Reform Agreement*.

In 2013 the Australian Government announced an independent Competition Policy Review, also referred to as the Harper Review. Both the final report and Government response to the Competition Policy Review were released in 2015. The review included a recommendation, supported by the Australian Government, to review competitive neutrality policies.⁶³

⁶² Australian Government, [Review of the Commonwealth Government's Competitive Neutrality Policy Consultation Paper](#), March 2017, 1.

⁶³ Australian Government, [Australian Government Response to the Competition Policy Review](#), November 2015, 15.

On 9 December 2016, first ministers signed a new *Intergovernmental Agreement on Competition and Productivity Enhancing Reforms*. The agreement reaffirmed a commitment to competitive neutrality and clause 9(f) of the agreement states that:

Government business activities that compete with private providers, whether for-profit or not-for-profit, should comply with competitive neutrality principles to ensure they do not enjoy a net competitive advantage simply as a result of government ownership.⁶⁴

In 2017, the Australian Government held a review into competitive neutrality policy. The Australian Trucking Association made detailed recommendations to address the competitive advantages enjoyed by the National Heavy Vehicle Accreditation Scheme (NHVAS).

The NHVAS, as part of the national transport regulatory reforms, does not meet the policy of competitive neutrality.

About the National Heavy Vehicle Accreditation Scheme

The National Heavy Vehicle Regulator (NHVR) administers the NHVAS. Under this scheme, truck operators can access regulatory concessions that reduce the cost of doing business. These can include extra mass, exemptions from inspection requirements and longer working hours for drivers.

At the same time, the ATA runs the TruckSafe safety accreditation scheme. Businesses accredited under TruckSafe cannot access the regulatory concessions available under NHVAS, even though TruckSafe has stronger standards in some areas.

Because NHVAS accreditation is virtually a pre-requisite for doing business in some sectors of the industry, trucking operators are withdrawing from TruckSafe, even though they acknowledge that this will reduce their safety. Alternatively, some operators maintain multiple accreditations.

NHVAS is a government business activity, despite previous NHVR claims that it is regulatory. NHVAS competes with TruckSafe and enjoys a competitive advantage: the regulatory concessions that are available only to NHVAS accredited businesses.

If the claim that the NHVAS is regulatory was accepted, it is still in breach of the agreement on competitive neutrality. Clause 9(b) states:

Regulatory frameworks and government policies binding the public or private sectors should not unnecessarily restrict the competition.

The NHVAS also fails to establish the separation of interests between policy, regulation and service provision as outlined in clause 9(d):

The model for government provision or procurement of goods and services should separate the interests of policy (including funding), regulation and service provision and where practical encourage a diversity of providers.

If NHVAS is regulatory in nature, then it is seeking to deliver a regulatory outcome through service provision in competition with private sector entities, and whilst enjoying a clear competitive advantage that is not available to private sector entities.

Otherwise as an obviously identifiable government business, the NHVAS enjoys a competitive advantage by the nature of its government ownership and in conflict with the principle of competitive neutrality.

⁶⁴ Council of Australian Governments, [Intergovernmental Agreement on Competition and Productivity Enhancing Reforms](#), December 2016, 3.

The ATA considers that applying a competitive neutrality arrangement to NHVAS would:

- enable more trucking businesses to remain in TruckSafe and comply with its higher standards, and
- ultimately improve the quality of NHVAS, because it would need to attract members based on the quality of its standards and auditing, rather than the availability of regulatory concessions.

Following the ATA's submission to the review of competitive neutrality policy, the Government referred our concerns to the then Department of Infrastructure, Regional Development and Cities. The Government then announced the Medlock review into heavy vehicle safety accreditation schemes, which the ATA strongly endorsed.

The Medlock review process has stalled

The Medlock review made a number of recommendations and recognised that accreditation schemes which operate to a required set of robust standards should receive the same regulatory concessions as those in the NHVAS.⁶⁵

However, the implementation of reforms from the Medlock review is now stalled.

The NHVR has established a Heavy Vehicle Accreditation Working Group (HVAWG) – which includes ATA and TruckSafe representatives – to consider how to implement the review findings, but its only function is to provide a report and proposals to state and territory governments.

The regulatory concessions that are only available to the NHVAS are clearly inconsistent with Australian Government policy. Current policies unnecessarily restrict private sector competition and provide clear competitive advantages to the NHVAS as a result of government ownership. This issue needs to be addressed as a matter of urgency.

Recommendation 13

Competitive neutrality should be applied to the NHVAS and heavy vehicle safety accreditation.

10. Vehicle standards, automation and assessment of safety benefits

The Productivity Commission raises issues for consideration around automation and the development of new technologies.

Whilst the National Transport Commission has recommended establishing a regulatory framework for automated vehicles, as the Productivity Commission has identified, this is likely to be a substantial and complex undertaking.⁶⁶ Any potential impact on the HVNL and NHVR will need to be the focus of future reform work, and it should not delay the current HVNL review process.

More immediate is the question of partial automation, including driver assist technologies such as lane departure warnings. For heavy vehicles, the immediate focus needs to be on the roll out of advanced braking technologies.

In 2018, the Australian Government mandated stability control technology for prime movers greater than 10 tonnes and rigid trucks greater than 12 tonnes with short wheel bases. This followed a long

⁶⁵ Fellows Medlock and Associates, February 2018, [Analysis of Heavy Vehicle Safety Accreditation Schemes in Australia](#), 3.

⁶⁶ Productivity Commission, May 2019, [National Transport Regulatory Reform Issues Paper](#), 28, 29.

campaign by the ATA, and is forecast to save 126 lives and prevent 1,101 serious injuries in coming years.

However, the decision missed an opportunity to maximise the safety gains by applying it to all new rigid trucks, which would save an estimated additional 22 lives and prevent an additional 395 serious injuries. The Government's consultation regulation impact statement reported that this reform would produce a positive benefit-cost ratio:1.99.

Additionally, Autonomous Emergency Braking Systems (AEBS) is an advanced braking system that applies a truck's brakes in an emergency. Monash University research shows that if this technology applied to the entire truck fleet it would reduce fatal heavy vehicle crashes by 25 per cent, and serious injury crashes by 17 per cent. For serious injury crashes there would be a reduction of up to 21 per cent for rigid trucks.⁶⁷ This is of a particular significance in urban areas and for vulnerable road users.

Mandating these technologies for new heavy vehicles should be a priority reform to improve the safety of our heavy vehicle fleet.

Assessment of safety benefits of government policies and investments

The National Road Safety Action Plan 2015 – 2017 *Action 5. Apply national willingness to pay values infrastructure for investment and other road safety project appraisals*, was to be implemented by the end of 2017. Governments agreed in the 2011-2020 National Road Safety Strategy to use the willingness to pay approach to valuing the cost of deaths and injuries in road crashes.

There are, broadly speaking, two approaches to placing a valuation on a statistical life or serious injury. The first is the **human capital approach**. BITRE's version of this approach sums 11 economic and non-economic costs together, such as workplace and household losses, hospital and medical costs and the cost of workplace disruption and replacement.⁶⁸

The alternative approach to calculating a statistical cost for deaths and injuries is **willingness to pay**. This approach generates its values by asking individuals how much they are willing to pay for gains such as a certain improvement in health or the reduction in risk of a crash.⁶⁹

Willingness to pay estimates of the cost of road crashes are markedly higher than human capital estimates. Not surprisingly, people are risk averse and are prepared to pay a premium for not being killed or injured.

According to BITRE, a willingness to pay valuation of the cost of serious injury would generate values 45 per cent higher than those generated using its human capital approach.⁷⁰

For the appraisal of transport related projects, Infrastructure Australia recommends the Australian Transport Assessment and Planning (ATAP) guidelines as the default guidance for almost all aspects of the appraisal process, with some limited departures from the guidelines relating to vehicle occupancy rates and vehicle operating costs⁷¹

⁶⁷ Budd, L. & Newstead, S., September 2014, [Potential Safety Benefits of Emerging Crash Avoidance Technologies in Australasian Heavy Vehicles](#), Monash University Accident Research Centre, 56.

⁶⁸ BITRE, 25.

⁶⁹ Abelson, P., November 2007, [Establishing a Monetary Value for Lives Saved: Issues and Controversies](#), paper prepared for 'Delivering better quality regulatory proposals through better cost-benefit analysis' conference, 5.

⁷⁰ BITRE, table T7.10, Cost of injury and disability, 91.

⁷¹ Infrastructure Australia, June 2017, [Assessment Framework](#), 105.

The ATAP guidelines provide the estimation of average cost of crashes per crash severity by either the human capital or willingness to pay approaches⁷² This fails to implement the long-standing commitment to apply willingness to pay for the assessment of road projects.

Implementing willingness to pay, in both the ATAP guidelines and Infrastructure Australia assessments would increase the value placed on improving safety outcomes when road project business cases are assessed by governments. This would increase the funding priority placed on achieving road safety infrastructure upgrades.

Willingness to pay should also be implemented for the assessment of policy changes, including assessment of new vehicle standards. The Australian Government's consultation regulation impact statement on mandating stability control technology used the hybrid human capital approach to cost serious injuries. As a result, the estimated cost of a serious injury was \$271,012 in 2016 dollar terms, instead of \$392,967, as the ATA recommended it should be. This would have resulted in higher benefit-cost ratios of the proposed policy options.

Recommendation 14

The Australian Government should include all new rigid trucks in the decision to mandate stability control.

Recommendation 15

The Australian Government should mandate AEBS for new heavy vehicles.

Recommendation 16

Governments should use willingness to pay in assessing proposed policy actions and infrastructure investments with a safety benefit.

11. Incentivising business investment

The ongoing ability of trucking businesses to invest is critical to the future of the industry. New investment can create jobs, move the growth in the freight task to enable continued economic growth, and result in newer, safer and more productive vehicles on the road.

ANZ analysis in 2017 found that the national average fleet age continues to age at record levels, and that the **industry will need to invest in excess of \$3.5 billion in capital over the next 5 years just to meet expected demand.**

Investment needs to be higher to reduce the average age of the truck fleet, which should be a priority. Newer vehicles have the latest safety technologies, meet newer emissions standards, and are quieter.

Stamp duty

Stamp duties are economically inefficient: they restrict the efficient allocation of capital and labour. Governments should be looking at reducing their reliance on stamp duty, not increasing it.

The Australia's Future Tax Review (Henry Tax Review) recommended in 2010 that there should be no role for any stamp duties in a modern Australian tax system.⁷³ In 2015, the Australian Government released a tax discussion paper (Re: think) noting that stamp duties are some of the

⁷² ATAP, Parameter Values – [Crash Costs](#).

⁷³ Recommendation 51 in [Australia's Future Tax System report to the Treasurer](#), December 2009.

most inefficient taxes levied in Australia, and that such taxes are more likely to discourage turnover of taxed goods.⁷⁴

KPMG has noted that the more inefficient or distorting a tax is, the more likely resources will be moved away from their highest-value use, leading to lower productivity across the economy and lower living standards.⁷⁵ KPMG also reported that motor vehicle taxes, including stamp duties, are taxes on capital and increase the cost of investing in motor vehicles. This in turn leads to a reduction in investment in vehicles, and a high excess burden.⁷⁶

KPMG has estimated that increasing motor vehicle stamp duty by a small amount has a marginal excess burden (representing an additional loss in living standards) of 33 cents per dollar of additional government revenue.⁷⁷

ATA member association, NatRoad, has made strong calls for the abolition of stamp duty.

But rather than reducing the reliance on stamp duties, governments have done the opposite. The decision to close FIRS, as part of the national transport regulatory reform agenda, will increase the annual stamp duty tax burden on trucking operators by \$6.2 million.

Recommendation 17

Governments should phase out stamp duties on the purchase of heavy vehicles.

Payment terms and the need for a mandatory code for the trucking industry

The trucking industry consists almost entirely of small businesses and is characterised by tight margins. Research by the ANZ shows that the median EBIT margin for trucking businesses was 4.2 per cent in 2015. The bottom quartile of trucking businesses recorded negative, unsustainable EBIT margins.

At the same time, the vast majority of the costs incurred by small trucking businesses must be met before they can bill their customers. These include wages or personal living costs, fuel, tyres, insurance, finance costs, registration and maintenance. Small trucking businesses are therefore very vulnerable to adverse changes in their payment terms, and often have little capacity to negotiate them with large customers.

The ATA has advocated developing a **mandatory code for the trucking industry under Part IVB of the Competition and Consumer Act (CCA)** to address the payment terms issues facing small trucking businesses. The provisions of existing industry codes show it would be possible to construct a code covering payment terms for these businesses, which could for example include payment times – recommended as no more than 30 days from the date an invoice is issued – a prohibition on set offs and pay when paid arrangements, and alternative dispute resolution. It would also be necessary to include special rules covering recipient created tax invoices (RCTIs), to prevent customers from delaying the creation of these invoices to avoid triggering the 30-day period.

A mandatory code should also apply to customer and suppliers which attempt to incorporate terms and conditions into compliance systems. These can provide limited to no ability for a transport operator to negotiate the terms and can often include oppressive payment terms and conditions.

The systems can also impose deadlines for completion. Where these deadlines are not met the operator is removed from the site or not paid.

⁷⁴ Australian Government, March 2015, [Re:think tax discussion paper](#), 145.

⁷⁵ KPMG, September 2011, [Economic Analysis of the Impacts of Using GST to Reform Taxes](#), 1, 4.

⁷⁶ *Ibid*, 6.

⁷⁷ *Ibid*, 5.

This can result in trucking operators essentially having to run a dedicated compliance system for each client, based on each client's IT requirements. This imposes both direct and indirect costs on the transport operators.

Recommendation 18

The Australian Government should implement a mandatory payments code for the trucking industry under Part IVB of the Competition and Consumer Act (CCA) to address the payment terms issues facing small trucking businesses, pay when paid arrangements, alternative dispute resolution and customer terms and conditions for compliance systems.

Monthly registration payments

South Australia and the Northern Territory have both introduced the option for monthly registration payments.

In the Northern Territory, heavy vehicle registration payments can be made for a period of one month, three months, six months, nine months, or twelve months.

In South Australia, a periodic registration scheme that allows clients to renew their registration each month via direct debit from their credit card or bank account was implemented in December 2013. With the removal of heavy vehicle registration labels, this scheme was opened up to heavy vehicles from 1 November 2017.

The South Australian scheme currently has just over 82,000 vehicles and is growing at around 1,000 vehicles per month.

Under the SA scheme:

- Customers must have a mySA GOV account.
- The direct debit and personal details can be changed online.
- Payments will be taken from the nominated bank account or credit card at monthly intervals.
- Customers can nominate their car, motorbike, caravan, truck or trailer as long as it is currently registered with at least one month's registration remaining.
- SMS or email reminders will be sent before the direct debit to ensure sufficient funds are available.
- Vehicle registration will be renewed for one month with each payment.
- A registration certificate is made electronically available through a customer portal.
- If the payment fails, an SMS or email is sent so the customer has time to make payment before the registration expires.
- Customers who do not have sufficient funds on two consecutive occasions may be removed from the scheme and advised to use an alternative payment method.
- Customers whose vehicles become ineligible for registration, such as becoming defected or outstanding fines, will be unable to complete registration until those matters are resolved.

Within the SA system, information is stored against a single client record for an individual or organisation. This allows a customer to manage all vehicles registered in their name.

Customers can:

- Renew the registration of a single vehicle, or multiple selected vehicles.
- Obtain unregistered vehicle permits.
- Add or remove a common expiry date from a vehicle or fleet of vehicles.
- Record the sale of a vehicle.
- Transfer a recently purchased vehicle into their name.
- Cancel a registration.
- Add a vehicle to monthly direct debit.

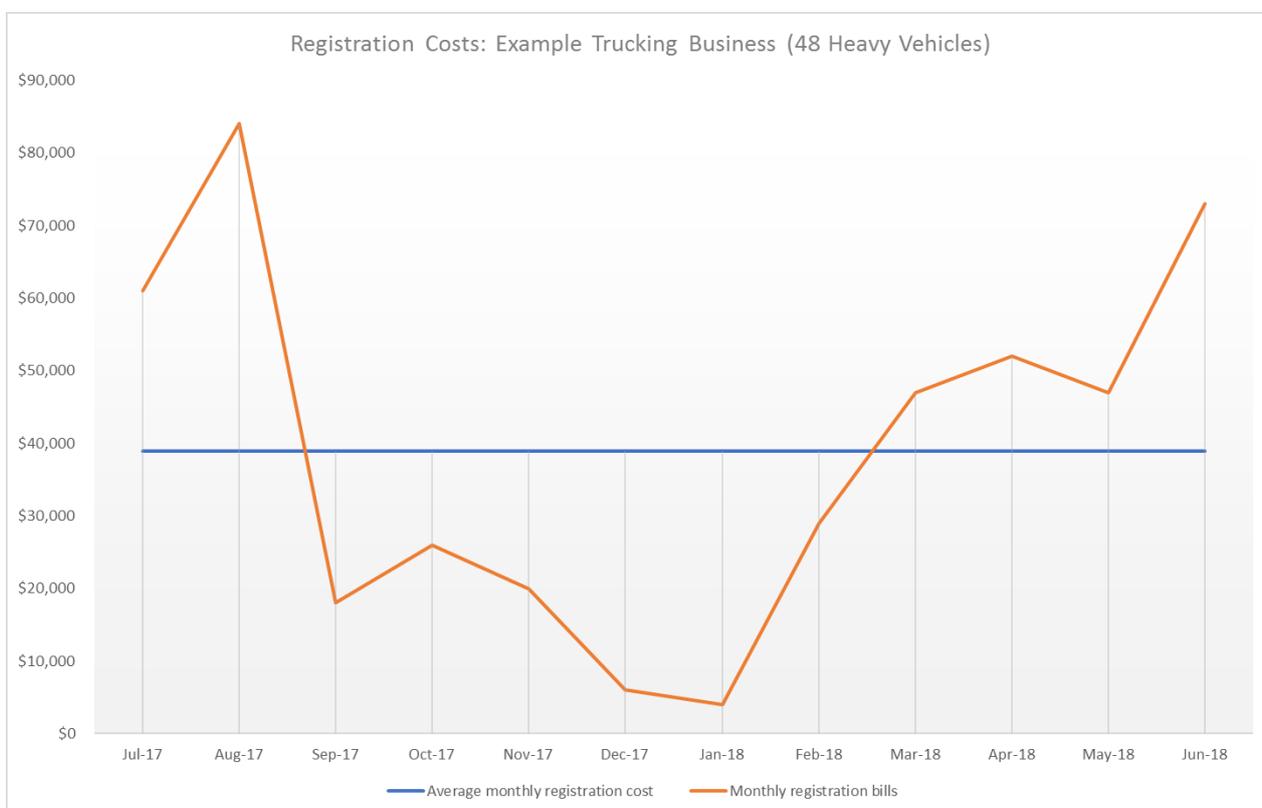
Moving to more regular payments, such as monthly payments, is a well-recognised mechanism for assisting customers to manage expenses. Monthly billing to avoid ‘bill shock’ is recognised as a way to soften vulnerability to high energy bills.⁷⁸

Deloitte has identified that the current registration charging system for heavy vehicles results in the use of debt funding for some trucking operators to finance these costs. Reducing the reliance on debt funding of registration charges would lead to reductions in vehicle operating costs.⁷⁹

As implemented in South Australia, monthly registration payment options represent an achievable reform to assist trucking operators.

Impact on a trucking business

The below example, based on an actual trucking operator's registration costs for 12 months (for a business which operates 48 heavy vehicles), illustrates the cashflow issues of registration payments.



In this example, an average monthly charge would significantly smooth registration costs for the trucking business, and provide a consistent, reliable cost.

Under the present system for registration costs, there is an \$80,000 variance in the monthly cost (highest month compared to the lowest cost month).

Recommendation 19

State and territory governments should implement a monthly registration payment option for heavy vehicles.

⁷⁸ Andrew Nance, 17 March 2017, [Energy Access and Affordability Policy Research](#), 51.

⁷⁹ Deloitte, 30 June 2017, [Economic analysis of potential end-states for the heavy vehicle road reform](#), 31.