



**Australian Government**

**Department of Infrastructure, Transport,  
Regional Development and Local Government**



# A National Framework for Regulation, Registration and Licensing of Heavy Vehicles

## Regulatory Impact Statement

May 2009

This Regulatory Impact Statement was provided to the Council of Australian Governments to inform its consideration of national transport regulatory reform proposals in July 2009. As such, the RIS does not necessarily represent the final outcomes that will be developed and agreed as Governments progress the reforms.

# CONTENTS

## EXECUTIVE SUMMARY

### 1. INTRODUCTION

- 1.1. Best practice regulation
- 1.2. The objectives of National Transport Reform
- 1.3. The ATC's proposed approach to national heavy vehicle regulatory reform
  - 1.3.1. Licensing, driver competencies and driver testing standards
  - 1.3.2. Access and Pricing
  - 1.3.3. Variations to enhance local productivity
  - 1.3.4. Registration
    - 1.3.4.1. Registration fees
    - 1.3.4.2. Stamp duty, Compulsory Third Party Insurance and other fees
- 1.4. Principles of heavy vehicle regulatory reform
- 1.5. COAG reform agenda

### 2. THE HEAVY VEHICLE INDUSTRY

- 2.1. What is a heavy vehicle?
- 2.2. How many heavy vehicles are there?
- 2.3. Overview of the trucking industry
- 2.4. Overview of the bus industry
- 2.5. Government revenues from heavy vehicles
- 2.6. The industry in summary

### 3. THE CURRENT REGULATORY ENVIRONMENT

- 3.1. Background to the current regulatory environment
- 3.2. How State and Territory regulation is developed
- 3.3. The Commonwealth's role
  - 3.3.1. Federal Interstate Registration Scheme
- 3.4. Local Government's role
- 3.5. The National Transport Commission
  - 3.5.1. Non-statutory regulation
- 3.6. International regulatory frameworks
  - 3.6.1. Canada
  - 3.6.2. United States
  - 3.6.3. Summary

### 4. NATURE OF THE PROBLEM

- 4.1. Inconsistencies between jurisdictions
  - 4.1.1. 'Black letter' law
    - 4.1.1.1. Progress in adoption of model laws
    - 4.1.1.2. Variation in adoption of model laws
    - 4.1.1.3. Updating legislation

- 4.1.1.4. Gaps in road transport reform coverage
- 4.1.2. 'Blanket' application of law
- 4.1.3. Exercise of discretion under the law
  - 4.1.3.1. Exercise of discretion produces different outcomes
- 4.1.4. Administration of the law
  - 4.1.4.1. Varying administrative practices between jurisdictions
  - 4.1.4.2. Lack of cross-border recognition of practices
  - 4.1.4.3. Information available to transport operators and other jurisdictions
- 4.1.5. Compliance monitoring and enforcement
- 4.1.6. Implementation of ATC-approved heavy vehicle policies
- 4.2. Heavy Vehicle road safety

## **5. WHY INCONSISTENCIES ARE A PROBLEM**

- 5.1. Current costs of regulation
- 5.2. The issues in summary

## **6. STATEMENT OF OPTIONS**

- 6.1. Common considerations across the options
  - 6.1.1. Content of national laws
  - 6.1.2. Decision making processes
  - 6.1.3. Variations to enhance local productivity
  - 6.1.4. Access
  - 6.1.5. Legal mechanisms for achieving uniform law
    - 6.1.5.1. Referral of powers
    - 6.1.5.2. Template law
    - 6.1.5.3. Complementary law
  - 6.1.6. National Partnership Agreements
  - 6.1.7. Review of the National Transport Commission
  - 6.1.8. Regulation remaining with jurisdictions
  - 6.1.9. Governance arrangements for all options
- 6.2. Option 1 - Retain the status quo (the 'base-case')
  - 6.2.1. National law
  - 6.2.2. National body
  - 6.2.3. Registration and licensing
  - 6.2.4. Other issues
- 6.3. Option 2 – A non-statutory national body supported by jurisdictions, developing 'best-practice' models and systems to achieve greater uniformity in the administration of law
  - 6.3.1. National law
  - 6.3.2. National body
  - 6.3.3. National Partnership Agreement
  - 6.3.4. Registration and licensing
  - 6.3.5. Other issues
- 6.4. Option 3 – Uniform national law adopted by all jurisdictions
  - 6.4.1. National law
  - 6.4.2. National body

- 6.4.3. National Partnership Agreement
- 6.4.4. Variations to enhance local productivity
- 6.4.5. Registration
- 6.4.6. Licensing
- 6.4.7. Other issues
- 6.5. Option 4 – Uniform national law administered by a single, national, statutory regulator
  - 6.5.1. National law
    - 6.5.1.1. Mechanism that might be used for Commonwealth registration law
    - 6.5.1.2. Mechanism that might be used for National Heavy Vehicle Regulator law
  - 6.5.2. National Heavy Vehicle Regulator
    - 6.5.2.1. Specific roles
    - 6.5.2.2. Agreements with jurisdictions
    - 6.5.2.3. Enforcement Plans
  - 6.5.3. National Partnership Agreement
  - 6.5.4. Governance

## **7. THE ECONOMIC ANALYSIS**

- 7.1. The cost-benefit analysis
  - 7.1.1. Methodology and data collection
  - 7.1.2. Results of the analysis
    - 7.1.2.1. Costs to Governments
    - 7.1.2.2. Costs to Industry
  - 7.1.3. Summary comparison of costs and benefits
  - 7.1.4. Conclusion

## **8. CONSULTATION**

- 8.1. Consultation process
- 8.2. Summary of issues
  - 8.2.1. Written submissions - statistics
- 8.3. Industry responses to the four options
  - 8.3.1. Option 1
  - 8.3.2. Option 2
  - 8.3.3. Option 3
  - 8.3.4. Option 4
- 8.4. How the RIS has responded
- 8.5. Issues specific to Jurisdictions

## **9. SUMMARY AND RECOMMENDATION**

- 9.1. Summary of the advantages and disadvantages of the options
  - 9.1.1. Option 1
  - 9.1.2. Option 2
  - 9.1.3. Option 3
  - 9.1.4. Option 4
- 9.2. Summary against the principles of heavy vehicle regulatory reform
- 9.3. Recommendation



## **10. IMPLEMENTATION AND REVIEW**

10.1. 'Guiding principles'

10.2. Implementation 'road map'

10.2.1. Administration / Governance

10.2.2. Actions for regulated parties

10.2.3. Actions for agencies

10.2.4. Transitional arrangements

10.2.5. Indicative timeframes

10.2.6. Implementing the National Heavy Vehicle Regulator

10.3. Review

## GLOSSARY

1991 Agreement	the Heavy Vehicle Agreement signed by Australian Heads of Government in 1991
2003 Agreement	the Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport signed by Australian Heads of Government in 2003.
ABS	Australian Bureau of Statistics
Agencies	Road or transport agencies of States and Territories eg VicRoads, RTA.
ATA	Australian Trucking Association
ATC	Australian Transport Council (Commonwealth, State and Territory Transport Ministers)
BITRE	(Commonwealth) Bureau of Infrastructure, Transport and Regional Economics
CAF	Council of Australian Federation (State Premiers and Territory Chief Ministers)
COAG	Council of Australian Governments
DITRDLG	Commonwealth Department of Infrastructure, Transport, Regional Development and Local Government
FIRS	Federal Interstate Registration Scheme
GVM	Gross Vehicle Mass
Heavy Vehicle	Vehicle with a GVM of 4.5 tonnes or more
IAP	Intelligent Access Program
NPA	National Partnership Agreement
JURISDICTIONS	the States, Australian Capital Territory and the Northern Territory (the Commonwealth is separately referred to as 'the Commonwealth')
NEVDIS	National Exchange of Vehicle and Driver Information System
NHVR	(proposed) National Heavy Vehicle Regulator
NRTC	National Road Transport Commission (predecessor of the NTC)
NTC	National Transport Commission
OAG	(proposed) Operational Advisory Group (see Option 4)
OBPR	(Commonwealth) Office of Best Practice Regulation
PBS	Performance Based Standards
RIS	Regulatory Impact Statement

## EXECUTIVE SUMMARY

### THE OBJECTIVES OF NATIONAL TRANSPORT REFORM

In May 2008, the Australian Transport Council (ATC) comprising the Commonwealth and all State and Territory Transport Ministers agreed that Australians want a national transport system that is safe, secure, efficient, reliable and integrated and that supports national social, economic and environmental prosperity. It further defined the following policy objectives for national transport reforms:

- Economic – promotion of the efficient movement of people and goods in order to support sustainable economic development and prosperity;
- Safety – provision of a safe transport system that meets Australia’s mobility, social and economic objectives with maximum safety for its users;
- Social – promoting social inclusion by connecting remote and disadvantaged communities and increasing accessibility to the transport network for all Australians;
- Environmental – protection of the environment and improving health by building and investing in transport systems that minimise emissions and consumption of resources and energy;
- Integration – promote effective and efficient integration and linkage of Australia’s transport system with urban and regional planning at every level of government and with international transport systems; and
- Transparency – in funding and charging to provide equitable access to the transport system through clearly identified means where full cost recovery is not applied.

### ATC PROPOSED APPROACH TO HEAVY VEHICLE REGULATORY REFORM

In September 2008, the Acting Prime Minister, the Hon Julia Gillard MP wrote to State and Territory First Ministers proposing that a Regulatory Impact Statement (RIS) on a possible single, national system of heavy vehicle regulation, registration and licensing (including the financial implications), should be prepared.

The ATC had agreed to investigate a framework for providing a seamless, national, uniform and coordinated system of heavy vehicle regulation (i.e. for vehicles with a Gross Vehicle Mass (GVM) of greater than 4.5 tonnes). A possible framework was agreed consisting of:

- a single regulation entity to administer a body of national heavy vehicle laws;
- a body of national heavy vehicle laws that encompasses existing heavy vehicle regulation. This includes registration, vehicle standards, mass and loading, oversize and overmass vehicle standards, restricted access vehicles, higher mass limits, licensing, driver fatigue management, speeding and associated compliance and enforcement activities. This body of law should make provision for variations to enhance local productivity;

- a national heavy vehicle registration scheme, established under Commonwealth law;
- a consistent approach to minimum standards for heavy vehicle driver competency and testing and to heavy vehicle driver training school recognition; and
- a single, physical, national heavy vehicle driver licence.

Ministers further agreed that, over time and with Council of Australian Governments (COAG)/ATC agreement, pricing and/or network access would be investigated.

This RIS has been developed as a response to these directions: it will be considered by the ATC prior to its presentation to COAG in 2009.

#### Licensing

Work on physical licence harmonisation had previously been commissioned through the Council of Australian Federation (CAF) and is being carried out by AustRoads' Registration and Licensing Taskforce. The Taskforce has produced a draft final report that will be considered by CAF prior to further advice being developed for the ATC in the second half of 2009. Any agreements from this work will be coordinated with the further development of any agreed model for a national regulatory system arising from this RIS.

#### Competency testing

The development of a national heavy vehicle driver competency and assessment framework is being led by Queensland Transport, through the Austroads Registration and Licensing Taskforce. The work will develop a national competency standard for multi-combination class vehicles drivers, adapting the existing competency standards in the Transport & Logistics Industry Training Package. The results of this work are expected to be delivered by 2010.

## **PRINCIPLES SUPPORTING THE ATC PROPOSED APPROACH TO HEAVY VEHICLE REGULATORY REFORM**

Transport Ministers agreed that a national system of heavy vehicle regulation would seek world-class economic efficiency and safety outcomes in the Australian road freight industry and deliver excellent and professional regulatory and compliance services. Consistent with this and the ATC's national transport objectives, six principles are proposed to guide the formulation of the options for heavy vehicle regulatory reform:

- Uniform laws and administrative practices should achieve the 'same outcome in the same circumstances' across Australia;
- Regulatory burden will not increase overall as a result of the reform;
- Legal and administrative costs of regulatory compliance will be minimised;
- Productivity, effectiveness and safety of the heavy vehicle industry are enhanced;



- Efficient, productive and sustainable freight and heavy vehicle operations will be facilitated, consistent with sustainable management of government assets; and
- The framework should allow for review and evaluation of the regulation and supporting systems to ensure their ongoing national relevance and efficacy.

## THE PROBLEM

The regulation of heavy vehicles is currently carried out by nine governments - the Commonwealth, six States and two mainland Territories. When you consider that road transport carries around 72 per cent of the total freight moved within Australia and buses carry around 62 percent of total public passenger trips in the country, this multiplicity of legislation and administration has economic and efficiency impacts.

To date, attempts to produce a national approach to heavy vehicle regulation have largely involved the development of series of 'model' laws and their application in individual jurisdictions. This has seen the development of multiple pieces of transport law to register and regulate the operation of heavy vehicles and their drivers. Differences in the adoption, application, interpretation and enforcement of these model laws and the use of jurisdiction-specific exemptions, permits, notices, business practices and guidelines has lessened their 'national' value and efficacy.

A heavy vehicle operator travelling interstate or operating intrastate in each of several jurisdictions will have to comply with the full range of regulation across as many jurisdictions as the business extends. A truck operator moving to another jurisdiction will need to re-register and establish compliance with a different set of regulations before being able to operate the same vehicle in the same business.

*"Truck drivers are deemed to be at the lower end of the intelligence scale in society and yet have the most complex set of work rules that they need to abide by. The comment often made is 'How many workers got to work wondering if they will cop a fine for just doing their job?'"*

*Victorian operator – submission to RIS*

In administering their heavy vehicle laws, each road or transport agency develops its own supporting documentation – guidelines, manuals, 'rules' – that they generally post on their own websites. There is no consolidated body of data on the heavy vehicle laws, how they differ across jurisdictions and how they apply: an operator seeking information will potentially need to access multiple websites and read and interpret multiple documents to carry out their basic operations. The same issue underlies the development of national policy; while information and data are gathered independently and separately by jurisdictional agencies, building a consolidated picture of the national heavy vehicle fleet - its make-up, operations, movements, breaches of regulation and costs and contributions to the national economy - can be difficult.

*"Every state has different rules – it is most difficult as a self employed person to be across all rules. Not only can ignorance on my part be expensive, it also contributes markedly to stress and has significant health implications."*

*Queensland owner/operator – submission to RIS*

## THE REGULATORY IMPACT STATEMENT (RIS) PROCESS

This Regulatory Impact Statement (RIS) aims to:


- provide information to stakeholders on issues with the current regulatory arrangements;
- establish realistic principles to support the proposed reform;
- provide options for addressing the identified issues in a way that achieves the principles;
- give stakeholders opportunity to provide input to and comment on the issues and the options;
- provide a financial and economic analysis as a basis for evaluating the options presented;
- make a recommendation on the options for reform, using information and analysis gained from the steps above.

This RIS explores only the framework for possible reform that Transport Ministers have agreed to investigate. The essential question under consideration is whether heavy vehicle law and its administration should be carried out by a single body rather than the existing eight or nine regulators. The RIS **does not explore the content of existing (or future) heavy vehicle law, or the policies underlying that content, or its ongoing relevance** (although the differences in content do serve to highlight existing regulatory issues). The particular costs, benefits, or other outcomes of specific legislation, or of a particular approach that a single regulatory body might implement, cannot be quantified at this time.

Should Governments decide to progress the national reforms, additional regulatory impact assessments may be needed to cover individual elements of heavy vehicle laws. These assessments may occur where regulation is varied from model laws that have already been the subject of a RIS, or where new laws are proposed, for example relating to competency assessment frameworks for heavy vehicle licensing.

To consider options for reform, the RIS examines the current heavy vehicle regulatory environment, with an emphasis on the legal frameworks and their interaction and operation. A financial and economic analysis (a cost-benefit analysis) has been carried out that seeks to identify and quantify:

- the costs of the current regulatory approach for both governments and industry;
- the potential costs and/or savings that could arise from each of the proposed reform options;
- the national economic implications of each of the proposed reform options .



This document also incorporates feedback and information gained from public and industry consultation. A Consultation RIS was released for consultation during December 2008 and January and February 2009. Representatives of the Commonwealth Department of Infrastructure, Transport, Regional Development and Local Government and the relevant State and Territory road and transport agencies visited selected cities and regional centres during January and February 2009 to meet with stakeholders and discuss the proposed reforms. Thirty-six written submissions on the RIS were received during the consultation period.

A revised Consultation RIS document that incorporated feedback gained from the consultation process and a financial and economic analysis was placed on consultation for a period of approximately two weeks during April 2009. Nine submissions were received.

The feedback gained through consultation has now been incorporated into this RIS that will be considered by the ATC and COAG. The Commonwealth Office of Best Practice Regulation has provided clearance to release the RIS.

## THE OPTIONS

Four options for a national system of heavy vehicle regulation, including the status quo, are considered in this RIS. Two options (Options 2 and 3) may also be considered as steps in a progression towards achieving the outcome of the ATC's agreed framework approach (Option 4). In this context, it is worth noting that the possible extent of legislative reform under Option 3 may result in changes to systems and process that administer existing laws.


The legislative/constitutional options for achieving each option are also described.

**Option 1** is to retain the status quo. Option 1 has also been used as the 'base-case' for the cost-benefit analysis and is the option against which the other three options have been costed .

**Option 2** involves a non-statutory body being established to foster consistency in the administration of the current model laws as they apply in each jurisdiction i.e. operating as a national heavy vehicle 'practice improvement agency'.

The body would develop and support jurisdictions in applying consistent business models and processes, procedures and guidelines (including possible systems improvement) to support the administration of existing laws. It would collect and analyse heavy vehicle data on a national basis to better facilitate national compliance and enforcement effectiveness and help inform future regulatory and policy developments. It would also act as a 'one-stop-shop' for industry interaction with governments.

**Option 3** involves enacting uniform (the same) national heavy vehicle law in a 'host' jurisdiction (not the Commonwealth) and its adoption as 'template' legislation in other jurisdictions. There would be no single national regulator and agencies of each jurisdiction would continue to be responsible for the administration of the uniform law. This option could operate to deliver more consistent outcomes across jurisdictions.



**Option 4** implements the national framework the ATC proposed. It would provide for uniform legislation administered by a single, national, statutory regulator, including Commonwealth registration law.

Road and/or transport agencies of each jurisdiction would continue to be responsible for the administration of the uniform legislation but as delegates of the national regulator.

The possible legal mechanisms for achieving this are:

- template legislation enacted in a host jurisdiction and adopted in other jurisdictions;
- a reference of powers from the States to the Commonwealth to enable it to enact legislation; or
- complementary legislation, where the Commonwealth enacts legislation applying to matters within its legislative powers, with that legislation adopted by jurisdictions to apply to the remainder; or
- using one or other of these for different parts of the package.

All options retain the following key elements:

- retention of the National Transport Commission (NTC) as an independent statutory body that develops and submits reform recommendations (with input from government and industry stakeholders) to the ATC for approval.
  - It is important to note that review of the NTC Act and its supporting Inter-Governmental Agreement is currently underway. Outcomes from this review, to be reported in September 2009, may have implications for each of the four options presented below. For the purposes of the RIS, the NTC's current operating framework, including provision of policy advice to the ATC, has been assumed to continue 'as is'.
- existing governance frameworks for input from governments through the Australian Transport Council as the main transport policy decision-maker to the Council of Australian Governments.

## INDUSTRY CONSULTATION

Industry accepts regulation as a necessity and that it can provide benefits: it is keen to raise its professional profile and to improve road and operational safety. However the existing regulatory framework is forcing operators to make choices not to operate in some markets, or not to carry certain freight in order to avoid complexity and costs.

Uniformity of regulation and administration is more important for interstate operators and those who operate in more than one jurisdiction (even if their vehicles don't actually travel interstate); intrastate operators work with the legislation and supporting systems that are in place. The possible content of new national regulation is a strong concern, with a common view expressed that to date, governments have shown little will to achieve regulatory outcomes that serve industry needs.

*"The Options put forward tend to have a narrow focus on the 'ease of the regulator' rather than the "ease of the regulatory burden".*

*Victorian Freight and Logistics Council – submission to RIS*

The need for clarity and transparency in decision-making processes and outcomes is a key message: a typical comment was along the lines of 'we could accept a decision if we just understood why it was made'. That transparency could come, in part, from a stronger involvement of industry in the development of regulation and its supporting frameworks.

There is strong 'reform fatigue' in industry; a sense that national reform has been in train since 1991 with little achieved. The recent implementation of driver fatigue regulations typifies, for operators, the lack of willingness of governments to achieve a national system.

*"There is a ground swell of opposition to state governments because of duplication of costs to community and a 'one-upmanship' attitude between state bureaucracies".*

*Queensland owner/driver – submission to RIS*

There is also strong concern that industry's biggest issue, access, is not being addressed directly as part of this reform.

The diversity of industry operations was reflected in the comments and submissions received. While there was no 'universal' consensus on any one option, ongoing reform to assist productivity, safety and efficiency and to simplify compliance is strongly welcomed by all operators. The key message taken from both the consultation sessions and the written submissions could be summarised as: uniformity is important, but a move to a 'lowest common denominator' system of regulation, administration and enforcement would defeat any gains from uniformity.

## THE ECONOMIC ANALYSIS

The consideration of a regulation 'framework' rather than regulation 'content' has in many ways, resisted the assignment of dollar values. The quantity and quality of the data provided by industry for the financial and economic analysis has also been limited. These issues have meant that the production of a single number to quantify benefits has not been possible.

Using data gathered and publicly available data, the approach taken has been to measure the expected percentage cost increase (or decrease) of each option; assess that cost against available qualitative and quantitative benefits of each option; and using those analyses, establish if expected increases in costs would be offset by the anticipated benefits.

The NPV cost of each option has been identified as follows:

		Calculation	Option 2 (\$'m)	Option 3 (\$'m)	Option 4 (\$'m)
A	Likely incremental cost of each option		503	567	480
B	Total Government costs (base case)		1,706	1,706	1,706
C	Total Industry costs		121,567	121,567	121,567
D	Total Costs	B + C = D	123,273	123,273	123,273
E	<b>Cost increase with each option</b>	E = A/D x 100%	<b>0.41%</b>	<b>0.46%</b>	<b>0.39%</b>

The cost increase percentage represents the incremental increase in cost under each option as a percentage of the total costs to society. While each of the options imposes costs, those associated with Option 4 are less than those of Options 2 and 3.

The potential value of identified benefits has been weighed against these costs; where benefits are assessed as being in excess of the cost increase, that option maximises the benefit and would be the preferred option.

Benefits have been considered as:

- monetised (where a dollar value can be attached to the anticipated benefit). These include benefits such as efficiencies in administration and business operations, reductions in compliance burdens and reductions in compliance costs; and
- qualitative (not quantifiable or monetised). These include benefits such as: improved policy and decision-making; increased certainty of outcome; reduced stress and better safety outcomes from removing uncertainty; improvements in responsiveness of regulation; and regulation promoting outcomes rather than setting minimum standards.

The analysis undertaken indicates that the cost benefits anticipated under Option 4 are more significant than for other reform options and that industry considers there is a higher likelihood of those benefits being realised under Option 4; they are more fully discussed in Chapter 7. Option 4 has been assessed as the preferred option for future heavy vehicle regulation on the grounds that it is expected to:

- be the least costly to implement and maintain of the three alternatives to the base case;
- maximise both the quantifiable and qualitative benefits of reform; and
- provide a net benefit over the base case.

*"Currently, national companies operating transport businesses in different jurisdictions are unable to achieve administrative savings and operational efficiencies from uniformity in the operating environment.*

*Further, they cannot simply transfer equipment and staff between jurisdictions. Each business unit needs to address the particular laws in its jurisdiction and the same operations in different states often require different solutions due to the inconsistent laws."*

*ATA – submission to RIS*

## RECOMMENDATION


By any measure, the heavy vehicle industry is an important one that has a vital role to play in the productivity, prosperity and social cohesion of the Australian nation. The transport and storage industries contributed 4.7 percent of total GDP in 2006-07; around 80 per cent of the current freight task is moved by trucks and buses carry around 62 per cent of total public passenger trips across the country. More than most countries, Australia is heavily reliant on road transport because of its low population density and the long distance between markets.

The consultation and data gathering processes carried out for the RIS highlighted how the national operation of the heavy vehicle industry is being impeded by inconsistencies in existing national regulation. Interstate operators in particular, face costs from additional regulatory burdens and are making business choices that suit the regulation; national regulation is not supporting their activity in many instances. Intrastate operators are not immune from the impacts of those inconsistencies, but their contribution to the national benefit is mostly done within regulatory regimes that take account of their 'local' productivity needs. Clearly, a solution for reform needs to consider both interstate and intrastate operations.

The recommendation that Option 4 is the preferred option does that: it provides a framework that can deliver benefits to interstate operators and reduce the costs and burdens of inconsistent regulation, administration and enforcement; and it provides mechanisms to ensure intrastate operators can benefit from 'local' productivity measures. Economic and 'qualitative' assessments of the national benefits of each of the four options, point to Option 4 as being the preferred framework for reform.

A national system under Option 4 would provide:

- the least-cost option for reform;
- uniform regulation that provides clarity and certainty for operators;
- clear decision-making frameworks to allow for local variations that enhance productivity;
- streamlined administration systems across the range of heavy vehicle regulatory functions including registration, inspections, access permissions and licensing;
- consistent enforcement strategies that provide consistent and improved safety outcomes;

- 
- a single regulator that could build a strong body of national data and analysis to better inform heavy vehicle policy, operations and future reform;
  - a clear and streamlined responsibility framework; and
  - a strong focus for industry interactions with governments to ensure ongoing regulatory relevance.

All of these deliverables are consistent with the objectives for reform that have been established in this RIS.

## IMPLEMENTATION

For reform to be successful, a planned and consultative implementation process will need to be carried out. Chapter 10 of the RIS provides more detail about the proposed framework for implementation, but at its basis are five guiding principles that aim to ensure quality reform outcomes:

- the results of reform should aim for national best practice and a reduction in regulatory burden, with consideration being given to 'outcomes-based' approaches;
- reform should provide ongoing quantifiable and qualitative improvements across heavy vehicle regulation, including safety outcomes;
- good policy frameworks will achieve the best long-term outcomes;
- implementation and delivery models need to be cost-effective and support the aims of the national system; and
- industry involvement is important to the ongoing development, implementation and success of reform.

Avoiding the 'lowest common denominator' approach will necessarily mean that getting policy and operational settings right will take time; this needs to be balanced with achieving real reform in a timely manner. A staged approach to implementing Option 4, should it be agreed, might involve establishing a national regulator with limited activities by the end of 2010, with a national system fully implemented at the end of 2012. The proposed implementation approach would work through the key issues of governance, legislation, operational policy and systems and processes, and provide a clear mechanism for industry input across all of those areas.



# 1. INTRODUCTION

1. At the 2020 Summit, one of the four key issues that emerged was the desire for a consistent national approach, particularly in economic policy. Numerous inefficiencies were identified, flowing from differences between the States and Territories. "The Future of the Australian Economy" Working Group reported that "the aspiration of the group was to provide the framework for systematically working towards a seamless national economy, with minimum inefficiencies, overlaps and bottlenecks, and clear roles, responsibilities and accountabilities between different levels of government. A true national market was the goal".<sup>1</sup>
2. When considering regulation, participants went on to say that "Regulations should be reformed to maximise productivity, encourage efficient investment and reduce the cost of doing business"<sup>2</sup> and that "this requires urgent action to increase economic capacity through the creation of a truly national, efficient, sustainable and inclusive economy supported by seamless regulation".<sup>3</sup>

## 1.1 BEST PRACTICE REGULATION

3. The overarching objective of regulation should be to achieve identified outcomes more efficiently than would be achieved by alternatives (including no regulation). In promoting government objectives and policy, the reality is that most regulation will impose costs, including:
  - the costs of dealing with regulators and keeping up-to-date with changing compliance and reporting requirements;
  - the costs of setting up compliance systems, collecting information, preparing and checking reports, form-filling, document storage etc; and
  - limits placed on the activities of a business, such as restrictions on the products or services it can supply and the markets it can enter, opportunities being missed, limits on the capacity of businesses to respond to changing technologies or market circumstances.<sup>4</sup>
4. It is unnecessary burdens (and therefore costs) that regulation should avoid. Such unnecessary burdens and costs might arise from:
  - problems with the regulations themselves (complexity for example, or lack of clarity in objectives, or over prescription);
  - poor enforcement and administration (for example excessive compliance requirements, inadequate resourcing of regulators, overzealous regulation); and/or
  - unnecessary duplication and inconsistency between jurisdictions.<sup>5</sup>

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<sup>1</sup> Commonwealth of Australia, "Australia 2020 Summit Final Report", 2008 p.38.

<sup>2</sup> Commonwealth of Australia, "Australia 2020 Summit Final Report", 2008 p.42.

<sup>3</sup> Commonwealth of Australia "Australia 2020 Summit Final Report", 2008 p.36.

<sup>4</sup> Productivity Commission, "Annual Review of Regulatory Burdens on Business", December 2008, p.12.

<sup>5</sup> Productivity Commission, "Upstream Petroleum Regulation", December 2008, paragraph. 3.2.

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5. Section 3 of this RIS explores the current heavy vehicle regulatory environment and its history and attempts to examine it generally against the broad framework of unnecessary regulatory burdens outlined in the dot points above.
  6. The Productivity Commission's Regulation Taskforce (2006) put forward six principles of good regulatory practice:
    - Governments should not act to address 'problems' through regulation unless a case for action has been clearly established. This should include evaluating and explaining why existing measures are not sufficient to deal with an issue;
    - A range of feasible policy options need to be assessed within a benefit-cost framework, including an analysis of compliance costs and, where relevant, risk;
    - Only the option that generates the greatest net benefit for the community, taking into account all the effects, should be adopted;
    - Effective guidance should be provided to regulators and regulated parties to ensure that the policy intent of the regulation is clear, as well as what is needed to be compliant;
    - Mechanisms such as sunset clauses or periodic reviews need to be built in to legislation to ensure that regulation remains relevant and effective over time; and
    - There needs to be effective consultation with regulated parties at the key stages of the regulation-making and administration.<sup>6</sup>
  7. In developing options for a framework for a single, national system of heavy vehicle regulation, registration and licensing, these underlying principles of best practice regulation have been considered in this RIS.

## 1.2 THE OBJECTIVES OF NATIONAL TRANSPORT REFORM

8. In May 2008, the ATC, comprising the Commonwealth and all State and Territory Transport Ministers, agreed that Australians want a national transport system that is safe, secure, efficient, reliable and integrated and that supports national social, economic and environmental prosperity. It further defined the following policy objectives for national transport reforms:
  - Economic – promotion of the efficient movement of people and goods in order to support sustainable economic development and prosperity;
  - Safety – provision of a safe transport system that meets Australia's mobility, social and economic objectives with maximum safety for its user;
  - Social – promoting social inclusion by connecting remote and disadvantaged communities and increasing accessibility to the transport network for all Australians;

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<sup>6</sup> Regulation Taskforce 2006, *'Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business'*, Report to the Prime Minister and the Treasurer, Canberra.

- Environmental – protection of the environment and improving health by building and investing in transport systems that minimise emissions and consumption of resources and energy;
- Integration – promote effective and efficient integration and linkage of Australia’s transport system with urban and regional planning at every level of government and with international transport systems; and
- Transparency – in funding and charging to provide equitable access to the transport system, through clearly identified means where full cost recovery is not applied.

### 1.3 THE ATC PROPOSED APPROACH TO NATIONAL HEAVY VEHICLE REGULATORY REFORM


9. In September 2008, the Acting Prime Minister, the Hon Julia Gillard MP wrote to State and Territory First Ministers proposing that a Regulatory Impact Statement (RIS) on a possible single, national system of heavy vehicle regulation, registration and licensing (including the financial implications), should be prepared. The RIS is to be considered by the ATC prior to reporting to the Council of Australian Governments (COAG) in 2009.
10. The ATC agreed that a seamless, national, uniform and coordinated system of heavy vehicle regulation should secure world-class economic efficiency and safety outcomes in the Australian road freight industry and deliver excellent and professional regulatory and compliance services.
11. The ATC has also agreed in principle to a framework for a national system of heavy vehicle regulation, registration and licensing. It consists of:
  - a single regulation entity (a National Heavy Vehicle Regulator) to administer the national heavy vehicle laws;
  - a national heavy vehicle registration scheme established under Commonwealth legislation;
  - a consistent approach to heavy vehicle driver competency and testing standards and heavy vehicle driver training school recognition;
  - a single physical national heavy vehicle driver licence; and
  - a body of national heavy vehicle laws encompassing current heavy vehicle regulation, including registration, vehicle standards, mass and loading, oversize and overmass vehicle standards, restricted access vehicles, higher mass limits, licensing, driver fatigue management, speeding and associated compliance and enforcement activities, with the laws making provision for variations to enhance local productivity.

### 1.3.1 LICENSING AND DRIVER COMPETENCY AND TESTING STANDARDS

12. The ATC also agreed to develop a consistent approach to minimum standards for competency and testing for heavy vehicle driver licences and the recognition of heavy vehicle driver training schools and proposed that a single physical national heavy vehicle licence would be delivered in 2010.
13. The first two of these initiatives are intended to promote a single eligibility and assessment framework. They are being progressed utilising the Austroads Registration and Licensing Taskforce and are expected to be delivered by 2010, at which time any necessary legislative changes would be developed together with administration arrangements.
14. Production of a single national heavy vehicle licence, whether a digital or smartcard product, would need to be based on consistent eligibility and assessment processes and associated business practices and on agreement on the form of the physical licence product.
15. Moving to a smartcard product, rather than retaining a digital licence product like that used currently by most jurisdictions, would provide considerably enhanced security, enhanced opportunity for electronic service delivery and the driver authentication critical to supporting technical developments such as electronic log books for heavy vehicle drivers.
16. Moves towards a single heavy vehicle licence product might occur over time and leverage off already existing work programs such as Smartcard Licence Interoperability Protocol (SLIP) and Queensland's current, new smartcard Driver Licence project.
17. Work on driver licence and vehicle registration harmonisation, especially for those who move interstate, had previously been commissioned through the Council of Australian Federation (CAF) and is being carried out by AustRoads' Registration and Licensing Taskforce. The Taskforce has produced a draft final report that will be considered by CAF prior to further advice being developed for the ATC in the second half of 2009. Any agreements from this work will be coordinated with the implementation of a national regulatory system arising from this RIS and/or any moves to a single heavy vehicle driver licence.

### 1.3.2 ACCESS AND PRICING

18. Industry representative bodies such as the Australian Trucking Association have argued that, in the context of a growing road freight task, access is not just a matter of increased productivity; improved access arrangements for higher productivity vehicles would allow operators to become early adopters of leading edge safety features by providing the right economic setting for early new vehicle purchase.
19. In committing to the reform process, Transport Ministers have focussed on establishing a national regulatory framework in the first instance, recognising that such a framework could assist in further developing uniform approaches to a range of heavy vehicle policy issues. Consistent with this approach, the ATC decided that national laws will, over time and with COAG/ATC agreement, encompass pricing and/or network access.
20. Within this ATC approach that recognises that access decisions are a matter for the asset owner, the RIS has recognised the importance to industry of the resolution of access issues and puts forward mechanisms by which consistent and transparent access decision-making processes could be provided



to industry under the proposed reform options. A body of data, analysis and knowledge that could be built up through the use of, and reporting on, those processes and frameworks could usefully inform future COAG/ATC deliberations on the issue.

### 1.3.3 VARIATIONS THAT ENHANCE LOCAL PRODUCTIVITY

21. The ATC also recognised that differences in current heavy vehicle regulation may exist for legitimate policy and productivity related reasons. They therefore included in their decision on a possible framework, that national law achieved under a national framework would “make provision for variations that enhance local productivity”.
22. Chapter 6 of the RIS discusses more fully how legislative and/or administrative mechanisms can be incorporated into a national framework under the reform options to enable variations, but *only* where they *enhance local productivity*.

### 1.3.4 REGISTRATION

23. In agreeing to consider a national registration scheme under Commonwealth law, the ATC identified a number of issues that emerge from that decision and established some guidance on measures that might be taken to resolve them.

#### 1.3.4.1 REGISTRATION FEES

24. A national registration scheme established under Commonwealth law would necessarily result in registration charges being paid to the Commonwealth. Transport Ministers therefore agreed that, while jurisdictions would no longer be the direct recipients of those charges, revenues “would be distributed to jurisdictions on the current basis.”
25. Nationally, jurisdictions received an estimated \$1.3 billion in 2007-08<sup>7</sup> in revenue across the range of heavy vehicle fees and charges, including stamp duty, registration, licensing, fines, permits and CTPI.
26. If Option 4 were adopted and a national regulator be established, it would be funded from the registration charges revenue. The ‘remainder’ of the registration charges revenues would be distributed to jurisdictions on the current basis.
27. Revenue from charges being distributed on “the current basis” has been taken to mean that jurisdictions would receive the same proportion of total registration revenues as is currently received by them rather than the actual amount currently received (which would see jurisdictions’ revenue decrease over time as registration charges increase).
28. The ATC also agreed in-principle that, in terms of registration charges, the ‘money should follow the truck’. It also agreed to ask the National Transport Commission (NTC) to provide advice on distribution methods consistent with this principle. Until the ATC has received and considered that advice, the distribution of registration revenues to jurisdictions will continue on the current basis as described.

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<sup>7</sup> Ernst & Young “Cost Benefit Analysis – Heavy Vehicle Regulation”, 2009 prepared for this RIS and attached at Appendix A.

#### 1.3.4.2 STAMP DUTY, COMPULSORY THIRD PARTY INSURANCE AND OTHER FEES


29. A national, uniform registration scheme has the capacity to impact on current arrangements and revenues. Jurisdictions attach stamp duty and in some cases, other fees (such as emergency services levies) to the vehicle registration transaction. These would not be levied under Commonwealth registration law.
30. Approaches to compulsory third party insurance (CTPI) arrangements for heavy vehicles also vary, ranging from incorporating CTPI charges in the registration scheme to requiring proof of CTPI purchase as a pre-condition to registration.
31. The ATC has agreed that separate processes would be needed to “review and consider alternatives to State and Territory stamp duty revenues and other fees and charges collected at the same time as the registration transaction (if replacement is necessary)”.
32. As a first step, data on stamp duty revenue, fees and charges and CTPI has been collected as part of the development of the financial and economic analysis undertaken for the RIS.
33. In implementing a decision, a number of mechanisms could be pursued to resolve this issue:
  - Consistent with the ATC decision, Treasurers could use the data collected through the RIS process as a base from which to “review and consider alternatives (if replacement is necessary)”;
  - Jurisdictions are committed to pursue the reform as parties to the Inter-Governmental Agreement on Federal Financial Relations that established regulatory and competition reform as key priorities and under which (through the National Partnership Agreement to Deliver a Seamless National Economy) funding is being provided to jurisdictions to implement reform;
  - Jurisdictions could raise those revenues by levying duties in other areas of their control; or
  - Jurisdictions could retain the capacity to impose stamp duty on the change of ownership of heavy vehicles and to retain jurisdiction-based CTPI. From an initial review of how these issues interact legally, it appears that with some amendments to jurisdiction-based legislation and administrative arrangements, jurisdictions could retain their stamp duty revenue, current CTPI arrangements and related concession/exemption measures under Option 4, without the need for a ‘financial’ solution. It should also be possible to achieve this outcome without running the risk of operators ‘shopping around’ for either cheaper stamp duty or CTPI.
34. This would be a key consideration in the implementation of any decision and would need to be further examined in that process. Should any examinations of these issues result in the need for separate RISs, these would be done at a later stage and would not affect decisions arising from this regulation impact statement.
35. It is also worth noting that outcomes from the review of Australia’s tax system (the ‘Henry Review’ being led by Dr Ken Henry, Secretary to the Treasury) may influence the development of this element of the framework. The Henry Review is expected to report in December 2009.

## 1.4 PRINCIPLES SUPPORTING THE ATC PROPOSED APPROACH TO HEAVY VEHICLE REGULATORY REFORM

36. Supporting the ATC's national transport and heavy vehicle reform objectives, the following principles are proposed to guide the formulation of the options for heavy vehicle regulatory reform:
- Uniform laws and administrative practices should achieve the 'same outcome in the same circumstances' across Australia;
  - Regulatory burden will not increase overall as a result of the reform;
  - Legal and administrative costs of regulatory compliance will be minimised;
  - Productivity, effectiveness and safety of the heavy vehicle industry are enhanced;
  - Efficient, productive and sustainable freight and heavy vehicle operations will be facilitated, consistent with sustainable management of state and territory assets; and
  - The framework should allow for regular review and evaluation of the regulation and supporting systems to ensure their ongoing national relevance and efficacy.
37. This RIS will support ATC and COAG decision making on a single national system of heavy vehicle regulation and its administration by:
- analysing the existing heavy vehicle regulatory regime, its operations and effectiveness;
  - presenting options for achieving a national framework for a single regulatory system;
  - canvassing and incorporating industry and jurisdictions' responses to the proposed reform;
  - identifying and evaluating the possible benefits and costs of each option for reform; and
  - making recommendations on the options, based on the analyses undertaken and as measured against the agreed principles for reform.
38. This RIS explores only the framework for possible reform that Transport Ministers have agreed to investigate. The essential question under consideration is whether heavy vehicle law and its administration should be carried out by a single body rather than the existing eight or nine regulators. The RIS **does not explore the content of existing (or future) heavy vehicle law, or the policies underlying that content, or its ongoing relevance** (although the differences in content do serve to highlight existing regulatory issues). The particular costs, benefits, or other outcomes of specific legislation, or of a particular approach that a single regulatory body might implement, cannot be quantified at this time.

## 1.6 COAG REFORM AGENDA AND COMPLEMENTARY WORK

39. At its meeting of 26 March 2008, all Australian Governments committed to a microeconomic reform agenda for Australia, with a particular focus on health, water, regulatory reform and the broader



productivity agenda. Supporting this commitment is an Inter-Governmental Agreement on Federal Financial Relations.

40. To deliver on the commitment, all States and Territories are also signatories to a “National Partnership Agreement to Deliver a Seamless National Economy” that complements COAG’s reform agenda to “deliver more consistent regulation across jurisdictions and address unnecessary or poorly designed regulation, to reduce excessive compliance costs on business, restrictions on competition and distortions in the allocation of resources in the economy”.<sup>8</sup> The Commonwealth Government has provided \$550 million over 5 years to all jurisdictions to facilitate implementation of the agreed reforms.

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<sup>8</sup> “National Partnership Agreement to Deliver a Seamless National Economy”, December, 2008 downloaded from [www.coag.gov.au](http://www.coag.gov.au).



## 2. THE HEAVY VEHICLE INDUSTRY'S ROLE

41. Of the 14.8 million vehicles the Australian Bureau of Statistics (ABS) reports<sup>9</sup> as being registered in Australia at 31 March 2007, heavy vehicles made up only 3.3 per cent. However, this statistic does not reflect the importance of the heavy vehicle industry across the full range of sectors in the national economy - as a mover of freight and people and as an employer. The road freight industry is a key component of the production, distribution and consumption of goods and services in the Australian national economy accounting for about 37 per cent of the total domestic freight task (tonne-kilometres).<sup>10</sup> Bus transport contributes significantly to facilitating the movement of people to and from work and around our cities and urban communities. They also play a strong role in interstate tourism and in connecting rural and regional centres with the rest of the country.
42. In 2006, the Bureau of Infrastructure, Transport and Regional Economics (BITRE) identified non-bulk, interstate freight as the fastest growing freight task, driven by growth in gross domestic product, reductions in freight rates and a continuing trend to national distribution by manufacturers, wholesalers and importers.<sup>11</sup> Interstate road freight is gaining mode share and will continue to do so as seen below in Table 1. Productivity and other efficiencies in this sector of the economy are important.

**Table 1 – Road freight task by tonne-kilometres (tkm) (billion)<sup>12</sup>**

	2004-05
Interstate	43.6
Intrastate	125.3
<b>Total</b>	<b>168.9</b>

43. More than most countries, Australia is heavily reliant on road freight because of its low population density and the long distances between markets. In urban areas trucks are the primary means of freight distribution. An efficient competitive industry is therefore important not only to the economic task of supporting urban and regional communities but also to the connectivity and social vibrancy of those communities.
44. By any measure the heavy vehicle industry is an important industry that has a vital role to play in the business, prosperity and social cohesion of the Australian nation. While recognising that regulation is required to promote wider public goals (safety, environmental management, for example) it is important that the regulation of this industry should not act to impede the legitimate efficiency and productivity of heavy vehicle businesses.

<sup>9</sup> Australian Bureau of Statistics, 2007 Motor Vehicle Census. 31 March 2007.

<sup>10</sup> Bureau of Infrastructure, Transport and Regional Economics, Report 112, "Freight Measurement and Modelling in Australia", Canberra 2006.

<sup>11</sup> Bureau of Infrastructure, Transport and Regional Economics, Report 112, "Freight Measurement and Modelling in Australia", Canberra 2006.

<sup>12</sup> Bureau of Infrastructure, Transport and Regional Economics, "Australian Transport Statistics, Yearbook 2007", Canberra 2008.

## 2.1 WHAT IS A HEAVY VEHICLE?

45. A heavy vehicle is a vehicle with a Gross Vehicle Mass (GVM) of more than 4.5 tonnes. This includes rigid trucks, articulated trucks, non-freight carrying trucks (including some types of plant and equipment such as mobile cranes and even some larger motor-homes), buses and heavy trailers. Table 2<sup>13</sup> below identifies the vehicles types that make up the heavy vehicle industry.

**Table 2 - Heavy Vehicle Types**

Vehicle designations		
Type of vehicle	Light vehicles	Heavy vehicles
Plant and equipment	GVM less than 4.5 tonnes	GVM over 4.5 tonnes
Trailers	GVM less than 4.5 tonnes	GVM over 4.5 tonnes
Non-freight carrying trucks	GVM less than 4.5 tonnes	GVM over 4.5 tonnes
Rigid trucks	GVM less than 4.5 tonnes	GVM over 4.5 tonnes
Articulated trucks	-	All
Buses	-	All
Light commercial vehicles	All	-
Passenger vehicles	All	-
Other vehicles (for example, motor cycles and caravans)	All	-

46. This RIS largely describes issues in relation to trucks because they represent the significant majority of regulatory issues surrounding heavy vehicle transport firms operating in more than one state and/or the interstate movements of heavy vehicles, the regulatory issues being discussed also relate to the interstate operations of the entire heavy vehicle fleet.

## 2.2 HOW MANY HEAVY VEHICLES ARE THERE?

47. The Commonwealth Grants Commission<sup>14</sup> has reported that in 2006-07 a total of 428 321 heavy vehicles and 173 187 heavy trailers were registered in states and territories as shown in Table 3:

<sup>13</sup> Cited in the Commonwealth Grants Commission Working Paper 09 U2008, *Heavy Vehicle Registration Fees and Taxes* (found at [www.cgc.gov.au](http://www.cgc.gov.au))

<sup>14</sup> Cited in the Commonwealth Grants Commission Working Paper 09 U2008, *Heavy Vehicle Registration Fees and Taxes* (found at [www.cgc.gov.au](http://www.cgc.gov.au)) as unpublished ABS data on NTC Vehicle classes from March 2007 vehicle census. *Note* – these numbers do not include heavy vehicle registrations under the Federal Interstate Registration Scheme.

+ In response to the RIS, Queensland Transport have provided revised figures as follows: Rigid trucks:66,067; Articulated trucks:16,159; Buses:7,427; Heavy Trailers:41,316. They have not been incorporated into the table as they are not the figures cited by the Commonwealth Grants Commission.

**Table 3 - Heavy Vehicles Registered, 2006-07**

	NSW	Vic	Qld <sup>+</sup>	WA	SA	Tas	NT	ACT	Total
Rigid trucks:	80,277	75,888	66,067	45,917	22,083	8,264	3,314	1,737	<b>303,547</b>
Articulated trucks:	15,648	22,370	17,231	10,159	6,463	1,477	836	226	<b>74,410</b>
Non-freight trucks:	4,237	5,559	1,184	3,030	485	7	286	19	<b>14,807</b>
Buses:	10,890	7,308	7,518	4,591	2,643	1,264	774	569	<b>35,557</b>
<b>Total heavy vehicles:</b>	<b>111,052</b>	<b>111,125</b>	<b>92,000</b>	<b>63,397</b>	<b>31,674</b>	<b>11,012</b>	<b>5,210</b>	<b>2,551</b>	<b>428,321</b>
Heavy trailers:	29,081	48,333	40,931	30,332	16,905	3,745	3,433	424	<b>173,187</b>

48. As at 30 June 2008, there were in addition, 9 723 heavy vehicles and 12 095 heavy trailers registered under the Commonwealth's Federal Interstate Registration Scheme (FIRS),<sup>15</sup> distributed by garaging address:

**Table 4 - Heavy Vehicles Registered under the Commonwealth FIRS as at 30 June 2008**

	NSW	Vic	Qld	WA	SA	Tas	NT	ACT	Total
Rigid trucks:	251	168	32	49	22	0	0	49	<b>552</b>
Articulated trucks:	2,339	5,201	948	217	341	9	2	100	<b>9,157</b>
Buses:	3	8	0	0	0	1	0	0	<b>12</b>
<b>Total heavy vehicles:</b>	<b>2,593</b>	<b>5,377</b>	<b>980</b>	<b>247</b>	<b>363</b>	<b>10</b>	<b>2</b>	<b>149</b>	<b>9,723</b>
Heavy trailers:	1,812	8,478	125	344	1,282	2	2	50	<b>12,095</b>

## 2.3 AN OVERVIEW OF THE TRUCKING INDUSTRY

49. The trucking industry consists of hire and reward operators (i.e. transport and logistics businesses that provide trucking services) and ancillary operators (i.e. businesses whose main activity is something other than transport but that have truck fleets to transport their own products).
50. Trucking is a relatively labour intensive industry and provides a significant source of employment for Australian workers. In 2007-08, the Commonwealth Department of Education, Employment and Workplace Relations reported there were almost 180,000 truck drivers engaged in the industry,<sup>16</sup> with many more thousands of workers employed as mechanics, schedulers, workshop managers, fleet managers etc.
51. In 2007-08, the hire and reward sector of the trucking industry contributed \$18 billion to Australia's national income, accounting for approximately 1.7 per cent of gross industry value added.<sup>17</sup> However

<sup>15</sup> Unpublished data, Department of Infrastructure, Transport, Regional Development and Local Government.

<sup>16</sup> Department of Education, Employment and Workplace Relations, 2008, *Job Outlook*: <http://joboutlook.gov.au/Pages/default.aspx>.

<sup>17</sup> Australian Bureau of Statistics, 2008, Australian National Accounts: National Income, Expenditure and Product, cat. no. 5206.0.

while the majority of road freight is moved by the hire and reward sector of the trucking industry, most trucks are owned and operated by ancillary fleets.

52. In 2004, the Australian Trucking Association estimated there were 218,867 businesses operating trucking fleets in Australia, with approximately 31,810 of the business establishments engaged in hire and reward transport operations.<sup>18</sup> Table 5 provides an overview of the trucking industry's structure:

**Table 5 - Number of Businesses operating truck fleets by Industry and Fleet Size, 2004**

	Number in fleet							Total
	1	2-4	5-9	10-19	20-49	50-99	100+	
<b>Hire and reward</b>	<b>21,762</b>	<b>7,803</b>	<b>1,454</b>	<b>508</b>	<b>211</b>	<b>42</b>	<b>30</b>	<b>31,810</b>
<b>Ancillary</b>								
Agriculture, fishing and forestry	93,389	26,509	1,223	729	72	1	0	121,923
Building and construction	13,069	4,171	483	154	51	31	0	17,959
Electricity, gas, water and communications	82	46	15	5	5	0	5	158
Manufacturing	6,514	3,668	801	329	154	82	20	11,568
Mining and quarrying	380	257	51	11	11	5	0	715
Wholesale and retail	16,419	9,217	1,675	421	31	72	21	27,856
Finance and property	1,675	555	82	31	10	5	5	2,363
Public administration and community services	1,346	431	72	31	15	5	5	1,905
Recreational, personal and other services	1,850	616	92	31	11	5	5	2,610
<b>Total</b>	<b>156,486</b>	<b>53,273</b>	<b>5,948</b>	<b>2,250</b>	<b>571</b>	<b>248</b>	<b>91</b>	<b>218,867</b>

53. The highly competitive market structure of Australian trucking is a key facilitating element to the achievement of efficiency and productivity in freight transport markets. Competition in the trucking industry delivers efficient transport pricing outcomes to the Australian economy, innovation and supply chain efficiency to Australian industry and the guarantee of on-time freight delivery for Australia's most streamlined production and distribution networks.
54. Road transport is the predominant mode for moving freight in Australia. Of the more than 2.44 billion tonnes of total freight moved within Australia in 2004-05, road transport carried about 1.6 billion tonnes, or 72 per cent of the total.<sup>19</sup> Approximately 30 per cent of the road task is completed by interstate trucking and road now performs approximately 75 per cent of the total non-bulk freight task.<sup>20</sup>

<sup>18</sup> Australian Trucking Association, 2004, *Trucking – Driving Australia's Growth and Prosperity*.

<sup>19</sup> Gargett, D. and Hossain, A. "Road Freight Estimates by State/Territory", paper delivered to Australian Research Forum, 2008.

<sup>20</sup> Bureau of Infrastructure, Transport and Regional Economics, "Freight Measurement and Modelling in Australia Report 112". 2006

55. Table 6 below<sup>21</sup> provides a breakdown of the total tonnage carried by the trucking industry by commodity and type of vehicle:

**Table 6 - Total tonnage carried by the trucking industry by commodity and vehicle type**

	Light commercial vehicles	Rigid trucks	Articulated trucks	Total
	tonnes (m)	tonnes (m)	tonnes (m)	tonnes (m)
Food and live animals	9	72	205	286
Beverages and tobacco	2	7	19	28
Crude materials, inedible, except fuels	5	535	269	808
Mineral fuel, lubricants and related materials	3	33	85	121
Animal and vegetable oils, fats and waxes	-	3	8	11
Chemicals and related products, not elsewhere specified	6	13	29	47
Manufactured goods	18	153	133	304
Machinery, transport equipment	10	53	60	123
Miscellaneous manufactured articles	4	17	12	33
Tools of trade	86	38	5	128
Other commodities, not elsewhere specified	18	88	92	199
Unspecified	5	22	31	58
<b>Total</b>	<b>166</b>	<b>1,035</b>	<b>946</b>	<b>2,146</b>

56. Forecasts by the BITRE project that the domestic freight task will grow at an average annual rate of 2.8 per cent over the period to 2020, with growth in the movement of non-bulk freight (3.6 per cent) substantially outstripping that of bulk freight (2.3 per cent).<sup>22</sup>
57. The road transport task is forecast to grow at an average annual rate of 3.8 per cent through to 2020, leading to an increase in the modal dominance of road transport in the domestic freight market and a doubling in the output of road freight transport over the period.<sup>23</sup>
58. Trucks provide nearly all urban freight transport and are the only freight transport mode available in many regional areas. The main area of competition between trucking and railways is on the inter-capital freight corridors.<sup>24</sup>

<sup>21</sup> Australian Bureau of Statistics, 2008, *2007 Survey of Motor Vehicle Use*.

<sup>22</sup> Bureau of Infrastructure, Transport and Regional Economics, 2006, *Freight Measurement and Modelling in Australia*.

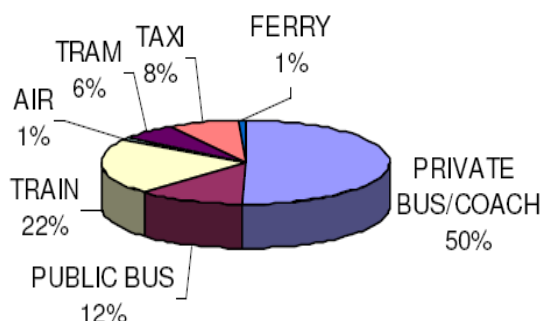
<sup>23</sup> Bureau of Infrastructure, Transport and Regional Economics, 2006, *Freight Measurement and Modelling in Australia*.

<sup>24</sup> Productivity Commission, 2006, *Road and Rail Freight Infrastructure Pricing*.

## 2.4 AN OVERVIEW OF THE BUS INDUSTRY

59. As of October 2007, there were 66,330 buses registered in Australia.<sup>25</sup> Approximately 42,000 people are employed by organisations directly related to the provision of bus services, 30,000 of these in the private sector.<sup>26</sup>
60. As shown in Figure 1 below, 62 per cent of total public passenger trips in Australia in 2002 were performed by the bus industry; of these, the private bus sector carried about 1.16 billion passengers.<sup>27</sup>

**Figure 1 - Bus trips as a percentage of total public passenger trips, 2002**



61. The bus industry consists of hire and reward operators (private) and publicly owned (government) operators. The private sector provides route services (urban and other regular public transport), charter and tourist services and school services under government contract.
62. The bus industry has a large role to play in urban transport systems, and plays a significant role in regional and international tourism transport. Buses and coaches are responsible for around 23 per cent of trips made by international visitors; 1.5 million international visitors travelled by bus in 2002-03.<sup>28</sup>
63. The ABS Survey of Motor Vehicle Use categorizes bus services provided by both sectors into Route Service (public transport, scheduled long distance and interstate bus services); dedicated school bus services; charter services; and 'other' (community operated buses and the like). Several different service models are used to achieve deliver the range of different bus services.

<sup>25</sup> Australian Bureau of Statistics, 2007 Motor Vehicle Census. 31 March 2007, p. 9.

<sup>26</sup> The Institute of Transport and Logistics Studies in NTC *Bus Operator Handbook*, 2005, p. 6.

<sup>27</sup> Bus Industry Confederation, "Fact Sheet: Passenger Transport Activity in Australia," 2004

<sup>28</sup> National Transport Commission *Bus Operator Handbook*, 2005, p. 6.

**Table 7 - Service models used to deliver bus services**

		OPERATOR	
		Government	Private
OWNER	Government	<ul style="list-style-type: none"> <li>• Route Services</li> <li>• School Services</li> </ul>	<ul style="list-style-type: none"> <li>• Route Services</li> </ul>
	Private		<ul style="list-style-type: none"> <li>• Charter</li> <li>• Route Services</li> <li>• Tourist services</li> <li>• School services (Government Contract)</li> </ul>

64. The ABS Survey of Motor Vehicle Use 2007 reported that Australia’s bus fleet travelled approximately 2,032 million kilometres in 2007 providing the following services.<sup>29</sup>

**Table 8- Bus Kilometres Travelled by Service Type, 2007**

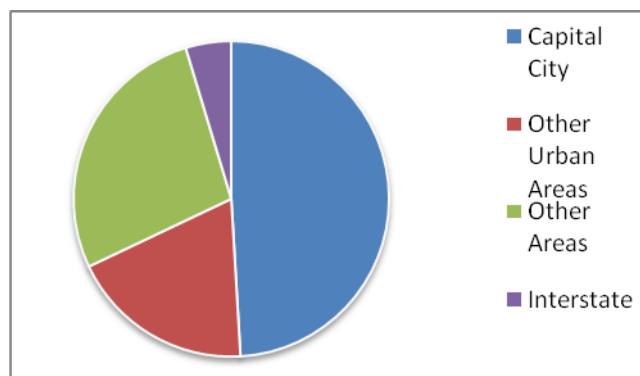
	Route service	Dedicated school bus service	Charter service	Other(b)	Not specified(c)	Total
.....						
TOTAL KILOMETRES TRAVELLED (million)						
New South Wales	^ 193	^ 126	*91	^ 123	**3	^ 537
Victoria	^ 157	^ 74	*83	^ 126	**—	441
Queensland	^ 181	^ 60	*82	^ 143	—	466
South Australia	^ 74	^ 20	*18	*10	**2	123
Western Australia	*136	*37	*27	*128	**—	^ 329
Tasmania	^ 13	^ 17	*4	*7	**1	42
Northern Territory	^ 13	*5	^ 8	^ 32	**1	58
Australian Capital Territory	^ 22	^ 4	*2	*8	—	35
<b>Australia</b>	<b>788</b>	<b>342</b>	<b>^ 316</b>	<b>^ 577</b>	<b>**8</b>	<b>2 032</b>
.....						

- ^ estimate has a relative standard error of 10% to less than 25% and should be used with caution
- \* estimate has a relative standard error of 25% to 50% and should be used with caution
- \*\* estimate has a relative standard error greater than 50% and is considered too unreliable for general use
- nil or rounded to zero (including null cells)
- (a) Excluding distance travelled by buses used exclusively for private purposes.
- (b) Includes tour service operations.
- (c) Represents travel by buses where type of service could not be obtained.

65. The chart below shows proportionately, the 2007 ABS Survey of Motor Vehicle Use reporting on the locational spread of bus kilometres travelled in urban and non-urban areas.

<sup>29</sup> ABS Survey of Motor Vehicle Use, 2007, p. 27.

**Figure 2 - Bus kilometres travelled by location, 2007**



## 2.5 GOVERNMENTS' REVENUE FROM HEAVY VEHICLES

66. Commonwealth, State and Territory governments receive annual revenues from heavy vehicles through the road user charge (including fuel excise) and heavy vehicle registration charges.
67. Table 9 below<sup>30</sup> presents the 2007-08 revenue base from heavy vehicle charges, calculated by the National Transport Commission using data from the *Survey of Motor Vehicle Use*, showing revenues of \$1,784 million from heavy vehicle charges, including \$638 million from registration charges.

**Table 9 - Revenue to Governments from heavy vehicle charges, 2007-08**

	C'wth	NSW	Vic	Qld	WA	SA	Tas	NT	ACT
	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m
Road user charge:	1,146								
Registration charges:		150	171	147	86	58	15	8	3

68. The Commonwealth Grants Commission has estimated that in 2006-07, the total revenue from "registration fees and taxes" was more than \$715 million.<sup>31</sup>
69. From data collected for the purposes of preparing a cost-benefit analysis for this RIS, an estimated total of government revenues collected from the heavy vehicle industry in the 2007-08 year is \$1.3 billion.<sup>32</sup> This is further reported in Chapter 7.

<sup>30</sup> National Transport Commission, *2007 Heavy Vehicle Charges Determination Regulatory Impact Statement Volume 1*, December 2007.

<sup>31</sup> Commonwealth Grants Commission Report 09/U2008 "Heavy Vehicle Registration Fees and Taxes", 2008

<sup>32</sup> Ernst & Young, "Cost-Benefit Analysis – Heavy Vehicle Regulation", prepared for the Department of Infrastructure, Transport, Regional Development and Local Government, 2009.





## 2.6 THE INDUSTRY IN SUMMARY

70. The rapid growth in the freight task in recent years has highlighted the importance of the heavy vehicle industry and its operations. Its contribution to the national economy in facilitating the movement of people and goods is substantial. The industry itself has been subject to many changes over recent years resulting from strong competition, technological advances and structural issues that have seen a bigger focus on logistics management, rather than freight movement per se. Such changes are increasingly highlighting the need to ensure the regulatory frameworks in which heavy vehicles operate can continue to support and facilitate the safety, productivity and effectiveness of the industry.

### 3. THE CURRENT REGULATORY ENVIRONMENT

71. While States and Territories are largely responsible for the regulation of heavy vehicles and their operations, the Commonwealth and local governments are both 'players' in the heavy vehicle regulatory field. The Commonwealth has no direct powers to legislate for transport matters and legislation it has enacted that affects heavy vehicles is confined to the corporations and trade and commerce arenas. Local Government is relevant to heavy vehicle regulation and operations through its role as an asset owner and manager of the vast majority of Australia's roads.
72. This section examines the current institutional frameworks and processes for developing and delivering heavy vehicle regulation.

#### 3.1 BACKGROUND TO THE CURRENT REGULATORY ENVIRONMENT

73. First Ministers recognised in a 1991 Inter-Governmental Heavy Vehicles Agreement (the 1991 Agreement) that a co-operative legislative scheme creating 'uniform or consistent' road transport legislation throughout Australia could achieve road safety and transport efficiencies as well as reductions in the costs of the administration of road transport.<sup>33</sup> The intention of the 1991 Agreement was for one piece of heavy vehicle legislation to be developed by the (then) National Road Transport Commission (now NTC) to be enacted by the Commonwealth to operate in the Australian Capital Territory (ACT). That legislation would then be used in the other jurisdictions as a 'template' for adoption as their own heavy vehicle law.<sup>34</sup>
74. The development of one piece of legislation was made difficult by the size and diversity of national road transport law, the complexity of the technical and legal subject matter and the complex regional, operational, institutional and legal differences across jurisdictions in their approach to road transport legislation.<sup>35</sup> As a consequence Ministers agreed to an approach that carved the law up into six stand alone, subject-based regulatory 'modules'.<sup>36</sup> The incomplete nature of the modules (for example penalty provisions) and the lack of ACT specific provisions to ensure that the modules and existing ACT laws co-existed effectively, meant some of these provisions were 'made but not commenced'. This made adopting the 'template' by other jurisdictions more difficult.
75. The Commonwealth enacted four laws in the ACT (charges, dangerous goods, registration and vehicles and traffic)<sup>37</sup> and regulations were also made on vehicle standards, mass and loading and oversize and overmass vehicles.<sup>38</sup> The provisions enacted in the ACT were intended to apply **automatically** in other jurisdictions. 'Automatic' application of the provisions was to be achieved by each jurisdiction enacting legislation that had the effect of applying any heavy vehicle legislation operating in the ACT from time to time (by virtue of the Commonwealth enactment) as the heavy vehicle law in that

<sup>33</sup> 1991 Heavy Vehicles Agreement, Recitals C and D.

<sup>34</sup> For a description of the process see Kirsty McIntyre and Barry Moore, *The National Road Transport Commission: An Experiment in Co-operative Federalism*, Paper prepared for the Public Law Discussion Group, Faculty of Law, Australian National University, 17 July 2001 at 3.1.

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

<sup>37</sup> See *Road Transport Charges (Australian Capital Territory) Act 1993*, *Road Transport Reform (Dangerous Goods) Act 1995*, the *Road Transport Reform (Heavy Vehicle Registration) Act 1997* and the *Road Transport Reform (Vehicles and Traffic) Act 1993*.

<sup>38</sup> The Road Transport Reform (Mass and Loading) Regulations, Road Transport Reform (Oversize and Overmass Vehicles) Regulations and the Road Transport Reform (Restricted Access Vehicles) Regulations.

jurisdiction. The 1991 Agreement did provide some scope for variation by means of the making of Application Orders<sup>39</sup> or Emergency Orders by Ministers in particular circumstances.<sup>40</sup>

76. The review of the *National Road Transport Act 1991* conducted in late 1996 recommended as a result of dissatisfaction with the template law approach, that the NRTC should be able to pursue reform through non-legislative means (such as national policies and practices) and that template legislation should be the long-term goal.<sup>41</sup> As a consequence the 1991 Agreement was amended to allow jurisdictions to “progressively apply the substance” of the national template law “... so as to provide a uniform or consistent national operating environment for road transport”.<sup>42</sup> That amendment saw jurisdictions enacting legislation based on the content of the ACT law with varying degrees of uniformity and consistency.
77. A 2001 review of the *National Road Transport Commission Act 1991* reported to COAG in 2002 about the future of the Act.<sup>43</sup> The review found that the use of template legislation for the delivery of reforms was “obsolete” and referred to a “wide consensus” that it was not practical and should be replaced. In particular, it found:
- the ACT had both in-principle and practical difficulties in accepting laws made for it by the Commonwealth;
  - other jurisdictions had difficulty in adapting template laws to mesh with existing laws; and
  - inherent delays in sequentially passing legislation in the Commonwealth Parliament and then replicating this in each other jurisdiction.<sup>44</sup>

It reported that all jurisdictions had agreed that “... template implementation of individual reforms was not more likely to occur in the future than in the past”.

## 3.2 HOW STATES AND TERRITORIES DEVELOP REGULATION

78. Recognising the difficulties with the approach taken in the 1991 Agreement, a different course was taken with a new inter-governmental agreement signed in 2003<sup>45</sup> (the 2003 Agreement) by all jurisdictions and the Commonwealth. In that agreement, all parties again committed to improving transport productivity, efficiency, safety and environmental performance and regulatory efficiency in a uniform or nationally consistent manner. Consistent with this commitment, the Agreement required them to “use their best endeavours to implement and maintain Agreed Reforms in a uniform and

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<sup>39</sup> Defined in the Agreement as an order made by the Minister of a jurisdiction which, because of geographical or regional conditions, suspends or varies the operation of the template legislation as it would otherwise apply in an area in relation to: the standards and other regulatory measures whether or not those measures are introduced as innovations on a trial basis; enforcement levels above a national minimum standard; and the level of penalties above a national minimum: *1991 Heavy Vehicles Agreement*, para 8(1).

<sup>40</sup> Defined in the Agreement as an order made for the purpose of public health or safety or the furtherance of some other public interest by the Minister of a jurisdiction that has the effect of suspending or varying the operation of the template law in relation to that jurisdiction: *1991 Heavy Vehicles Agreement*, para 8(1).

<sup>41</sup> Kirsty McIntyre and Barry Moore, *The National Road Transport Commission: An Experiment in Co-operative Federalism*, Paper prepared for the Public Law Discussion Group, Faculty of Law, Australian National University, 17 July 2001 at 3.1.

<sup>42</sup> *National Road Transport Commission Amendment Act 1998*, Schedule 1, clause 98 the effect of which was to insert a new paragraph 8A into the 1991 Agreement.

<sup>43</sup> Under the *National Road Transport Commission Act 1991*, the Act would cease on 14 January 2004. The review was for the purpose of determining whether it should cease or be re-enacted (including in a modified form).

<sup>44</sup> At [http://www.atcouncil.gov.au/documents/nrtc/nrtc\\_7.aspx](http://www.atcouncil.gov.au/documents/nrtc/nrtc_7.aspx).

<sup>45</sup> Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport, 2003.

nationally consistent manner”.<sup>46</sup> However, the agreement specifically recognised that “**in exceptional circumstances**” it may not be possible for a reform to be implemented, “for example due to policy or practical constraints”.<sup>47</sup>

79. Under the 2003 Agreement model legislation is developed by the NTC after consultation with jurisdictions and stakeholders. Following its approval by the ATC, model laws are included as schedules to regulations made under the *National Transport Commission Act 2003*. The model laws are a ‘single reference point’ for implementation by jurisdictions but have no legal effect in themselves.<sup>48</sup> Jurisdictions then enact their own legislation based on the content of the model law and, consistent with the 2003 Agreement can choose not to implement the model law at all or to make changes to suit their particular needs.
80. The model laws now cover:
- heavy vehicle charges;
  - transportation of dangerous goods;
  - registration;
  - vehicle standards;
  - mass and loading,
  - oversize and overmass vehicle standards,
  - restricted access vehicles,
  - higher mass limits,
  - driver fatigue management,
  - heavy vehicle speeding; and
  - generally applicable compliance and enforcement provisions for those modules.
81. While not produced in the form of model laws, a National Three Strikes Policy,<sup>49</sup> the National Driver Licensing Scheme<sup>50</sup> and a national policy on Concessional Mass Limits<sup>51</sup> have been agreed by the ATC and have been implemented in legislation (with various degrees of consistency) by some jurisdictions.
82. Other policy initiatives developed through the NTC/ATC process and implemented by some jurisdictions are: mass limits increases for single and twin-steer prime movers and semi-trailers; approval of 26 metre B-doubles; and mass limit increases for quad-axle groups.

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<sup>46</sup> Paragraph 12.1 of the 2003 Agreement.

<sup>47</sup> Paragraph 12.2. That paragraph however requires the relevant Minister to advise the NTC of the reasons for any decision not to implement a reform or to later change a reform.

<sup>48</sup> Paragraph 14.1 of the 2003 Agreement.

<sup>49</sup> The policy required jurisdictions to implement at staged response to operators or heavy vehicles that were detected in excess of 15 km/h above speed-limited speeds. It was approved by the ATC in 1997.

<sup>50</sup> The National Driver Licensing Scheme is defined by a number of documents - the National Driver Licensing Policy incorporating Primary and Supporting Principles and 3 sets of guidelines – on the Scheme, the management, release and use of information and evidence of identity requirements. It was approved by the ATC in 1999.

<sup>51</sup> The policy was introduced to encourage mass management accreditation by retaining tolerance levels for general access vehicles that were accredited. In-principle support by the ATC in November 2005 after a 5 year pilot was confirmed by COAG in February 2006.

83. The NTC has also produced business rules and guidelines to assist jurisdictions in the implementation of some model laws and to encourage consistency in that implementation across jurisdictions.<sup>52</sup>

### 3.3 THE COMMONWEALTH'S ROLE

84. States and Territories are largely responsible for the regulation of heavy vehicles and their operations, with the Commonwealth's role restricted to the Australian Design Rules and a national registration scheme for those heavy vehicles engaged solely in interstate trade.
85. The Commonwealth Government is also responsible for setting the effective rate of fuel tax paid by the trucking industry - the road user charge - under the *Fuel Tax Act 2006*.
86. Using the corporations and international trade and commerce power, the Commonwealth has enacted the *Motor Vehicle Standards Act 1989* to regulate safety and environmental standards of new motor vehicles, including heavy vehicles (the Australian Design Rules). These set minimum standards for supply to market, providing trade facilitation and involve obligations under international treaties to which Australia is a signatory.

#### 3.3.1 FEDERAL INTERSTATE REGISTRATION SCHEME (FIRS)

87. The Federal Interstate Registration Scheme (FIRS) is a national scheme introduced by the Commonwealth in 1987 to overcome interstate road transport difficulties then perceived as arising from different registration charging regimes and mass permit restrictions. It is established by the *Interstate Road Transport Act 1985* and *Interstate Road Transport Regulations 1986* and is restricted to vehicles *solely* involved in interstate trade and commerce; it is therefore not open to the bulk of heavy vehicles. No State or Territory stamp duty attaches to a registration transaction under FIRS. It is administered by agencies of each jurisdiction on the Commonwealth's behalf.
88. The scheme has facilitated general access to 42.5 tonne semi-trailers and established uniform definition and operating conditions for the first two generations of B-doubles and provided incentives for road agencies to match or lead on access decisions so that the industry was not motivated to make a wholesale shift to FIRS registration (which does not involve payment of stamp duty).
89. FIRS is revenue neutral for the Australian Government. The registration charges for FIRS vehicles that are collected by the States and Territories and submitted to the Government are then returned to the States and Territories according to a formula relating to heavy vehicle road use. The funds are required to be used for road maintenance.
90. A recent review of FIRS by the Commonwealth Government indicates that it requires significant revision to bring it up to date with the heavy vehicle legislation described in this RIS. While work by the Commonwealth on implementing the outcomes of this review is continuing, clearly any decisions

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<sup>52</sup> For example, *Administrative Guideline: National Driver Licensing and Heavy Vehicle Registration Schemes* (compilation), January 2006 (replacing *Administrative Guideline: Assessment of Defective Vehicles*, February 1999, *Administrative Guideline: Management, Release and Use of Information*, September 1998, *Administrative Guideline: Proof of Identity Requirements*, August 1999, *Administrative Guideline National Heavy Vehicle Registration Scheme*, March 1998 and *Administrative Guideline (Interim): Evidence of Identity*, August 2005); *Roadworthiness Guidelines*, September 1995; *Administrative Guideline: Pilot and Escort Vehicle Driver Accreditation Procedures*, October 2004; *National Heavy Vehicle Accreditation Scheme Business Rules*, November 2007; *PBS Scheme – Review Panel Business Rules*, October 2007; *Fatigue Agencies Panel Business Rules*, June 2008; *NHVAS Business Rules Version 3*, August 2007.

taken on the outcomes of this RIS, particularly relating to a federal heavy vehicle registration scheme, will impact on that work.

### 3.4 LOCAL GOVERNMENT'S ROLE

91. Local Government has no formal role in the development, implementation or administration of heavy vehicle regulation. However local governments across Australia own, control and manage around 85 per cent<sup>53</sup> of Australia's total road network: while those assets are important parts of community infrastructure and provide access to a range of services and opportunities, they also form part of the nation's road freight network (and often as the 'last mile').
92. Heavy vehicle operators often need to apply to local governments, as asset owner and manager, for access to roads, bridges and associated structures. Recognising the importance of this decision-making role to the heavy vehicle industry, the ATC approved a 'Vehicle Access Project' in 2000 to develop consistent guidelines for use by local governments in assessing applications for heavy vehicle access to local roads. The work has been progressed through Austroads<sup>54</sup> and draft "Guidelines for Assessing Heavy Vehicle Access to Local Roads" are currently out for consultation. The guidelines are not proposed to be mandatory, nor will they override regulatory processes operating in jurisdictions. Their implementation is expected after 2009.
93. Consistent with this coordinated approach, a Memorandum of Understanding between the National Transport Commission and the Australian Local Government Association was agreed in June 2003 to investigate the introduction of a Performance Based Standards (PBS) approach to local roads. Amongst other things, the agreement outlined a process for local governments to come to an agreement on PBS issues with their relevant State or Territory Governments to achieve a coordinated approach to access for PBS vehicles.

### 3.5 THE NATIONAL TRANSPORT COMMISSION (NTC)

94. The National Transport Commission (NTC) 'evolved' from the National Road Transport Commission that was formed by inter-governmental agreement in 1991 to develop and coordinate regulatory reform for nationally consistent road transport policies and laws. It was created under the *National Transport Commission Act 2003*, with the responsibility to:
  - develop, monitor and maintain uniform or nationally consistent regulatory and operational reforms for road transport, rail transport and intermodal transport; and
  - provide a mechanism for the making of regulations, agreed by the Australian Transport Council relating to road transport, rail transport and intermodal transport.
95. An inter-governmental agreement of October 2003 underpins the operations and functions of the NTC.

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<sup>53</sup> Australian Local Government Association, "Fact Sheet 11 - Facts and Figures" downloaded from [www.alga.asn.au](http://www.alga.asn.au) 11 March 2009

<sup>54</sup> Austroads is the association of Australian and New Zealand road transport and traffic agencies; its members are the six Australian state and two territory road transport and traffic agencies, the Department for Infrastructure, Transport, Regional Development and Local Government, the Australian Local Government Association (ALGA), and the NZ Transport Agency.

96. Funding for NTC is contributed by all governments with the States and Territories contributing 65 per cent, and the Commonwealth Government providing 35 per cent.
97. As an independent statutory body, the NTC develops and submits reform recommendations to the ATC for approval. It also plays a role in co-ordinating and monitoring implementation of approved reforms.

### 3.6.1 NON-STATUTORY REGULATION

98. While the current regulatory environment is still focussed on prescriptive regulation, other forms of regulation have emerged in recent years including 'best practice' accreditation schemes, industry codes of practice and the use of performance based systems which encourage industry involvement and responsibility.<sup>55</sup> This is a significant shift.
99. In the past, Austroads has often acted as a consultant to the NTC reform process to develop these types of tools, for example, the mass measurement guidelines and measuring adjustment concept. Additionally, industry bodies have developed a range of industry codes, recommended practices and guidelines that are not always mirrored in regulation.

## 3.6 INTERNATIONAL REGULATORY FRAMEWORK

100. The following brief description of the heavy vehicle regulatory frameworks in Canada and the United States of America is provided to allow a simple contextual comparison of existing regulatory arrangements in other apparently similar nations/economies.


### 3.6.1 CANADA

101. Canada has a three-tiered, federated system of government, similar to that in Australia, although it is the Provinces' (States) powers that are spelt out in the Canadian Constitution rather than the Federal Government's. The federal government has constitutional responsibility for interprovincial (interstate) road transportation and has delegated this power to provinces and territories through the Federal *Motor Vehicle Transport Act*. The federal government also has limited, direct responsibilities in areas such as new vehicles standards, the transportation of dangerous goods, international road transportation, air quality (engine emissions and fuel standards) and labour issues.<sup>56</sup>
102. Provinces have responsibilities for all other transport matters. Under the Canadian Constitution, provincial governments can delegate some of their responsibilities to a local or municipal government; Quebec's *Municipal Powers Act* states, for example, that a local municipality has jurisdiction over public roads that are not under the agency of the Government of Québec or the Government of Canada or one of their departments or bodies.

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<sup>55</sup> For example, the National Heavy Vehicle Accreditation Scheme (which now includes mass management, maintenance management and fatigue management). The Performance Based Standards Scheme is designed to facilitate the adoption of more innovative and efficient heavy vehicle design outside the prescriptive rules approach of the current regulator framework. The Compliance and Enforcement model bill provides that compliance with an industry code of practice registered under legislation is prima facie evidence that the person charged took reasonable steps to prevent the contravention (clause 90). There is a similar provision in the heavy vehicle speeding compliance model law (clause 30). Queensland, Tasmania and South Australia have implemented the Road Transport Reform (Alternative Compliance Schemes) Regulations model bill which encourages operators to develop management and operating systems that can be audited to assure agencies of compliance with the relevant aspects of road transport law: see clause 1 of the Bill.

<sup>56</sup> Transport Canada, "Truck Activity in Canada - A Profile", 2007

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103. The regulation of interprovincial road transport has been pursued through the Council of the Federation (Canada's COAG equivalent) and the Council of Ministers Responsible for Transportation and Highway Safety (CMRTHS - the ATC equivalent). Since 1987, these bodies have promoted harmonisation and national consistency in transport policy and regulation.<sup>57</sup> Under a 1994 inter-governmental Agreement on Internal Trade (AIT) and a memorandum of understanding to establish and maintain uniform rules governing the size and weight of commercial motor vehicles, the three levels of government agreed to reduce and eliminate, to the extent possible, barriers to the free movement of persons, goods, services and investments within Canada.<sup>58</sup>
  104. As part of the AIT, a National Safety Code (NSC) was developed that consists of 16 minimum standards including drivers' license requirements, medical testing, vehicle maintenance and inspections, driver hours of service, driver testing, training course standards for examiners and criteria to suspend a driver's licence. The NSC standards are models for legislative, regulatory or administrative action and while the NSC has no legal status in itself, all levels of government, in consultation with the transport industry, have agreed to adopt them by legislation in their respective jurisdiction.
  105. In terms of inter-provincial transport, the federal *Motor Vehicle Transport Act 1985* (MVTA) allows provincial or territorial agencies to choose to issue an inter-provincial license or permit, with discretionary conditions, to allow interstate movement. The MVTA requires, however, that the NSC should be the basis of provincial regulation and decision making in this regard.
  106. A review by the CMRTHS of the harmonisation framework indicates that, while progress has been made towards consistency in heavy vehicle laws through all jurisdictions' agreement to adopt the NSC, consistent implementation and administration is ongoing. Some provinces and territories have not legislated to adopt the NSC, others have deviated significantly from the standard in their legislation and overall, exemption from the standards in one jurisdiction make it difficult for another jurisdiction not to also allow exemptions.<sup>59</sup>

### 3.6.2 UNITED STATES OF AMERICA

107. Interstate road transportation regulation falls under the agency of the Federal Government under the Constitution of the United States of America. That agency is based in its exclusive power over commerce between the states which specifically includes transportation of goods and passengers.
108. Intrastate commerce and transportation is the exclusive responsibility of the States. However state transportation laws that are inconsistent with federal interstate transportation laws cannot be enforced on interstate transportation by a state regulator. Where laws are inconsistent, federal interstate laws will prevail; where state regulation 'interferes with' or places extra burdens on interstate businesses, the Federal Government may regulate that area of state commerce in order to protect interstate commerce from the extra or unfair regulation.<sup>60</sup> States must implement federal requirements for interstate heavy vehicles and enforce heavy vehicle laws. States also address a variety of additional safety issues that are not covered by federal law.

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<sup>57</sup> Council of Ministers Responsible for Transportation and Highway Safety, 2008, Harmonization of Transportation Policies and Regulations: Context, Progress and Initiatives in the Motor Carrier Sector.

<sup>58</sup> Government of Nova Scotia, "National Safety Code Program information for Commercial Carriers / Owners for Trucks and Buses".

<sup>59</sup> Transport Canada, "Evaluation of Transport Canada's Contribution Program in Support of the National Safety Code for Motor Carriers", 2003.

<sup>60</sup> Grant, D.L., Commerce Clause Limits on State Regulation of Interstate Water Export





109. The Federal *Commercial Motor Vehicle Safety Act 1986* was introduced to regulate the safety of interstate heavy vehicles and created the commercial driver's license program that regulates drivers and motor carriers. Although the Act maintains states' rights to issue a driver's licence, it introduces minimum national standards that states have to meet when licensing interstate commercial motor vehicle drivers. The Federal agency administering this Act may prohibit a state from issuing interstate commercial motor vehicle licences if that state is in not substantial compliance with the Act's minimum standards.<sup>61</sup> Under the Act, states' regulatory requirements must be at least as stringent as the Federal standards or they risk losing part of federal funding for related programs. Minimum standards include testing and licensing procedures, driver training, driver hours, transportation of hazardous materials, driver disqualifications and checks, certification of safety auditors, medical standards and requirements for state participation.

### 3.6.3 SUMMARY

110. If there is anything to draw from these brief examinations of international contexts, it is that at least two other governments working under apparently similar legal structures have not achieved consistency or uniformity in heavy vehicle regulation in other parts of the world. A regulatory approach that could provide real national uniformity may therefore be able to set a standard that comparable federally-based economies have not yet been able to achieve.

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<sup>61</sup> Sundeen, M., 2004, Commercial Motor Vehicles 2003 State Legislative Update

## 4. NATURE OF THE PROBLEM

111. While framed and developed through a national approach, current regulatory arrangements allow for close monitoring of local conditions. This is not without reason: the condition and quality of road infrastructure varies across states and territories; the contribution of various industries to jurisdictions' economies needs to be reasonably considered. There are a number of parties with responsibilities in heavy vehicle regulation: industry operators, employees, employee unions, industry associations, regulators, investigators, regulatory and investigatory staff and government departments and 'local' management of these relationships can impact on the efficiency of the current regulatory environment.
112. Jurisdictions have indicated a range of reasons for varying model laws: ensuring no additional cost to government or consumers; rewording to maintain a jurisdiction's legislative style or to match a jurisdiction's legal framework; the inclusion of transition provisions to 'smooth' implementation; rewording to include additional safeguards or to ensure the model laws worked with existing legislation and judicial requirements.
113. Nevertheless, after 17 years of a national approach to regulatory reform, interstate heavy vehicle operations (more than a quarter of the total road freight tonne-kilometres travelled) and national firms operating within each of several jurisdictions, still have to understand and comply with up to nine sets of laws and rules and cannot operate to maximum efficiency. Given the significant reliance of the economy on the heavy vehicle industry, the question is whether the presence of multiple jurisdictions in heavy vehicle regulation impedes the efficiency of heavy vehicle operations and indirectly, therefore, the efficiency of the Australian economy? Or is the current regulatory environment a sufficient basis for industry productivity and growth?

*"There is no doubt that good uniform national laws would reduce the compliance burden on interstate operators. The ATA therefore supports in principle, further advances in uniformity that will also achieve gains in efficiency, effectiveness and safety for all operators."*

*Australian Trucking Association – submission to RIS*

114. There is a relatively high degree of consistency in regulation across jurisdictions, so issues resulting from regulatory inconsistency are particularly obvious especially where interstate operators are required to comply with different regulations while running trucks effectively on the same 'national' highways. Differences in the administration of regulation between states can mean that an operator in several states, or one relocating interstate (in whole or in part), faces new sets of compliance costs and activities in each new jurisdiction to carry out functions that duplicate those the operator has already passed in (an)other jurisdiction(s). From governments' perspective, the current split of responsibilities means that data is not automatically shared around Australia and this can result in operators falling between gaps in enforcement regimes.
115. The complexity of the existing framework can also have safety impacts; safety is inextricably linked with regulation, with clarity of information and with a clear understanding of expected behaviours and outcomes from both operators and regulators. Industry participants at consultation sessions advised

that the existing differences in safety compliance requirements creates confusion, stress and related health impacts, resulting in a loss of safety. Through its representative bodies, industry has argued that existing enforcement regimes are funded on the basis of activity-counts such as the number of vehicles intercepted, the number of tickets issued and the number of hours worked. This, they argue, creates incentives and promotes cultures that focus on stopping the maximum possible number of vehicles, and issuing the maximum number of tickets; the focus is in fact, on non-compliance, rather than compliance with established safety goals.

*"Some concrete examples of where national regulations will facilitate better safety outcomes are:*

- better targeted enforcement practices, with proper incentives for agencies and better information, incentives and deterrents for industry and clients;*
- making [Chain of Responsibility] seamless and fully operational across borders;*
- consistent fatigue management rules;*
- better understanding of the rules and resulting obligations within industry leading to greater compliance and more efficient national operations;*
- more consistent on-road enforcement;*
- introduction of modern safer vehicle configurations;*
- an increase in adoption of leading edge safety aids in high use fleets, who are early adopters of high productivity vehicles, and the resultant faster flow on good practice into the broader fleet (the pass down effect) and better management of accreditation schemes."*

Australian Trucking Association – submission to RIS

116. Intrastate operators have generally acknowledged through the RIS consultation process that interstate operators do face a higher burden of regulatory compliance and cost. This does not mean they are immune from the impacts of existing regulatory frameworks. In consultation sessions, all operators talked of the disconnect between driver and operator responsibilities they perceive as existing in current laws: where a driver removes an access permit from a truck, for example, an owner gets the fine; if a driver is booked by an officer, the company is not informed of the offence and cannot deal with the issue of driver behaviour until a 'third-strike' takes a truck off the road. In some jurisdictions, owners/operators must keep a copy of a driver's licence but they are not able to find out if the holder of the licence has lost points for speeding, for example, to be fully informed when hiring drivers.
117. However their particular concerns relate to a general perception that under a national framework, they could lose hard-fought productivity gains that exist in current jurisdiction based-legislation. Some expressed a view that all operators should be able to operate with those same productivity benefits in all jurisdictions.
118. As discussed in Section 7.1, gathering specific and quantitative data on heavy vehicle operations is difficult and is acknowledged by key transport analysis organisations such as the Commonwealth Bureau of Infrastructure, Transport and Regional Economics. However feedback gained from industry through the RIS consultation process indicates that heavy vehicle operators are responding to the existing regulatory regime in a range of ways:

- they are making businesses decisions to suit the regulations ie they are choosing not to operate in certain markets or on certain routes to minimise the level of compliance activities and costs. This can include choosing not to expand to interstate operations or not to relocate or commence new operations in other jurisdictions; or
- they are paying the cost of ensuring their vehicles and operations complying with the most 'stringent' regulatory requirements, to minimise the risk of breaches of laws; or
- they are incorporating the costs of non-compliance or breaches of laws into their operating (and customers') costs.

*"There is general confusion among drivers between state to state rules. The big downside for drivers is that they feel they are hassled by law enforcement officers who are 'revenue raising' and handing them fines for the mistakes (state to state). All because of differing rules".*

*Victorian operator – submission to RIS*

119. Various reviews of the implementation of components of model law by the NTC,<sup>62</sup> have confirmed that the objectives of uniform or consistent legislation, to create even a minimum standard outcome and current industry expectation of 'the same outcomes from the same circumstances' have not been achieved. In some cases, the conclusion has been that the benefits identified in the regulatory impact statements developed for the relevant model laws<sup>63</sup> have not been achieved.<sup>64</sup>
120. In February 2006<sup>65</sup> the NTC presented its response to the findings of a study exploring how Australia's land transport system might cope with the forecast doubling of the domestic freight task by 2025.<sup>66</sup> In

<sup>62</sup> See for example Rozen, Peter; *Implementation of the regulations on mass and loading, restricted access vehicles and oversize and overmass vehicles*; NTC, August 2005; Keatsdale Pty Ltd; *Review of heavy vehicle mass and loading, oversize and overmass and restricted access regulations*, NTC, May 2006; Ebsworth & Ebsworth; *Implementation of the Heavy Vehicle Registration Scheme*; NTC, September 2005 and S J Wright and Associates Pty Ltd; *Review of the National Heavy Vehicle Registration Scheme and the National Driver Licensing Scheme – Final Report*; NTC, August 2006; Rozen, Peter; *Evaluation of the implementation of the vehicle standards – report*, NTC, March 2007.

<sup>63</sup> See for instance, *Regulatory Impact Statement: Vehicle Standards, October 1998* in which the principle objective was identified as "to achieve national uniformity or consistency in the in-service requirements for all vehicles" (at page 4). The objectives of the National Heavy Vehicle Registration Scheme described in the August 1996 *Regulatory Impact Statement for the National Heavy Vehicle Registration Scheme* are listed paragraph 1.3.3 of the August 2006 *Review of the National Heavy Vehicle Registration Scheme* as: providing a uniform set of requirements and standards for registration, transfer of registration and registration costs cancellation in Australia; eliminating unnecessary duplication of resources and regulations in these processes; and streamlining the vehicle registration process: see *Review of the National Heavy Vehicle Registration Scheme and the National Driver Licensing Scheme: Final Report, August 2006* at paragraph 1.3.3. The December 1993 *NRTC Regulatory Impact Statement on Mass and Loading Regulations* identified 5 objectives: to encourage efficient, competitive and safe road transport; to match the use of the road resource by heavy vehicles to the budgeting and physical constraints faced by road agencies; to provide justified, practical and enforceable standards; to provide flexibility to operators; and to allow for the development of alternative enforcement measures and innovation where appropriate (see *Keatsdale Pty Ltd, Review of Heavy Vehicle Mass and Loading, Oversize and Overmass, and Restricted Access Regulations, May 2006* (2006 Review) at paragraph 2.2.1). The January 1995 *NRTC Regulatory Impact Statement on Oversize and Overmass Vehicles Regulations* identified 4 objectives: to promote uniformity and consistency in rules governing the operation of Oversize and Overmass vehicles; to reduce the cost of administration by removing the need for permits; to improve transport efficiency by providing manufacturers and operators with a common set of limits, and road agencies with the power to control access; and to ensure that the road safety is not adversely affected (see 2006 Review at paragraph 2.2.2). The July 1995 *NRTC Regulatory Impact Statement on Restricted Access Vehicles Regulations* identified 2 objectives: to provide uniform or consistent conditions for the operation of vehicles and combinations that are too large or too heavy for general access to the road system; and to increase administrative efficiency by allowing classes of vehicles and combinations to operate under notice systems and single permits (see 2006 Review at paragraph 2.2.3).

<sup>64</sup> *The Review of Heavy Vehicle Mass and Loading, Oversize and Overmass, and Restricted Access Regulations* concluded that the Mass and Loading Regulations had achieved 4 of 5 objectives; the Oversize and Overmass Regulations had been "relatively ineffective" in achieving its 4 objectives; the Restricted Access Vehicles Regulations were "ineffective" in achieving the majority of objectives: see page 3 of the summary in the Review

<sup>65</sup> National Transport Commission, *Improving the Regulatory Framework for Transport Productivity in Australia*, 2006

<sup>66</sup> Meyrick and Associates; Sinclair, Knights, Merz: 'Twice the Task' – a review of Australia's freight transport task, 2006.

that response the NTC identified “key weaknesses” in the process of national transport regulatory reform that add to the regulatory burden rather than reduce it, as:

- the protracted process to obtain agreement on a reform often risks a ‘lowest common denominator’ outcome;
- delays and inconsistencies in implementation (eg following ATC approval of a legislative reform, jurisdictional implementation can take from six months to several years, depending on resourcing, access to parliaments and priorities given to reform); and
- the unwillingness or inability of jurisdictions to make joint decisions or to automatically recognise the processes followed and decisions made elsewhere.<sup>67</sup>

121. The NTC paper cited the reasons for divergence from consistent implementation as including:

- staff turnover in transport agencies diminishing the corporate understanding of the need for a national approach;
- transport agencies not agreeing with the national proposal; and
- transport agencies aiming to provide improvements to operators within their jurisdictions.<sup>68</sup>

*“The key problems with the current regulatory approach... are the result of:*

- *different states and territories hav[ing] different skills and experience in certain aspects of heavy vehicle regulation and different cultures of operating as a regulator;*
- *different states and territories hav[ing] different priorities and exercis[ing] different degrees of discretion; and*
- *each state and territory focus[ing] on heavy vehicle regulation in its jurisdiction but not consider[ing] any of the national effects of the regulation it enforces”*

*NatRoad – submission to RIS*

122. Other perspectives on the reasons for divergence might include; the lack of an effective mechanism to ensure and monitor implementation; the lack of discipline and incentives in the model law process to require the resolution of outstanding policy issues; or NTC resourcing not being sufficient to manage the large road transport reform agenda, particularly when its remit expanded under the 2003 Agreement.

<sup>67</sup> NTC, *Improving the regulatory framework for transport productivity in Australia*, paragraph 3.3.8.

<sup>68</sup> NTC, *Improving the Regulatory Framework for Transport Productivity in Australia*, 2006 at paragraph 3.3.8.

## 4.1 INCONSISTENCIES BETWEEN JURISDICTIONS

123. In its *Inquiry Report into Road and Rail Freight Infrastructure Pricing* of 2006, the Productivity Commission found that:

*"Finding 11.1*

*Performance-based regulation is likely to result in greater efficiency and productivity in the road freight transport sector than the existing, largely prescriptive, regulatory framework. The Commission considers that establishing a performance-based regulatory framework for heavy vehicles is a priority reform. The Performance Based Standards project, under the National Transport Commission, should be fully implemented as soon as practicable.*

*Finding 11.2*

*To realise the benefits of a national road freight transport market, it is important that road freight operators not be subjected to additional and unnecessary compliance costs and burdens arising from regulatory variations across jurisdictions. All remaining regulatory inconsistencies, overlaps or duplication between jurisdictions should be identified and further efforts made to develop nationally consistent and coordinated approaches".<sup>69</sup>*

124. These findings encapsulate the issues that are both evident in the current regulatory framework and that were considerations in shaping the ATC-agreed approach to regulatory reform.

125. There are inconsistencies across jurisdictions in the adoption and implementation of the existing body of heavy vehicle law and each jurisdiction also has its own administrative processes and enforcement regimes. The separate and distinct data collection and management systems maintained in each jurisdiction do not provide a body of heavy vehicle data to inform ongoing regulatory reform or compliance operations. Taken together, these factors can result in duplication, inefficiency and loss of benefits and increased cost to both industry operators and governments.

*"The lack of a national regulatory framework constantly delays or otherwise negatively impacts our ability to develop best practices within our organisation for the following:*

- *The requirement to understand and maintain full knowledge of regulations in eight different jurisdictions;*
- *The lack of clear and concise guidance from our governments or government agencies;*
- *Our limited ability to seek legal opinion because of the lack of systematic structure in regards to precedence at law (for example, do we park on the highway (illegal)? Which one should I do when there isn't a rest area every 7 minutes, given driving hours are based on 15 minute intervals? Which one considers the other in order for a defence if needed etc; and*

<sup>69</sup> Productivity Commission Inquiry Report No. 41 "Road and Rail Freight Infrastructure Pricing", December 2006.

▪ *Our limited access to 'experts' on the regulation (ie consultation with Government Officials)."*

*NSW operator – submission to RIS*

126. The following discussion draws out regulatory inconsistencies across five general areas:

- 'Black letter' law;
- Exercise of discretion under the law;
- Administration of the law;
- Compliance monitoring and enforcement; and
- Implementation of ATC-approved heavy vehicle policies.

#### 4.1.1 'BLACK LETTER' LAW

127. 'Black-letter' law in this context refers to:

- the law set out in the road transport reform legislation passed by the Commonwealth Parliament under the 1991 Agreement and regulations made under that law, and
- the provisions developed by the NTC and approved by ATC as model law under the 2003 Agreement (these can be found as schedules to regulations made under the NTC Act).

128. It does not cover the guidelines and business rules developed by the NTC, nor does it cover the notices, guidelines and permits issued under that heavy vehicle black-letter law as it was adopted by the jurisdictions.

##### 4.1.1.1 PROGRESS IN ADOPTING MODEL LAWS

129. Recognising that jurisdictions have committed to use their best endeavours to implement model laws, the following list summarises the adoption of the model laws by jurisdictions:

- All jurisdictions have implemented the charges legislation.
- All jurisdictions have implemented the registration and the mass and loading, oversize and overmass and vehicle standards model laws.
- Western Australian, Tasmania, the Northern Territory and the Australian Capital Territory have alternative arrangements in place for the restricted access vehicles model law that aim to achieve the same administrative effect, while all the other jurisdictions have implemented the model law.

- Western Australia and the Northern Territory have alternative arrangements in place that aim to achieve administratively the effect of higher mass limits model law, while all the other jurisdictions have implemented the model law.
- Western Australia has alternative arrangements in place for the concessional mass limits national policy while all the other jurisdictions have implemented the policy.
- The Australian Capital Territory and Tasmania will implement the driver fatigue model law in 2009, while Western Australia has alternative arrangements in place: the other jurisdictions have implemented the model law.
- New South Wales, Victoria and South Australia have fully implemented the compliance and enforcement model law and Tasmania will do so in 2009.
- Victoria, New South Wales and Queensland have implemented the intelligent access program model law and South Australia and Tasmania will do so in 2009.
- Queensland, Tasmania and South Australia have enacted legislation to implement the alternative compliance schemes model law.
- New South Wales has implemented the heavy vehicle speeding compliance model law and Tasmania and South Australia will do so in 2009.

#### 4.1.1.2 VARIATION IN THE ADOPTION OF MODEL LAWS

130. As noted in Section 3.1, the 2003 Agreement allows jurisdictions to make changes when adopting model law "in exceptional circumstances". A formal review commissioned by the NTC<sup>70</sup> of the mass and loading, oversize and overmass and restricted access regulations published in May 2006 for example, found that ten years after their development, approximately half of the mass and loading model provisions and only a third of the oversize and overmass model provisions have been implemented in a "completely consistent manner".<sup>71</sup> Of the differences across jurisdictions, the majority were rated by the NTC as "moderately inconsistent", with the differences in oversize and overmass and restricted access vehicles considered to be "significantly inconsistent". The report of the review goes on to say that the oversize and overmass regulation has been relatively ineffective in achieving its stated regulatory objectives<sup>72</sup> and has failed to reduce the costs of administration for both industry and government. The review also concluded that:

- significant differences at the policy level between the various transport agencies have served to preclude the achievement of the primary objective of uniformity in the regulation of heavy vehicle transport industry;<sup>73</sup>

<sup>70</sup> Rozen, Peter; *Implementation of the regulations on mass and loading, restricted access vehicles and oversize and overmass vehicles*; NTC, August 2005 and Keatsdale Pty Ltd; *Review of heavy vehicle mass and loading, oversize and overmass and restricted access regulations*, NTC, May 2006.

<sup>71</sup> The relevant model laws are Road Transport Reform (Mass and Loading) Regulations, Road Transport Reform (Oversize and Overmass Vehicles) Regulations and the Road Transport Reform (Restricted Access Vehicles) Regulations.

<sup>72</sup> Four objectives were identified in the January 1995 NRTC Regulatory Impact Statement on Oversize and Overmass Vehicles Regulations: promote uniformity and consistency in the rules governing the operation of Oversize and Overmass vehicles; reduce the cost of administration by removing the need for permits; improve transport efficiency by providing manufacturers and operators with a common set of limits, and road agencies with the power to control access; and ensure that road safety is not adversely affected: Keatsdale Pty Ltd; *Review of heavy vehicle mass and loading, oversize and overmass and restricted access regulations*, NTC, May 2006 (2006 Report) at paragraph 2.2.2.

<sup>73</sup> Paragraph 5.1 of the 2006 Report.



- one of the objectives of the oversize and overmass model law of providing a “common set of limits” to improve transport efficiency was not achieved because of the lack of uniform implementation;<sup>74</sup> and
- it was not possible to say whether the lack of uniformity and consistency of the Restricted Access Vehicles model law is attributable to the content of the law or their implementation and administration by jurisdictions.<sup>75</sup>

131. The transport of hay bales illustrates the operational and compliance issues surrounding the transport of oversize freight. As the table below<sup>76</sup> shows, the general limits for hay trucks vary between jurisdictions:

State	Max. Height (m)	Max. Width (m)
NSW	4.6	2.5
Vic	4.6	2.5 (round bales to 3)
Qld	4.6	2.5
WA	4.6	2.7
SA	4.6	2.75
Tas	4.6	3.0

132. The standardised nature of hay bale production means that when stacked two-wide on a vehicle, they generally exceed 2.7m in width, and when stacked three bales high they often exceed height limits. Hay transporters must therefore remove layers of hay bales to comply with different regulations. Removing a layer of bales has been estimated to add 27 per cent in transport costs (excluding handling and administration costs). The impacts of these differences can reduce truck carrying capacity by 27 per cent, resulting in an estimated additional 40 000 trucks on rural roads.<sup>77</sup>

133. A similar review of the implementation of the heavy vehicle **registration** model law<sup>78</sup> found that there is a high degree of consistency in implementation of the registration model provisions<sup>79</sup> but that the provisions for review of registration decisions, unpaid charges and fees, renewal of registration, suspension/cancellation and the obligations of disposers and acquirers vary between jurisdictions:

- not all jurisdictions have adopted the model law provision that requires re-registration within 3 months,<sup>80</sup> with some jurisdictions adopting a ‘renewal’ requirement with timeframes ranging from 2 to 12 months;
- not all jurisdictions have adopted the model law provision requiring only the acquirer of a heavy vehicle to notify the registration agency of a transfer;<sup>81</sup>

<sup>74</sup> Paragraph 5.4 of the 2006 Report.

<sup>75</sup> Paragraph 5.5 of the 2006 Report.

<sup>76</sup> Commonwealth Rural Industries Research and Development Corporation, *Assessment of vehicles for the Transport of Hay and Straw*, 2008, p.6. These limits can vary (by notice) for drought conditions or types of vehicles.

<sup>77</sup> Commonwealth Rural Industries Research and Development Corporation, *Assessment of vehicles for the Transport of Hay and Straw*, 2008, p.7.

<sup>78</sup> Ebsworth & Ebsworth; *Implementation of the Heavy Vehicle Registration Scheme*; NTC, September 2005 and S J Wright and Associates Pty Ltd; *Review of the National Heavy Vehicle Registration Scheme and the National Driver Licensing Scheme – Final Report*; NTC, August 2006.

<sup>79</sup> *Road Transport Reform (Heavy Vehicle Registration) Act 1997* and Road Transport Reform (Heavy Vehicle Registration) Regulations 1996 (these ‘regulations’ were not enacted). The Act and ‘regulations’ were later ‘made’ as regulations scheduled under the *National Transport Commission Act 2003*.

<sup>80</sup> Clause 26(3) of the Road Transport Reform (Heavy Vehicle Registration) Regulations and paragraph 2.10.2.

<sup>81</sup> Clauses 27 and 28 of the Registration Regulations and paragraph 2.12.2.

- a minority of jurisdictions have implemented the model law provision that provides for internal and external review, the suspension and cancellation of registration for a variety of reasons including that a defect notice has not been complied with and the non-payment of fines;<sup>82</sup> and
- the 'review of decisions' provisions in the model law have not been replicated by the jurisdictions.<sup>83</sup>

134. Under the **higher mass limits** model law the relevant agency in each jurisdiction has the discretion to determine what routes heavy vehicles travelling at higher mass limit can and cannot use, but the model law does not allow for the imposition of conditions on that access. The intent of the model law was to allow vehicles with 'road friendly suspension' to operate with a higher axle mass. The opening up of road networks to allow access to HML vehicles has varied across states and in some states, this has now been coupled with Intelligent Access Program (IAP), requiring drivers to install and use additional equipment before accessing even published networks.
135. In some jurisdictions,<sup>84</sup> the law as enacted provides for the Minister or agency exercising the power to determine access routes to impose conditions on access in addition to the requirements specified in the model law.<sup>85</sup>

*"Off Route Rule:*

*In NSW a driver is permitted a leeway of 500m of the route allowed under permit for the purposes of refuelling, finding a quiet place to rest, breakdowns etc. In all other states a penalty notice may be issued for being 'off permit route'. An example is in Penong in SA. All trucks approach the bowsers from the rear of the property. To access the rear of the property at least two other streets must be driven on. There are a lot of places with such access issues.*

*One does not know when applying for a permit where fuel, rest or breakdown stops will be, to have them included in the permit route and it is not feasible from the operators point of view or the permit issuing authority to have all such access points recorded on the permit.*

*Driver and/or operator penalties can be in the vicinity of \$900 per occasion"*

*Victorian Operator – submission to RIS.*

136. The heavy vehicle **fatigue management laws** have not been implemented consistently across jurisdictions.<sup>86</sup> Differences include:

<sup>82</sup> Clause 33 of the Registration Regulations and paragraph 2.13.2.

<sup>83</sup> Clauses 36 and 37 of the Registration Regulations.

<sup>84</sup> For example, see s.163AA of the SA Road Traffic Act; s.11 Road Transport (General) Act 2005; s.48 Transport Operations (Road Use Management – Mass, Dimensions and Loading) Regulation 2005.

<sup>85</sup> The vehicle must have road friendly suspension and where it has tri-axle groups, the operator of the vehicle must be accredited under the Mass Management Module of the National Heavy Vehicle Accreditation Scheme: *Road Transport Reform (Higher Mass Limits) Regulations*: clause 4.

<sup>86</sup> Different degrees of progress in different states in meeting the administrative service needs of Basic Fatigue Management and Advanced Fatigue Management have led to problems for industry seeking to use these options. No Fatigue Expert has been approved so AFM applications cannot be progressed.

- the legislation in one jurisdiction does not provide for the split rest hours that the model law allows (6 + 2 hours as an alternative to 7 hours);
- the legislation in two jurisdictions does not allow the defence (provided in the model law) available to a driver required to drive up to 45 minutes beyond the time of the required rest stop to find an available rest area;
- while the model law requires work diaries to be kept only by drivers operating more than 100 kilometres from the driver's base, the legislation in one jurisdiction has 200 kilometres and 160 kilometres for drivers engaged in primary production; and
- One jurisdiction has its own fatigue law that is administered as part of Occupational, Health and Safety legislation rather than heavy vehicle legislation, giving rise to some enforcement issues.

*"Just look at the latest farce. A 'national' log book that is **not** the same in even two states."*

*"The introduction of the 'National Work Diaries' is a prime example of how the different sectors of the industry are being disadvantaged... due to the differing requirements needed by an industry specific operation ie livestock transport, the requirements of animal welfare override all other requirements, however this is not taken into consideration by transport regulation, hence the operator is left to improvise and that is not an acceptable outcome."*

*"The introduction of the National Work Diaries is a prime example of how the different States and Territories [sic] regulations differ and cause no end of grief to interstate operators trying to operate in responsible, effective and efficient way."*

*Queensland operator - submission to RIS*

137. A March 2007 NTC evaluation of the **vehicle standards** model law identified a number of 'significant' and 'moderate' inconsistencies that warranted reference to the relevant jurisdiction for a response seeking information about the reasons for the departures from the model law.<sup>87</sup> Seemingly minor differences between jurisdictions can create problems for multi and interstate operators and those who, while operating locally, must cross borders. Industry reports, for example, that the exhaust outlet for a heavy vehicle that complies with the Victorian vehicle standards will not comply with the relevant NSW standards.<sup>88</sup>
138. The **compliance and enforcement** model law itself contains provisions that are described in the relevant NTC regulation as "valuable components of the proposed national best practice legislative compliance and enforcement scheme, but are not regarded as critical for nationally consistent outcomes".<sup>89</sup> Jurisdictions have the flexibility to choose whether to implement those provisions that mainly relate to matters that jurisdictions may regard as matters of criminal and regulatory law policy

<sup>87</sup> Rozen, Peter; *Evaluation of the implementation of the vehicle standards – report*, NTC, March 2007.

<sup>88</sup> See clause 148 of the Vehicle Standards, Schedule 8, *Road Safety (Vehicles) Regulations 1999*; and clause 156 of the Vehicle Standards, Schedule 2, *Road Transport (Vehicle Registration) Regulation 2007*.

<sup>89</sup> National Transport Commission (Road Transport Legislation – Compliance and Enforcement Bill) Regulations 2006 at page 14.

including forms of penalties, nature of criminal liability and available defences. The inter-jurisdictional elements of the model law that would facilitate national investigative and enforcement action have yet to be fully implemented.<sup>90</sup>

#### 4.1.1.3 UPDATING LEGISLATION

139. For practical reasons the road transport reform/model law developed as a series of stand-alone modules. There are now 12 separate pieces of model law and 2 sets of policy/principle (for driver licensing and concessional mass limits). It has been left to each jurisdiction to integrate and consolidate the model law modules as they deem appropriate. For instance, many jurisdictions have incorporated the vehicle standards and registration provisions into a single piece of legislation applying to all vehicles. Some have combined the mass and loading, oversize and overmass, restricted access vehicle and higher mass limits model laws into one set of regulations. The earlier modules have not been revised where changes have taken place in later model provisions by the NTC or by the jurisdictions, relating to the size of penalties and the formulation of offences.
140. Reviews of national transport reform conducted by the NTC as part of its monitoring role under the IGA have focused on evaluating implementation and the ongoing relevance of its original objectives. The evaluations of jurisdiction legislation have identified divergences but to date maintenance activities have not 'ironed out' the differences and formulated suitable amendments (as necessary). The NTC also has a role in identifying where the model law needs to be updated and advising ATC on amendments to the model law to implement agreed changes. While this has been successful in keeping the road rules and vehicle standards up to date, there has been less success with the other model law modules.

#### 4.1.1.4 GAPS IN ROAD TRANSPORT REFORM COVERAGE

141. Jurisdictions have identified a number of areas of heavy vehicle regulation in their own jurisdictions not covered by any ATC-approved model law or policy. These include: roadworthiness; the approval of persons to undertake inspections of, and test, heavy vehicles and to use premises for that purpose; and the ability to issue certificates of approved operations or install modification plates where a heavy vehicle has been modified and rules about the treatment of written off vehicles.
142. Whether there are any issues in relation to these matters that would require consideration in the context of a change to national regulation of heavy vehicles would need to be considered.
143. Gaps can also occur from the lack of maintenance and updating of agreed guidelines. For example, the uniform parameters and the network of approved access routes that were established for common movements by large, indivisible combinations up to 3.5 metres wide, 4.6 metres high, 25 metres long and 49.5 tonnes gross mass have not been updated to account for the changes that have occurred over time and with the movement of some jurisdictions to allow larger combinations under the same general administrative framework.

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<sup>90</sup> By means of an extended definition of 'Australian road law' in the model law, officers in one jurisdiction can investigate and enforce the corresponding law of another jurisdiction in their own jurisdiction and enforce their own law and take investigative action in another jurisdiction. Jurisdictions have not yet added references in that definition to corresponding legislation in other jurisdictions that would facilitate this cross-border enforcement.

#### 4.1.1.5 'BLANKET' APPLICATION OF LAW

144. Heavy vehicle law can take a 'blanket' approach to regulation, not recognising the diversity of the industry. The bus industry, for example, has argued that the application of heavy vehicle fatigue management laws focus on long-haul truck operations and ignore bus industry specific driving arrangements needed for long-distance, tourist and charter operations, as well as government, contracted and school operations. Citing the application of the fatigue management laws in New South Wales, the bus industry further argues that existing bus safety regulation (in the form of the Safety Management System introduced in 1993) has produced good safety results for the bus industry, with no fatigue related incidents since its introduction.<sup>91</sup>

*"CANEGROWERS has concerns that some transport regulation, while having best intentions, is particularly focussed on longer distance road transport than agriculture... It is important to note that much heavy vehicle transport in agriculture is characterised by varying mass (including heavy mass), short distance, low to moderate speed and travel on mainly farms off-road with any road travel on 'rural' or 'country' roads in addition to some minor travel on busier highways."*

Canegrowers – submission to RIS

*"The requirements ... of heavy vehicle regulation, while relevant in some areas, are often removed from the operational reality of our sector and, indeed, conflict with those regulations focussed on passenger safety. In short, the much smaller and specialised passenger transport sector is disadvantaged at the expense of the much larger 'freight' sector."*

busnsw – submission to RIS

145. Western Australia has a more 'liberal' regime of heavy vehicle road laws than other States which enable a range of heavy vehicle combinations to operate, providing higher productivity options for Western Australian transporters though policies that support innovative vehicle configurations and mass limits. The majority of trucks and trailers in use in Western Australia are likely to have been purchased or built with these combinations in mind. It would be important from the perspective of these operators that any national system continued to allow them to take advantage of the productivity flexibilities they currently enjoy; for example, driver-fatigue managed through Occupational Health and Safety laws that allow greater flexibility in driving hours.

#### 4.1.2 EXERCISE OF DISCRETION UNDER THE LAW

146. The model laws give the relevant minister or agency the power to determine whether or not certain provisions should apply to heavy vehicles. The model law does not say what criteria can or should be taken into account nor the objects for which the power should be exercised. As a result the same

<sup>91</sup> "One size. It's Gall" in *Australian Bus and Coach*, Issue 254, October 2008.

rules will not necessarily apply to a heavy vehicle in different jurisdictions even if the model law in the jurisdictions is exactly the same.

147. For instance, the registration agency in each jurisdiction can determine which heavy vehicles could get conditional registration even though they do not comply with the vehicle standards. Under the restricted access vehicle model law the relevant agency in each jurisdiction can exempt a heavy vehicle or a class of heavy vehicles from a mass or dimension requirement, determine the routes that such vehicles may travel and the conditions under which that travel can be undertaken. There is nothing in the model law to say what matters that the agency must take into account in issuing a permit (for an individual heavy vehicle) or gazetting a notice (for a class of heavy vehicles). While the practice is for jurisdictions to consult asset owners about proposed routes, there is no obligation under the model law, or the legislation in each jurisdiction implementing that model law, to do so.

*"Moving a CAT789 Dump Truck on two trucks in convoy. Load 27.5m long, 7m high, 5.3m wide at 79 tonnes:*

- *WA – NSW  
WA – need 2 pilots, 2 police; SA – 2 pilots, 2 police; NSW – 6 pilots, 2 police;*
- *WA-Qld trip.  
WA – 2 pilots, 2 police; NT 2 pilots, 1 accredited escort; Qld – 4 pilots and 4 police.*

*Very difficult to coordinate police to meet on borders."*

*WA Operator - response to RIS*

#### 4.1.2.1 EXERCISE OF DISCRETION PRODUCES DIFFERENT OUTCOMES

148. Application of different standards requires operators to both understand and comply with the differences between jurisdictions, thus incurring additional and different compliance activities and costs for those that operate in more than one jurisdiction.
149. For instance, the Intelligent Access Program (IAP) was introduced as a voluntary program that would allow jurisdictions to use as an operating condition so as to help guarantee route compliance for some applications.<sup>92</sup> Some (but not all) jurisdictions<sup>93</sup> have, consistent with this policy, chosen to make enrolment in the IAP a condition for access to higher mass limits. As a result a heavy vehicle that complies with requirements for higher mass limits in one jurisdiction will not have a right of access in other jurisdictions in which IAP enrolment is a pre-condition.
150. Similarly, not all B-doubles or other combination restricted access vehicles that are approved for operation in one or more jurisdictions can operate in other jurisdictions because either technical

<sup>92</sup> See Austroads, *Intelligent Access Program (IPA) Stage 1 Implementation - Regulator Impact Statement 2005*, National Transport Commission, September 2005, foreword.

<sup>93</sup> The Commonwealth has also agreed to apply the same condition to FIRS-registered vehicles operating at higher mass limits in New South Wales and Queensland.

requirements that the combinations must comply with in the latter are different or because only a limited number of routes have been approved.

*In a consultation session, a driver cited an example of being issued with a \$900 fine for driving a B-double on an identified road-train network (ie driving a non Class-2 vehicle on a Class 2 route).*

151. Technically speaking, 53.5m (triple) road trains can travel in NSW but only from Barringun on the Qld border to Bourke and no further and 'vehicle components must not be left on the road side' - see RTA General Notice for Road Trains 2005. This makes it difficult for someone operating a triple road train in Queensland to travel through to SA.
152. As noted above, an operator carrying hay bales and loaded to its allowable 3 metre width from Victoria, will find that the same hay load is 'over-width' in NSW under the relevant oversize and overmass notice, where the maximum width is 2.5 metres. Similar differences apply in height restrictions, where New South Wales allows the 4.6 metres height restriction for rigid, B-double and semi-trailers, where Victoria allows only tri-axle semi-trailers and B-doubles to be 4.6m high. These examples illustrate how inconsistency can be a particular problem for operators in rural areas near borders.
153. Industry stakeholders have cited an example of an operator moving heavy equipment under permit across three jurisdictions where an additional axle is required to be brought in for the middle part of the trip but must be removed from the final part of the trip to comply with permit conditions in that jurisdiction.

*"Sunset/Sunrise Travel*

*Under current rules, travelling from Brisbane to Perth with a wide load there are 3 different rules on travel times:*

- a. *In Queensland the rule is 250m visibility regardless of sunrise time;*
- b. *In NSW, the rule is sunset at the physical location of the load eg if in Cobar or Broken Hill, then the sunset time applicable at those places is the time the load must be off the road;*
- c. *In South Australia, the rule is 'Adelaide Sunset Time' as proclaimed in the Gazette. Eg if at the Nullarbor Roadhouse, there is still plenty of sunlight to enable travel to continue, however because it is sunset time in Adelaide the load must be off the road. The opposite of course occurs the following morning ie the load is able to move prior to sunset according to the clock, however it must then apply the 250m visibility rule of no travel;*
- d. *In WA, it is back to the sunset at the physical location rule.*

*Make Australia wide regulation of 250m visibility. It is something that all drivers understand, instead of trying to guess sunset times or trying to find them out everyday."*

*Tasmanian operator - Submission to RIS*

### 4.1.3 ADMINISTRATION OF THE LAW

154. Consistency in black-letter law does not, of itself, produce the same outcome in the same circumstances.
155. The way in which guidelines and procedures are applied can also result in different outcomes even where the black-letter law is the same. For instance, the 2006 NTC review of the implementation of the registration model law identified different practices for the interstate transfer of heavy vehicles,<sup>94</sup> and the refusal of some jurisdictions to accept the modification plating and/or certification done in other jurisdictions.<sup>95</sup>
156. These differences continue between jurisdictions in part because the (approved) National Heavy Vehicle Registration Scheme Administrative Guideline currently requires the new jurisdiction to cancel and re-register the vehicle. This was not the intention of the agreed policy for such transfers<sup>96</sup> but the problem with the content of the guidelines has not been resolved.
157. The findings of the review of the implementation of the registration model law<sup>97</sup> also highlighted the importance of the updating of relevant guidelines (including the 1998 NHVRS Administrative Guideline, the 1995 Roadworthiness Guidelines and the 1999 Assessment of Defective Vehicles) as issues emerge about administrative practices if the benefits of consistency and uniformity in the application of the model law are to be harnessed.

#### 4.1.3.1 VARYING ADMINISTRATIVE PRACTICES BETWEEN JURISDICTIONS

158. Varying administrative practices in each jurisdiction can also impact on the operation of the model laws approach to underpin a national system of heavy vehicle regulation. The efficacy of the National Heavy Vehicle Registration Scheme depends in part on the capacity and willingness of jurisdictions to collect information on a consistent basis and to share that information where necessary. Differences in the kind of identification data recorded on registration and the communication of defect notices and clearances were identified by the NTC's 2006 review as detracting from successful national implementation of the National Heavy Vehicle Registration Scheme.<sup>98</sup> The existence of different practices in jurisdictions about sharing information about conditionally registered vehicles as well as in the application of standard condition codes was also noted in the review.<sup>99</sup>

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<sup>94</sup> S J Wright and Associates Pty Ltd *Review of the National Heavy Vehicle Registration Scheme and the National Driver Licensing Scheme – Final Report*, NTC, August 2006 at 2.5.2.

<sup>95</sup> *Ibid* at 2.6.2.

<sup>96</sup> See paragraph 5.2.1 of the 2006 Report.

<sup>97</sup> S J Wright and Associates Pty Ltd *Review of the National Heavy Vehicle Registration Scheme and the National Driver Licensing Scheme – Final Report*, NTC, August 2006.

<sup>98</sup> S J Wright and Associates Pty Ltd, *Review of the National Heavy Vehicle Registration Scheme and the National Driver Licensing Scheme – Final Report*, (2006 Report) NTC 2006 at paragraphs 2.8.2 and 2.9.2.

<sup>99</sup> See paragraph 2.7.2 of the 2006 Report.



*"All individual states issue their own permits. These vary in cost, procedure, implementation and time frames for preparation. The driver of an oversized load can end up with as many as 9 permits for one trip from Brisbane to Perth! [This creates costs in] waiting time at borders (up to 3 days), time spent chasing different departments for permits and the cost of permits."*

*Operator based in Victoria and Tasmania – submission to RIS*

159. The trucking industry points to the implementation of the PBS initiative as an issue. Approved in 2007, PBS aimed to increase productivity of the current network through the access of innovative vehicles that performed similarly or better than prescribed vehicles in terms of safety and road wear. A PBS Review Panel, consisting of independent and jurisdictional representatives, is responsible for approving a vehicle as meeting the standards for access to PBS networks published by jurisdictions. It is governed by business rules proposed by NTC Commissioners and approved by ATC. Any amendments to those rules require approval by the ATC.
160. Despite this framework, a heavy vehicle assessed as complying with an approved design must still obtain access to routes from the agency in each jurisdiction (which may also apply conditions). The operation and efficacy of the performance based standards approach is affected by the absence of nationally applicable guidelines on how those access decisions might be made and also by the lack of published network access maps by some jurisdictions.<sup>100</sup> While the ATC has agreed to a review of PBS by the NTC in 2009, industry bodies indicate that the current operating framework is impacting on the willingness of operators to invest in innovative, high productivity vehicles.

#### 4.1.3.2 LACK OF CROSS-BORDER RECOGNITION OF PRACTICES

161. Even if agencies are applying uniform law and applying the same guidelines and standards, a heavy vehicle that can be registered and deemed roadworthy in one jurisdiction may not be in another. The review of the implementation of the model registration law reported that inspectors from one jurisdiction would not accept as roadworthy a vehicle inspected in another jurisdiction because the procedures followed were different even though the same Roadworthiness Guidelines were used. The majority of jurisdictions require a vehicle transferred from another jurisdiction to be inspected, irrespective of how recently it had been inspected. The review also reported that there were no generally applied administrative procedures for plating and certifying modified vehicles, notwithstanding there are common technical standards, and some jurisdictions did not recognise modification plating and certification from other jurisdictions.<sup>101</sup> The same problem was identified with compliance inspections.<sup>102</sup>
162. Similarly, in its submission to the RIS, Natroad has pointed out that driver health and safety accreditation in Queensland is not recognised in NSW and that different states have adopted different privacy arrangements around driver information.

<sup>100</sup> The NTC website (<http://www.ntc.gov.au/ViewPage.aspx?page=A02217508300270020&Print=true>) at 18 November 2008 indicates that maps for Tasmania and Victoria are being finalised.

<sup>101</sup> See paragraph 2.6.2 of the 2006 Report.

<sup>102</sup> See paragraph 6.4.2 of the 2006 Report.

#### 4.1.3.3 INFORMATION AVAILABLE TO TRANSPORT OPERATORS AND TO OTHER JURISDICTIONS

163. Because there is no uniformity in the application of the model laws it is necessary for operators to access and understand the regulations in each jurisdiction in which they operate. There is no one place that the regulations applying the model laws in each jurisdiction can be found and they are described differently in each jurisdiction.<sup>103</sup> The amount of information available to operators on the respective websites of the agencies varies and there is no consistency even where the content of the information is, or should be, the same. The 2006 review of the mass and dimension model laws reported information bulletins were not structured uniformly, were presented in differing formats and with differing content and that interstate operators had to maintain multiple sets.<sup>104</sup>

*"All states are pushing for the use of their respective web sites for the appropriate permits for their state. However the web sites are very complex and confusing to find the information.*

*It is a requirement by law for a Heavy Vehicle driver to carry and fill out the National Work Diary however the only places to get this book is at Customer Service Centres of the respective jurisdictions. A lot [sic] of the Customer Service Centres are located so a heavy vehicle has no access to them causing yet another cost to the Driver or Operator to get public transport to these places."*

*Qld operator – submission to RIS.*

164. The National Exchange of Vehicle and Driver Information System (NEVDIS) was set up to facilitate the exchange of registration and licensing information between jurisdictions for compliance and enforcement purposes and to manage the allocation of Vehicle Identification Numbers to vehicles as they were registered to indicate whether vehicles had been stolen. NEVDIS became operational in 1998 and now covers all jurisdictions<sup>105</sup> and since 2000 it has also functioned as a National Written-off Vehicle Register to all jurisdictions. It has not been used to automatically exchange defect notices between jurisdictions which continue to be handled manually including by fax, email or weekly spreadsheets.<sup>106</sup>

#### 4.1.4 COMPLIANCE MONITORING AND ENFORCEMENT

165. Approaches to enforcement of heavy vehicle regulations also vary across jurisdictions, even where the same or very similar law has been adopted. Some difference of approach will be inevitable as enforcement of the heavy vehicle laws is as much in the hands of the police as it is the relevant

<sup>103</sup> For instance, the mass and dimension model laws are found in the NSW *Road Transport (Mass Loading and Access) Regulation 2005*, the Victorian *Road Safety (Vehicles) Regulations 1999* and the South Australian *Road Traffic (Mass and Loading Requirements) Regulations 1999* and *Road Traffic (Oversize and Overmass Vehicle Exemptions) Regulations 1999*.

<sup>104</sup> Keatsdale Pty Ltd; *Review of heavy vehicle mass and loading, oversize and overmass and restricted access regulations*, NTC, May 2006, paragraph 24.

<sup>105</sup> S J Wright and Associates Pty Ltd, *Review of the National Heavy Vehicle Registration Scheme and the National Driver Licensing Scheme – Final Report*, (2006 Report) NTC 2006 at paragraph 1.5.

<sup>106</sup> S J Wright and Associates Pty Ltd, *Review of the National Heavy Vehicle Registration Scheme and the National Driver Licensing Scheme – Final Report*, (2006 Report) NTC 2006 at paragraph 1.5.

agencies. While there may be close cooperation on a day-to-day basis between agencies and the police it is not generally within the power of the Minister responsible for transport to determine police practices or activities. Police priorities may be on road safety enforcement focusing on alcohol, drugs, speed, fatigue and roadworthiness rather than specific heavy vehicle operational matters.

166. Differences will result from the fact that the police of each jurisdiction do much of the enforcement of heavy vehicle laws and the degree to which this is integrated into enforcement policies of the agencies may vary between jurisdictions. Moreover different levels of resources will be available for enforcement purposes and even a similar level of resourcing will operate differently on the ground depending on factors that vary between the jurisdictions.

*In consultation sessions, many operators stated a view that enforcement activities are often concentrated at and near state borders and are focussed on non-compliance with variations in the law between states.*

*As an example, an operator cited an instance where, in the 200m over a border to the depot where a delivery was being made, he was issued with a \$1200 fine for 'being over mass', although he had just travelled in compliance, along hundreds of kilometres of what was effectively the same road.*

167. All jurisdictions have road safety strategies and action plans that largely reflect 'traditional' approaches that focus on enforcement through increased penalties, increased and targeted road patrols, education campaigns and ongoing and longer-term investment in safer road construction. Western Australia has developed a 'Heavy Vehicles Operations Compliance Plan' that aims for incentives-based responses to compliance (such as quality management schemes) that recognise operators who demonstrate a commitment to maintaining a higher level of compliance. The plan acknowledges that compliance responses need to address a range of needs from industry, the judiciary and the community in general.<sup>107</sup>
168. Jurisdictions generally employ vehicle and transport safety inspection staff with activities ranging from conducting vehicle inspections for registration to on-road targeted and 'spot' checks of both vehicle and operator compliance. At least one jurisdiction uses road side heavy vehicle weighing stations to further enforce compliance; others use mobile weighing systems. The resourcing of these activities varies considerably between jurisdictions as does the targeting of specific enforcement activities at any given time.
169. The Compliance and Enforcement model laws include 'chain of responsibility' provisions that have different targets and use different skills from the traditional 'on-road' compliance activities. These provisions oblige all parties in the chain to take positive steps to prevent breaches of the road transport mass, dimension and loading laws are aimed at reducing pressures on on-road parties and ultimately leading to improved compliance and safer roads. Only three jurisdictions have fully implemented the model law so far. This fragments any national approach to this modern approach to compliance and enforcement and effectively results in a focus on 'on-road' activities. The chain of

<sup>107</sup> MainRoads Western Australia "Heavy Vehicles Operations Compliance Plan 2006-2008".

responsibility approach is aimed at addressing some of the higher-level supply-chain issues (such as delivery time pressures) that can put pressure on operators to take risks with compliance.

*"Despite COR legislation being in place from as early as 1999, the States have not demonstrated a real capacity and willingness to take COR seriously. Although the COR spans across the whole logistics supply chain, from customer/consignor to customer/consignee, in most instances enforcement agencies have shown that their grasp of the chain involves only one part of a link: prosecuting drivers and truck operators. In other instances, State agencies have shown that they do not have the legal or investigative skills to effectively manage COR cases. Embarrassment at losses in the courts has seen some State agencies pull back from COR, rather than embrace the need to become more professional and effective in their operations."*

*Australian Trucking Association – submission to RIS*

#### 4.1.5 IMPLEMENTATION OF ATC-APPROVED HEAVY VEHICLE POLICIES

170. As noted at Section 3.2, a number of policies developed by the NRTC/NTC and approved by the ATC did not appear in model law provisions but were adopted by jurisdictions. Most jurisdictions have implemented the Concessional Mass Limits policy in legislation albeit with minor variations.
171. The August 2006 NTC review of the National Driver Licensing Scheme<sup>108</sup> found that elements<sup>109</sup> of the Scheme had been implemented prior to the adoption of the Primary and Secondary Principles and that all the jurisdictions had incorporated (or in the case of Western Australia, were incorporating) the principles into their licensing legislation and business practices.<sup>110</sup> The review also concluded that six of the eight objectives of the eight primary elements of the Scheme<sup>111</sup> had been largely or substantially met (the two being transmission of demerit points and offence penalties and disqualification in one jurisdiction to apply to all).<sup>112</sup>
172. Not all jurisdictions implemented the Three Strikes Policy.<sup>113</sup> It was intended to operate on a national basis so that breaches in different jurisdictions could be taken into account in determining whether suspension action from the home jurisdiction was warranted. Implementation was undertaken by comprehensive legislation, by a mix of legislative and administrative means, and by administrative means. The NTC reported on concerns about the effectiveness of the various approaches taken and the resulting inconsistencies including concerns about the legal and practical difficulties with

<sup>108</sup> S J Wright and Associates Pty Ltd; *Review of the National Heavy Vehicle Registration Scheme and the National Driver Licensing Scheme – Final Report*; NTC, August 2006.

<sup>109</sup> These elements were the interstate conversion of driver licences and one driver/one licence.

<sup>110</sup> S J Wright and Associates Pty Ltd; *Review of the National Heavy Vehicle Registration Scheme and the National Driver Licensing Scheme – Final Report*; NTC, August 2006, at paragraph 1.4.4.

<sup>111</sup> The objectives were listed in the review as: drivers to hold only one licence; common licence classes, with common eligibility criteria; common conditions, licence card symbols etc; driver to conclusively prove his/her identify; mutual recognition of interstate licences; transmission of demerit points and offence penalties to home jurisdictions; disqualification or suspension in one jurisdiction to apply to all; common medical standards for all drivers with self-assessment for drivers of very heavy vehicles. See Report at paragraph 9.2.

<sup>112</sup> See Report at paragraphs 9.8.3 and 9.9.3.

<sup>113</sup> Under the "three-strikes and you're out" speeding policy, owners of heavy vehicles caught speeding 15 km/h above the open road or vehicle capability limit face escalating penalties and ultimately registration suspension for three months. Western Australia, Northern Territory, Tasmania and the ACT did not implement this policy.

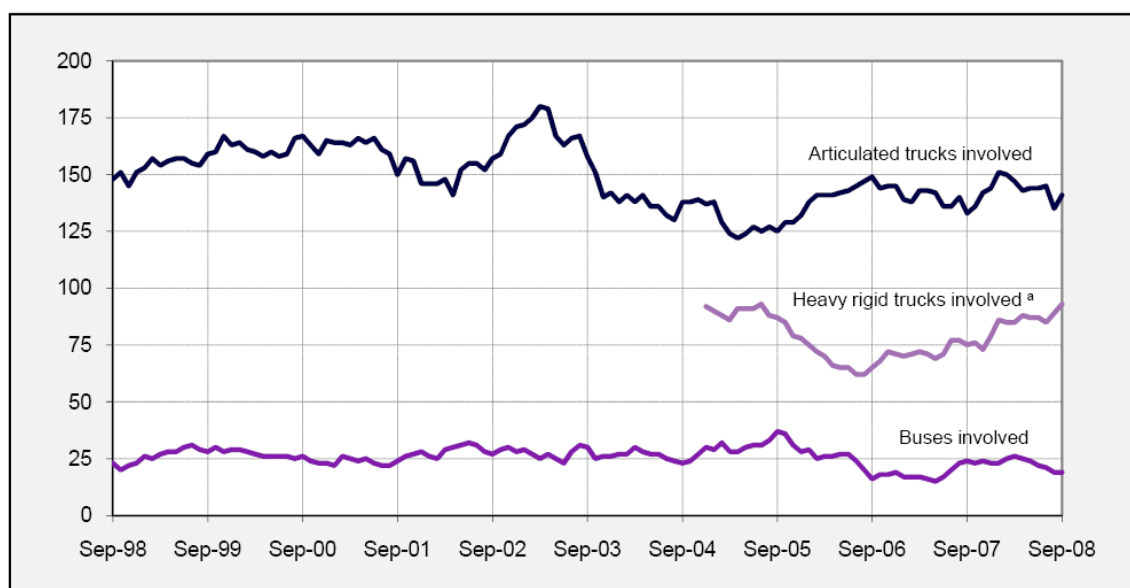
transferring information between jurisdictions.<sup>114</sup> The NTC concedes that " ... the lesson from this example is that, irrespective of views on the desirability of template legislation, policy certainty is required if uniform outcomes are to be achieved. Many of those involved consider that policy certainty can only be achieved if agreed policy is expressed in legislative form".<sup>115</sup>

## 4.2 HEAVY VEHICLE ROAD SAFETY

173. Safety is a key concern for both regulators and industry. As the table below<sup>116</sup> shows, fatal crashes involving heavy vehicles have remained relatively consistent over a ten year period from September 1998. The number of fatalities involving articulated trucks have remained at or above 125 per year in that period; buses have been involved in more than 10 fatal crashes per year.

**Table 10 – Numbers of fatal crashes involving heavy vehicles, 1998-2008**

Each point shows the number of fatal crashes in the preceding 12 months



<sup>a</sup> Data unavailable prior to 2004.

174. For the 12 months to the end of September 2008, 281 people died from 247 crashes involving heavy trucks or buses. In that same period, fatal crashes involving articulated trucks increased by six per cent over the previous 12 month period and fatal crashes involving heavy rigid trucks increased by 24 per cent.
175. One recent analysis of heavy vehicle insurance claims<sup>117</sup> indicates that in 2007, 325 major incidents<sup>118</sup> were reported. Of the serious truck accidents reported, driver fatigue and inappropriate speed for the


<sup>114</sup> NTC, Heavy Vehicle Speed Compliance: Draft Proposal and Draft Regulatory Impact Statement, December 2006, Appendix C, p. 51.

<sup>115</sup> Kirsty McIntyre and Barry Moore, The National Road Transport Commission: An Experiment in Co-operative Federalism, Paper prepared for the Public Law Discussion Group, Faculty of Law, Australian National University, 17 July 2001 at 3.2.

<sup>116</sup> Department of Infrastructure, Transport, Regional Development and Local Government, "Fatal Heavy Vehicle Crashes Australia; Quarterly Bulletin July-September 2008", April 2009.

<sup>117</sup> National Transport Insurance, National Centre for Truck Accident Research "Major Accident Investigation Report 2009". The figures quoted from this report are based on a longitudinal study (analysis of claims) of heavy vehicle drivers involved in accidents since 1998. The research focuses on heavy vehicle accidents in the hire and reward freight sector with vehicles having a payload exceeding five tonnes.

<sup>118</sup> A 'major incident' is defined in the Report as damage more than \$50 000.



conditions were responsible for almost 50 per cent of heavy vehicle crashes. Amongst other findings, the report indicates that in three out of four cases, no other vehicles were involved; that semi-trailers are involved in over 57 per cent of major crashes; and that B-doubles are represented in almost 22 per cent of major accidents.

176. In its 2008 Report "Safe Payments - Addressing the Underlying Causes of Unsafe Practices in the Road Transport Industry", the NTC has cited that crashes involving heavy vehicles are estimated to cost around \$2 billion a year out of the total \$15 billion costs of road crashes. In the same report, the on-road factors contributing to poor safety outcomes were identified as fatigue, speeding, drug use, poor vehicle maintenance, inattention and road or environmental conditions.
177. This brief review of recent statistical data is provided to show that heavy vehicle safety is a real issue for regulators, operators and the wider economy. In the context of an increasing freight task, increasing numbers of vehicles on the roads, a skills shortage across the range of heavy vehicle operations, the condition of road and other infrastructure assets and the changes in the nature of freight management and distribution, the issue of safety is one that both regulators and industry must work on.

## 5. WHY INCONSISTENCIES ARE A PROBLEM

178. Transport and storage industries contributed 4.7 percent (or \$44.5 billion) of total GDP in 2006-07.<sup>119</sup> Road transport and storage contributed \$16.1 billion of that share. The transport sector as a whole provided 4.7 per cent of total national employment in 2007.<sup>120</sup> The importance of transport, and in particular road transport, to the economy is clear.
179. It is a widely quoted statistic that Australia's freight task is expected to double by 2030 and the interstate road freight task to almost triple.<sup>121</sup> Given that around 80 per cent of the current freight task is moved by trucks, the end result may be an extra 50 000 trucks on the country's roads. Such continuing rapid growth implies a trade-off between increasing the number of trucks and providing for fewer, more-efficient trucks.
180. The heavy vehicle transport sector moves more than freight and it is important to recognise, for example, that for most Australians, buses are the main transport alternative to the private car. The bus industry employs 30 000 people across the country and carries 1.4 billion passengers a year.<sup>122</sup> It provides connectivity to work, facilities and communities and through this, enables production and social engagement.

*"RTA regulations in NSW impose a total weight limit of 16 tonnes for 2 axle buses and coaches. European manufacturers design 2 axle chassis to conform to European Union standards for Gross Vehicle Mass (GVM) of 18 tonnes. In order to conform to the current requirement, operators are forced to operate vehicles with fewer passengers than the bus is capable of holding or to implement other similarly inefficient measures, such as towing a trailer to carry passenger luggage in."*

busnsw – submission to RIS

181. Productivity for all sectors of the heavy vehicle industry will have to be enhanced to enable it to deal with both existing and new and increased task pressures. Technological and design improvements in heavy vehicles can produce, and already have produced, improvements and efficiencies that have economic, safety and environmental benefits for the country. In the trucking industry, fuel efficiency gains, improved driver training, an increased use of articulated vehicles, the use of road trains on defined suitable roads and technological advances in braking and suspension systems have produced productivity gains, reductions in damage to road pavements and improved environmental outcomes in terms of emissions, for example.<sup>123</sup>
182. While acting in wider interests of safety, environment and asset protection, regulation can have the effect of restricting efficiency gains. The NTC's response to the "Twice the Task" Report of 2005 concludes that the current approach to regulation has helped embed a focus on infrastructure asset

<sup>119</sup> BITRE "Australian Transport Statistics Yearbook 2007", June 2008

<sup>120</sup> BITRE "Australian Transport Statistics Yearbook 2007", June 2008.

<sup>121</sup> Gargett, D. and Hossain, A. "Road Freight Estimates by State/Territory", paper delivered to Australian Research Forum, 2008.

<sup>122</sup> Bus Industry Confederation – submission to House of Reps Sustainable Cities 2025 inquiry.

<sup>123</sup> "The Great Freight Task" 2007 pp24-25.

protection by transport agencies, rather than on a productive use of the asset.<sup>124</sup> Regulation that assumes road infrastructure is homogenous and that results in prescriptive vehicles standards does not allow maximum productivity, and can result in spare or unused capacity in much of the infrastructure. Gross mass vehicle limits applied to B-double trucks, for example, can force trucks to operate at less than optimum levels and result in unintended outcomes – restricting heavy vehicles to a lower tonnage, for example, can result in more trucks using roads, with potentially greater impacts on assets, productivity and communities.

A recent report by the Australian Logistics Council on inconsistencies in cross border regulation<sup>125</sup> cites the instance of a winery in the Victorian area of Sunraysia/Riverland region that has a 70 day annual season of peak activity. To cart its grapes to its winery in NSW, the business has calculated that the most efficient vehicle harvest movement is a High Performance Vehicle (HPV) with a carrying capacity of 46 to 48 tonnes at current General Mass Limits. They are currently using conventional semi trailers with a payload of around 23 to 24 tonnes as these vehicles are acceptable for use in both Victoria and NSW. The report indicates that using the most efficient vehicle (a road-train) for this purpose, savings are of the order of \$7 to \$9 per tonne. This could offer a 36% reduction in transport costs and a reduction of up to 56% in the number of truck trips.

183. The same Report notes that the inconsistent implementation of higher mass limits legislation, the varying levels of access permitted for HML vehicles on even agreed routes and its recent coupling, in some states, with the need to install IAP instruments has seen an erosion of the benefits that efficiency gains can bring. Citing an investment by industry of up to \$250 million dollars in making vehicles HML compliant, the report further notes that "best estimates are that around 10% of the HML compliant fleet are regularly benefiting from HML mass increases".<sup>126</sup>
184. On a related note, industry contends that the current regulatory development and review environment does not give adequate weight to industry initiated proposals. As an example, it argues for the replacement of current regulatory standard of dual wheels on drive and trailing axles, with ultra-wide single tyres that, it says, can be shown to provide equivalent road wear while providing energy efficiency and tare weight reductions for operators. These differences in approach are not easily resolved and clearly a balance has to be struck between efficiency of transport and the cost of repairs and maintenance.
185. Inconsistent regulation that requires additional compliance measures that add cost or otherwise impacts on operations, can act to reduce competitiveness of industries. The Australian Meat Industry Council submission to "The Great Freight Task" report, highlights an example where legal road weight limits in New South Wales being generally 3 tonne less than all other states places an unfair limitation on NSW meat processors.<sup>127</sup>

<sup>124</sup> "Improving the regulatory framework for transport productivity in Australia" NTC 2006.

<sup>125</sup> Australian Logistics Council, "The Cost Impact of Regulation Disparity in Cross Border Regions", March 2009.

<sup>126</sup> Australian Logistics Council, "The Cost Impact of Regulation Disparity in Cross Border Regions", March 2009, p.27.

<sup>127</sup> House Standing Committee on Transport and Regional Services, "The Great Freight Task: is Australia's transport network up to the challenge?", 2007.





*"Currently, the extreme measures taken with the new fatigue laws have cost our company approximately \$100 000 and even though most of our employees had already done the TFMS training they had to sit through the course again. So the cost of compliance needs to be significantly reduced or people will take shortcuts or avoid concurrent training altogether."*

Victorian operator – submission to RIS

186. In an increasingly global marketplace, the land transport industry needs to operate on a national basis. Jurisdiction- based differences may work against achieving a seamless national market that facilitates national, and industry, economic goals. While there are instances where local divergence may enhance productivity, it is important to find the appropriate balance.
187. While the inconsistencies highlighted in the RIS largely affect interstate operators and those that operate within each of several jurisdictions, intrastate operators are not immune from the impacts. The intrastate transport task takes place within the broader transport market and the effects of interstate trade and multistate operators will be competition for intrastate freight. For example, an interstate operator may routinely operate some intrastate work at competitive rates in order to avoid 'running empty', forcing the local rate down. Further, there are instances of jurisdiction-specific conditions that impose additional costs on the local operator (such as B-double requirements), that do not apply to visiting or FIRS registered vehicles. In addition, jurisdiction-based business taxes vary and transport operators may be able to find a cost edge for operations by basing their office operations centrally – an opportunity that is not available to the local, single operator. Feedback provided through the consultation process has also indicated that the complexity of regulatory regimes may be creating a barrier for intrastate operators to expand their operations into other jurisdictions and markets.

*"To ensure that local productivity is enhanced, the VFF feels that there needs to be sufficient flexibility built into the system. The VFF could not be supportive of a national regime that will put unique answers to agriculture specific problems at risk, such as the primary producer registration."*

Victorian Farmers Federation – submission to RIS

188. Regulation needs to support both domestic and international trends to ensure Australia's economic competitiveness and ongoing improvements in road safety. In moving freight, heavy vehicle transport needs to have the flexibility to adapt to increasingly global markets and recognised trends such as the consolidation of production facilities, the growth of imports and in non-bulk freight on inter-capital routes, increasing containerisation, and changes in production and distribution industries that increase transport demand. Industry also needs to deliver on road safety outcomes. Generally, industry is increasingly operating with sealed trailer loads of product; operators pick up and deliver and line haul these trailers using different drivers, prime movers and in different configurations –single, B-double, and other multiple trailer combinations. This flexibility to mix and match loads, trailer, drivers and trucks is an essential factor in task efficiency and truck industry representatives argue that once

dedicated combinations are required, for example by a narrower view of PBS or the application of IAP, this foundation efficiency is lost.

189. A key concern of both regulators and industry is that of road safety, with challenges rising from the increasing freight task and resulting increases in number of vehicles on the roads; the stagnation in recent times of safety outcomes from safety initiatives; and the lack of consistency in safety approaches across jurisdictions (seen in the lack of consistency in application of model laws on driver fatigue and compliance and enforcement, for example).
190. In separate Regulatory Impact Statements, the NTC identified annual savings of up to \$143 million from uniform implementation of model driver fatigue laws; up to \$51 million and a reduction of up to five per cent in fatal accidents from uniform implementation of compliance and enforcement model laws; and up to \$172 million, 146 fewer fatal crashes and 566 injury crashes from uniform implementation of driver speeding model laws. These laws, however, have not yet been implemented in all jurisdictions, or consistently.

## 5.1 CURRENT COSTS OF REGULATION

191. The economic analysis carried out for the RIS indicates that industry's total operating cost under the existing framework is an estimated \$17.4 billion a year. In 2007-08, it cost jurisdictions in total, approximately \$218 million to administer heavy vehicle regulation.
192. The full economic analysis is discussed in Chapter 7.

*"Each additional inconsistency or inefficiency in regulation, registration and licensing adds to the labour costs and time and effort involved in doing business. As might be appreciated, the effect on a busy operator of each additional piece of paperwork is more of an exponential increase in time and stress, rather than a linear one. Governments need to be mindful of the effects of such inefficiencies."*

*Australian Livestock Transporters Association – submission to RIS*

193. Regulatory reform was identified by the Productivity Commission as being part of a package of reforms that could generate significant benefits for the road sector and the economy. Together with improvements in decision making processes for infrastructure investment and cost recovery mechanisms, improved regulation of heavy vehicles (to take a performance-based approach) was identified as producing a 5 percent productivity improvement, with a possible increase in GDP of some \$2.4 billion.<sup>128</sup>

<sup>128</sup> Productivity Commission "Road and Rail Freight Infrastructure Pricing" Report, 2006 p XLI

## 5.2 THE ISSUES IN SUMMARY

194. The regulatory issues identified in Chapters 3 and 4 work against the role that regulation needs to play in supporting the activity and wider economic importance of the heavy vehicle industry. The lack of uniformity of both law and administrative practice across jurisdictions ensures industry cannot rely on achieving the 'same outcome in the same circumstances'. There is arguably more regulation than is necessary and the existing inconsistencies add to the costs of heavy vehicle operations and regulatory compliance, all of which works against safety, efficiency and productivity gains.
195. Each RIS the NTC produces for model heavy vehicle legislation identifies the anticipated savings of national, uniform regulation. The very fact that the laws are not adopted or administered in a consistent way ensures those savings are at least diminished. Throughout the development of this RIS, operators have consistently identified the additional cost and compliance burdens the lack of uniformity places on them. While the aggregate costs of these inefficiencies have not been able to be quantified, the RIS has identified that inconsistent regulation impacts on both interstate and intrastate operators; it limits opportunities for expansion and growth as different compliance requirements require different business and operating models; it imposes compliance burdens and costs as by requiring different activities and resources from purchase of vehicle to stages of journeys; it results in different operating conditions across industry where some jurisdictions have more 'liberal' regulation; it adds stress and a lack of certainty to a driver's working environment; it limits innovation and productivity within industry in proscriptive regulatory approaches; and it provides no certainty or clarity to industry about regulators' policies, expectations and decision-making.
196. In being responsive to industry and in providing for outcomes that benefit the wider economy and society, regulation needs to be flexible enough to respond to the range of growing issues that both industry and governments face: a changing and expanding freight task; global economic pressures; urban congestion; environmental and sustainability pressures; the need to establish acceptable standards of accountability and compliance; and the need to ensure the safety and security of people and assets.
197. Ideally regulation should balance efficient use of the road asset so that the aggregate of prices charged for its use are balanced against the provision of an accessible, safe and sustainable transport network and identified community standards are met.

## 6. STATEMENT OF OPTIONS

198. A framework for developing and implementing uniform (or at least consistent) regulation already exists, but has not produced consistent outcomes. Strengthening this model to provide a single body of law and a single regulatory body is the option Transport Ministers have agreed to explore and this must clearly be one of the options considered.
199. An alternative, non-statutory, cooperative model that aims to achieve greater uniformity through focussing on developing 'best-practice' operations, systems, business models and application of various jurisdictions' heavy vehicle law has also been considered. A third model involves establishing a single, national uniform body of law so that, over time, greater consistency in operational delivery of that law might follow. The fourth option involves a single, national, uniform body of law administered by a single, statutory regulator as envisaged by the ATC.
200. The following four options for achieving a single, national, regulatory system for heavy vehicles will be considered as representing the potential framework for reform:

**Option 1: Retain the status quo (the 'base-case')**

**Option 2: A non-statutory national body supported by States and Territories, developing 'best-practice' models and systems to achieve greater uniformity in the administration of heavy vehicle laws**

**Option 3: Establish uniform national law adopted by all jurisdictions with no national regulator.**

**Option 4: Uniform legislation administered by a single, national, statutory regulator.**

201. Each option is described below, including a qualitative and economic analysis of the advantages/benefits and disadvantages/costs associated with it. The financial and economic analysis has been developed using data provided by State and Territory agencies, individual industry operators and from published data.
202. Summaries of the advantages and disadvantages of each option for identified stakeholders are included at Chapter 10 and an approach to implementing COAG 's decision to progress any of Options 2, 3 or 4 is included at Chapter 11.

### 6.1 COMMON CONSIDERATIONS ACROSS THE OPTIONS

203. The following issues are relevant to all proposed options. Where necessary, more particular detail has been included in the discussion of the individual options.

### 6.1.1 CONTENT OF NATIONAL LAWS

204. As discussed in Section 1.3, the national framework the ATC agreed to investigate provides that the national laws will encompass the breadth of current heavy vehicle regulation. Ministers did not make any decision to change the content of the national laws.
205. For the purposes of the RIS, an assumption has been made that the body of national heavy vehicle law will be the existing model legislation that has been agreed by all jurisdictions. This is particularly relevant to Options 3 and 4.
206. In formulating the content of uniform laws going forward, however, it would be necessary to resolve existing differences between the provisions currently in operation in each jurisdiction, to enable an agreed text to be determined. A stocktake of the implementation of existing model laws across jurisdictions is currently being undertaken to identify the policy rationale behind departures from those laws. While the stocktake is yet to be completed, it indicates a largely consistent policy intent across jurisdictions with less consistency around the 'discretionary decision-making' provisions of existing laws.
207. Understanding the reasons for those departures will inform the later development of national laws under either Options 3 or 4, and will more generally assist ongoing heavy vehicle reform under Options 1 and 2.
208. If either Option 3 or 4 is adopted and national uniform laws are required, additional regulatory impact assessments will need to be carried out where new laws are proposed, or where existing model laws change to produce impacts that have not previously been the subject of an impact assessment. These regulatory impact assessments would be carried out by the NTC.

### 6.1.2 DECISION MAKING PROCESS

209. A clear message from the consultation process was the need for clarity and transparency in the decision-making processes of regulators; this was seen as particularly important in relation to access and local productivity variations.
210. An agreement to support a common framework for decision-making processes could be included in an National Partnership Agreement supporting the national laws. Matters that must be taken into account by the decision-maker, a requirement for reasons to be given and appropriate procedures for review could be included in the regulations.
211. Guidelines issued by the national regulator to inform the day-to-day exercise of the decision-making function by the regulator's delegates, could include the following kinds of considerations:
  - consulting recognised assessment guidelines (eg Austroads guidelines on access assessment for local government, published HML networks, PBS outcomes etc);
  - establishing which organisations, agencies and/or governments (including local) might be consulted;
  - ensuring that where access is involved, asset owners have the final say;

- establishing reasonable timeframes within which decisions will be made;
- establishing information sharing protocols (to the extent needed to make a decision) and networks between agencies (acting on behalf of the national regulator) and with local government;
- a decision format that clearly provides the reasons why the decision has been made; and
- a review mechanism for decisions to be either appealed and/or clarified or reviewed, to ensure transparency and consistency.

### 6.1.3 VARIATIONS THAT ENHANCE LOCAL PRODUCTIVITY

212. Section 1.3 outlined the ATC's agreed approach to a national framework which included a decision that national heavy vehicle laws will make provision for variations that enhance local productivity. This consideration is of particular relevance to Options 3 and 4. In the transition to either of those options, it is important that existing approved productivity variations will be maintained.
213. A current example of such variations is the issuing of gazette notices or individual permits by jurisdictions that provide exemptions from rules in specific circumstances. Permits or notices might allow heavy vehicles used in particular local or regional industries (such as logging) to be exempted from particular vehicle standards and mass and loading requirements; they might allow network access under conditions; or allow certain agricultural vehicles seasonal registration in particular regions.
214. This ATC direction for national laws to make provision for variations that enhance local productivity does not require that any such variations be included in the 'black-letter' content of the national laws. Nor does the direction indicate that the 'local' area must be 'jurisdiction-wide': productivity enhancements can cover a relatively small area within a jurisdiction where a particular industry is based, for example; it might cover a region that goes beyond the boundaries of one jurisdiction that has particular characteristics.
215. Based on preliminary observations about jurisdictions' input to the stocktake of laws (Section 6.1.1), making provision for variations that enhance local productivity can almost certainly be achieved by providing in the laws, capacity for an agreed and transparent decision making process in support of uniform application of those laws. Those decision-making processes can ensure local, regional or jurisdiction-wide circumstances are appropriately taken into account.
216. The criteria for decision-making to assess variations that enhance local productivity could be included in an NPA and the legislation, and might include, for example, the need to:
- demonstrate it can provide for some efficiency or productivity dividend to a given local area;
  - not result in a diminution of safety;
  - reflect an agreed approach by governments, or relevant 'experts' in the field;
  - not be commercially discriminatory;

- include a 'sunset' provision that would trigger a review of the variation's use, effectiveness and ongoing applicability.

217. With monitoring over time (by the NTC or National Heavy Vehicle Regulator), variations that appear to reflect a national policy or have more general applicability, could be taken up through the NTC-ATC approval process for possible application on a national basis or inclusion in national laws.

#### 6.1.4 ACCESS

218. Access arrangements and access provision have been considered in the RIS primarily as a matter for the asset owner, consistent with Transport Ministers' decision. Consideration of access under each of the Options has therefore focussed on providing consistent and transparent decision-making processes and frameworks that aim to recognise both the primacy of the asset owner in relation to access<sup>129</sup> and the needs of industry to understand why a decision has been made and to achieve more consistent outcomes. Operators can then determine themselves how to respond to those regulatory decisions; through an appeal process or perhaps by reviewing their request for a decision.

#### 6.1.5 LEGAL MECHANISMS FOR ACHIEVING UNIFORM NATIONAL LAWS

219. As described in Chapter 3, the current approach to national regulation relies on 'model' laws. The framework the ATC agreed to investigate is based on achieving uniform laws; that is, the same law implemented in each jurisdiction. There are a number of relevant cooperative legal arrangements (mechanisms) by which constitutionally valid uniform national legislation can be achieved:

- '**reference of powers**' where the Commonwealth enacts the agreed legislation covering the whole subject matter relying on a reference of powers from the States in relation to those parts of the subject matter beyond the Commonwealth's constitutional powers;
- '**templated**' law where a 'host' jurisdiction enacts the agreed bill/template; each other jurisdiction has in place legislation that applies that template law without the jurisdiction required to do more (including in relation to agreed amendments to the templated law);
- '**complementary**' legislation where the Commonwealth enacts agreed legislation to apply to matters within its constitutional powers; each other jurisdiction has in place legislation that applies that law to matters outside the Commonwealth powers without the jurisdiction required to do more (including in relation to agreed amendments to the templated law).

##### 6.1.5.1 REFERENCE OF POWERS

220. With a **reference of powers**, the Commonwealth can legislate for matters over which it does not have constitutional power, if one or more States refers that matter to the Commonwealth. That Commonwealth legislation:

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<sup>129</sup> In Western Australia and Victoria, approval of access to all roads is the responsibility of state road agencies.

- will usually rely for constitutional power on both existing Commonwealth power (for example in relation to corporations and trade practices matters) and the 'matter' referred from the State or States (for example in relation to individuals and trade practices matters);
- can later be 'adopted' by jurisdictions that have not already referred the matter to the Commonwealth; and
- operates as Commonwealth law in all of the participating jurisdictions (i.e. whether referring jurisdictions or adopting jurisdictions).

221. It is more common now for jurisdictions to 'refer' the 'matter' by referring to an agreed draft text tabled in one of the jurisdictions' Houses of Parliament, which is then enacted by the Commonwealth parliament. This is combined with a reference of particular subject matters for the purpose of making amendments to the initial Commonwealth Act. The legislation of the referring State will include provisions such as the following:

- limiting that reference to have effect only to the extent that the matter is not within the Commonwealth's legislative powers and is within the legislative powers of the State;
- limiting the subject matter part of the reference to very specific parts of the proposed Commonwealth Act; and
- limiting the reference to a specific period of time or allowing that period of time to be determined by Proclamation (with appropriate notice).

#### 6.1.5.2 TEMPLATE LAW

222. For the options under consideration in the RIS, 'template' law would be enacted by a 'host' jurisdiction with a text agreed by the ministerial council (ATC). That law would then be applied as it is from time to time by each other jurisdiction ('participating jurisdiction') as the law of that jurisdiction.

223. An example of applied State template legislation is the National Electricity Law which is part of a co-operative scheme for regulation of the national electricity market and came into operation in December 1998. The 'host' jurisdiction is South Australia and the template legislation is the *National Electricity (South Australia) Act 1996* (SA). The current National Electricity Law is a Schedule to that Act, and that Law, together with the Regulations made under the *National Electricity (South Australia) Act 1996*, are applied by each of the national electricity market jurisdictions, that is, Victoria, New South Wales, Queensland, the Australian Capital Territory and Tasmania, as the law in their jurisdiction.

#### 6.1.5.3 COMPLEMENTARY LAW

224. Complementary laws operate very much like template law but with the Commonwealth as 'host' jurisdiction enacting the text agreed by the ATC. The difference is that the Commonwealth law is limited in its application to matters within the legislative power of the Commonwealth (such as corporations). Each jurisdiction would then apply that law in its jurisdiction in relation to residual matters that is those to which the Commonwealth law does not apply (for instance registered operators who are not incorporated). The Commonwealth law would contain a provision that



expressly preserves the operation of State and Territory laws that are capable of operating concurrently with the Commonwealth law.<sup>130</sup>

225. An example of a complementary law scheme is the Competition Code. The restrictive trade practices provisions in Part IV of the *Trade Practices Act 1994* apply to corporations and trade or commerce within the Commonwealth's legislative powers.<sup>131</sup> For the purposes of the application of Part IV to persons and partnerships by the States, the text of Part IV is appended in a Schedule to the Act in a form (the Competition Code) that is adopted directly by the States in that form.
226. More recently another approach has been adopted by the Commonwealth to achieve a similar outcome. The text of the *Gene Technology Act 2000* and the *Water Efficiency Labelling Standards Act 2005* are drafted in general terms with an application provision limiting the coverage of each Act to matters within Commonwealth legislative power<sup>132</sup> and as with the Trade Practices legislation, expressly preserving the operation of the corresponding laws of the jurisdictions.<sup>133</sup> Because of the nature of these cooperative legislative schemes, the participating States have in part replicated the legislation.

#### 6.1.6 NATIONAL PARTNERSHIP AGREEMENTS (NPA)

227. Regardless of the legal mechanism used to achieve uniformity or the extent and nature of the framework, the RIS proposes that each of Options 2, 3 and 4 would require a new National Partnership Agreement (NPA) to support the implementation and ongoing operation of the proposed national systems and/or laws. If a decision is made to implement any of the options in a staged manner, this would need to be reflected in the NPA.
228. The level and nature of detail included in an NPA under each of the options would vary considerably and is therefore included separately in the discussion of each option. Essential to each NPA, however, would be:
- a renewed and strengthened commitment by all parties to a national framework, including ATC agreed commitments to securing world-class economic and efficiency and safety outcomes;
  - agreed objectives of the NPA and principles for implementing the framework for reform (these may be based on those proposed in this RIS, for example);
  - the role, functions and operating arrangements for the agreed national system;
  - financial arrangements for the national system;
  - timing and administrative arrangements for establishing and supporting the national system;
  - a review mechanism to enable the efficacy of the national approach to be assessed; and
  - some indication of the 'priority' areas of reform in any staged implementation.

<sup>130</sup> See for instance, the *Trade Practices Act 1974*, s.150G.

<sup>131</sup> *Trade Practices Act 1975*, s.6.

<sup>132</sup> *Gene Technology Act 2000*, s.13; *Water Efficiency Labelling Standards Act 2005*, s. 9.

<sup>133</sup> *Gene Technology Act 2000*, s.16; *Water Efficiency Labelling Standards Act 2005*, s.11.

### 6.1.7 THE REVIEW OF THE NTC

229. All options retain NTC as a transport policy and regulatory reform adviser to ATC with input from all jurisdictions and industry stakeholders.
230. Consistent with the requirements of the National Transport Commission Act 2003, a review of the NTC Act and the Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport, is currently being undertaken.
231. The outcomes of that review may have implications for each of the four options presented below. The Review will report in September 2009. Consideration of the options in this RIS has therefore been done on the basis of the NTC's current operating framework: a body with responsibility for providing regulatory policy advice to the ATC will continue to exist. For convenience, the term 'NTC' is used in the following discussion where required.
232. In addition, a national heavy vehicle regulator would have input to the development of policy through providing feedback on the operation of the national law. Jurisdictions would also continue to have input into policy.

### 6.1.8 REGULATION REMAINING WITH THE JURISDICTIONS UNDER ALL OPTIONS

233. Under all options, jurisdictions would retain control over legislation that may, at times, interact with heavy vehicle law. This includes occupational health and safety legislation (noting that changes to these laws and institutional frameworks that might arise from the current COAG review of OH&S laws and arrangements), general road law, workers' compensation, criminal codes, primary industry legislation such as (animal welfare and food regulation) and environmental management. The proposed national laws would apply to the operation of heavy vehicles and not to the management of road networks or creation and/or maintenance of the road assets on which heavy vehicles operate.

### 6.1.9 GOVERNANCE ARRANGEMENTS FOR ALL OPTIONS

234. The ATC comprises Commonwealth, State and Territory Ministers responsible for transport, roads and marine and ports issues. The Commonwealth chairs ATC meetings which are generally held bi-annually. Out-of-session processes are also used to progress issues. The ATC is supported by the Standing Committee on Transport (SCOT) comprising a nominee of each ATC Minister, generally at Head of Department/Agency level. SCOT is supported by a formal committee structure which provides advice on a range of policy and technical matters.
235. All options retain the existing governance frameworks for input from jurisdictions through the ATC as the main policy decision-maker to the COAG.

## 6.2 OPTION 1: RETAIN THE STATUS QUO

236. As the status quo, Option 1 is also the 'base-case' for the cost-benefit analysis against which the other three options have been costed in the RIS. It is described in detail in Chapters 3 and 4.

### 6.2.1 NATIONAL LAWS

237. This option retains the existing bodies of law within each jurisdiction and the Commonwealth (FIRS).

238. It also retains the current system for developing a nationally consistent approach to regulation and reform; jurisdictions collectively developing model laws and supporting administrative guidelines through the NTC/ATC process and enacting them to the extent required by the current IGA.

### 6.2.2 NATIONAL REGULATOR

239. There is no national regulator under the current arrangements; there would be no change to this under this option.

240. Jurisdictions would remain responsible for implementing, administering and enforcing the legislation of their own jurisdiction.

### 6.2.3 REGISTRATION AND LICENSING


241. Work that has commenced on licence harmonisation (see Section 1.3.1) will continue for later decision by Transport Ministers.

242. Registration laws and systems will continue as they currently exist, with the Commonwealth continuing to administer FIRS under existing delivery arrangements with jurisdictions.

### 6.2.4 OTHER ISSUES

243. Measures could be taken to improve the current arrangements:

- Jurisdictions could refresh their commitment to achieving uniform or consistent legislation using the model law approach and work more urgently to eliminate identified inconsistencies for heavy vehicles operating interstate;
- The mechanism for implementing outcomes from the NTC model law maintenance process could be clarified and strengthened;
- The monitoring and reporting role of the NTC established in the current IGA could be strengthened to ensure a stronger approach to uniformity;
- 'Mutual recognition' provisions could be included in model laws to enable cross-border recognition of practices;

- 
- The results of the stocktake of variations to existing legislation that is currently underway (see Section 6.1.1) could be used to better inform development of future model legislation to provide a stronger, more common policy approach across jurisdictions.

244. The continuing problem however would be that there is insufficient incentive in the current arrangements to achieve resolution of differences between jurisdictions about the content the heavy vehicle law and its administration.

245. The role of the NTC remains the same (see Section 6.1.7), including in the monitoring, review and maintenance of reforms and reporting to the ATC.

## 6.3 OPTION 2: A NON-STATUTORY NATIONAL BODY SUPPORTED BY JURISDICTIONS, DEVELOPING 'BEST-PRACTICE' MODELS AND SYSTEMS TO ACHIEVE GREATER UNIFORMITY IN THE ADMINISTRATION OF LAW

246. This option focuses on standardising and creating greater uniformity in the **administration** of the body of law operating in individual jurisdictions.

### 6.3.1 NATIONAL LAW

247. This option retains the existing bodies of law within each jurisdiction and the Commonwealth (FIRS).

248. It also retains the current system for developing a nationally consistent approach to regulation and reform; jurisdictions collectively developing model laws and supporting administrative guidelines through the NTC/ATC process and enacting them to the extent required by the current IGA.

### 6.3.2 NATIONAL BODY

249. The proposed national body under this option is non-statutory, therefore is not referred to as a 'regulator' as in Option 4.

250. Governments would have to agree whether the non-statutory body would be a separate entity funded by governments collectively (from jurisdictions' registration revenues, for example), or whether it could be supported and effective as a co-operative intergovernmental 'working group', for example. Under either model, the agency would not be self funding and over time, there may need to be a process of investigating and establishing cost off-setting mechanisms.

251. The overall objective of this body would be to foster consistency in the administration of the model laws as they apply in each jurisdiction. It would, for example:

- develop generally-applicable business rules, procedures and guidelines (including possible technology use and/or systems improvement) and support agencies in their application. This might include, for example, developing standard formats, terminology and forms for common transactions such as registration and licensing or standardising processes and conditions for access permit applications;
- develop information sharing protocols between jurisdictions, agencies and governments to assist in registration, licensing and enforcement strategies, for example;
- collect and analyse heavy vehicle data on a national basis to facilitate more effective national compliance and enforcement and to help inform ongoing reform and policy development;
- formulate strategies, performance targets and operating procedures for agencies in implementing compliance and enforcement, and for agency reporting on the compliance and enforcement outcomes;

- manage the PBS Review, Dangerous Goods and Driver Fatigue Panels and the National Heavy Vehicle Accreditation Scheme initiatives on a national basis;
- provide (over time) a one-stop-shop for a range of industry's 'business transactions' with governments. This could include coordinating access permit applications across jurisdictions and agencies, or potentially co-ordinating the registration of components of a fleet in different jurisdictions;
- act as a central reference point for information to industry, jurisdictions and other stakeholders. Through a single website, for example, it could provide integrated information about laws and administrative practices throughout Australia as well as links to other relevant organisations and sources of information. It could be a single resource point for approved HML routes, agency gazettes and information on the differences in law or administrative practices across jurisdictions.
- provide assistance, information and advice to all stakeholders (including governments) on matters relevant to their roles and functions;
- undertake (either itself, or by promoting) research, analysis and evaluation of national heavy vehicle data and trends to inform and better coordinate regulator activities, establish best practice models and provide input into legislative reviews.
- communicate and liaise with industry, jurisdictions and other stakeholders and the public as necessary. It could provide information to NTC maintenance reviews of the model law and associated guidelines as well as to the development of new heavy vehicle policy and laws.

252. Examples of specific projects the agency could undertake might include the following:

- Facilitating consultation on regulatory and policy reform to ensure coordinated input from all stakeholders;
- Developing operational guidelines for the consistent use by agencies of exemption mass, dimension and loading laws notices on a regional/sectoral basis;
- Developing operating procedures and business rules for the exercise of discretionary powers under the model law (including in relation to inspection and identification/clearance of defective vehicles);
- Supporting agencies in applying standard operating procedures and business practices through training and reporting; and
- Developing and implementing national heavy vehicle education/information programs to assist all stakeholders in meeting their regulatory obligations.

253. Its functions would be separate from that of the NTC. It would not be concerned with developing policy or formally reviewing the effectiveness of model law. However, the agency would be able to provide information to the NTC for that purpose in accordance with the NTC's ongoing role in monitoring, reviewing and maintaining agreed reforms and reporting to the ATC.

### 6.3.3 NATIONAL PARTNERSHIP AGREEMENT

254. Jurisdictions would agree, through an NPA to create, support and utilise the outputs of a (non-statutory) body, in effect a 'national heavy vehicle practice improvement agency'. The nature of the body (eg separate agency; intergovernmental committee) and extent of its operations would be detailed in an NPA.
255. The NPA would set out what kind of information jurisdictions would undertake to provide to the body and what assistance the body would provide. Jurisdictions would undertake to apply the models, procedures and guidelines to the greatest extent possible.
256. Any new NPA would contain more detailed and effective mechanisms by which the model law maintenance program would be undertaken by the NTC and any ATC-approved outcomes implemented by jurisdictions under the model law process.

### 6.3.4 REGISTRATION AND LICENSING

257. Work that has commenced on licence harmonisation (see Section 1.3.1) will continue for later decision by Transport Ministers.
258. Registration laws and systems will continue as they currently exist, with the Commonwealth continuing to administer FIRS under existing delivery arrangements with jurisdictions.

### 6.3.5 OTHER ISSUES

259. As in Option 1, measures could be taken to improve existing regulatory development and implementation arrangements (see Section 6.2.4) to better achieve a national approach.
260. Network access remains the responsibility of jurisdictions and local governments.

## 6.4 OPTION 3: UNIFORM NATIONAL LAW ADOPTED BY ALL JURISDICTIONS

261. In this option, the focus is on achieving uniform 'black-letter' law throughout Australia. Administration and operations would remain with individual jurisdictional agencies exercising powers under the law of the relevant jurisdiction.

### 6.4.1 NATIONAL LAW

262. This option involves a single national system of heavy vehicle law. This set of laws would result from the aggregation and consolidation of the existing heavy vehicle law (see Section 7.1.1) registration, vehicle standards; mass and loading; oversize and overmass vehicles; restricted access vehicles, higher mass limits; concessional mass limits; fatigue management; heavy vehicle speeding, intelligent access program, and compliance and enforcement.

263. Agencies of each jurisdiction would retain responsibility for the administration of the law in each jurisdiction.

264. The 'complementary' laws (see Section 6.1.4.3) and 'reference of powers' (see Section 6.1.4.1) mechanisms are not considered relevant for Option 3 because it is not proposed that Commonwealth legislation be involved.

265. It is proposed that 'template' law (see Section 6.1.4.2) be enacted by a 'host' jurisdiction with each other jurisdiction adopting that law.

266. The Commonwealth would not propose to enact template law in the ACT as was the case under the 1991 Agreement and which is not considered to have been successful (see Section 3.1).

267. Ministers would sign up to the content of agreed national law through the ATC process and would be responsible and accountable to their individual Parliaments and their communities for its administration and enforcement within their jurisdiction, and dependent on their Parliaments for funding of administration.

268. The legislation passed in each 'participating jurisdiction' other than the host jurisdiction, might contain provisions of the following kind:

- a provision that identifies the law of the host jurisdiction that is intended to apply as the law of the participating jurisdiction for example "the law on mass, dimensions and loading as set out in Schedule 1 to the Heavy Vehicle Regulation Act of Jurisdiction X as in force for the time being applies as the law in this jurisdiction";
- an attachment that sets out the text as set out in that Schedule 1 so that the text of the law applying in the participating jurisdiction is included;
- definitional provisions that set out how references in the text to institutions in the host jurisdiction (such as the local agency, administrative tribunal, court or Minister) are to be read as references to the equivalent institution in the participating jurisdiction;
- a provision that states in which court of the participating jurisdiction offences under the law are to be dealt with;



- depending on any agreement reflected in an National Partnership Agreement (NPA), there may be provisions requiring:
  - the relevant Minister of the participating jurisdiction to table in the Parliament of that jurisdiction the text of any Act of the host jurisdiction that amends the template law within a specified period;
  - the attachment containing the text of the template law to be updated to ensure that it is always accurate (for information purposes only);
- a provision that ensures that a person is not punished for any one action or offence against the law of the participating jurisdiction as well as against the law of another participating jurisdiction or the host jurisdiction; and
- depending on any agreement reflected in an NPA, a provision that states when any amendment to the template commences in the participating jurisdiction and any circumstances in which it does not apply.

269. As the template law would apply in each jurisdiction as a law of that jurisdiction:

- any offence provisions would have to be drafted in such a way as to take account of the different legal environments in which the legislation was to operate;
- the laws would be enforced just as they are now ie by a combination of inspectors employed by the relevant road transport agency and the police;
- the offences under the law of the jurisdiction adopted from the template would be prosecuted in the courts of the jurisdiction and the courts of the jurisdiction would deal with those offenders;
- the laws of the jurisdiction on arrest, custody, criminal procedure and the related rules of evidence would apply in relation to those offences – any differences in court practices should not impact on the application of the content of the template law in the jurisdiction; and
- any differences in interpretation of the laws of each jurisdiction (which would be in the same terms and should therefore be to the same effect) would be resolved by appeal, eventually to the High Court.

270. While under this option there may continue to be issues in relation to the management of legislation timetables, jurisdictions and the NTC are now experienced with the road reform process and the heavy vehicle laws operating in each jurisdiction that would have to be consolidated are now substantially similar. Jurisdictions are much more used to participating in cooperative legislative schemes and the procedures for the drafting of the law through the Parliamentary Counsel's Committee has been refined and more formalised.<sup>134</sup> Some of the delay may be addressed in the choice of 'host' jurisdiction and more flexible mechanisms for updating the template law.

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<sup>134</sup> See now Parliamentary Counsel's Committee, *Protocol on Drafting National Uniform Legislation*, Third Edition, July 2008.

#### 6.4.1.1 THE PROCESS FOR IMPLEMENTING TEMPLATE LEGISLATION

271. Sections 3 and 4 of the RIS identified that not all ATC approved heavy vehicle policy is in the form of model law, that not all the model law itself has been adopted by all jurisdictions and that there are gaps in policy which jurisdictions have filled with their own law. An initial task would therefore be to settle on an agreed text for the host jurisdiction to enact; this would require the resolution of policy issues which in some cases have up until now proved difficult to resolve.
272. A 'single, national system' of heavy vehicle law does not mean that all parts of the law would have to be enacted at one time or that it would necessarily appear in one piece of legislation. The laws could be enacted in tranches, the content reflecting some natural subject-matter association. For instance, a package of registration and vehicle standards legislation as well as legislation for imposing heavy vehicle charges might be an initial text for templating; with laws on operational matters (all aspects of mass and dimension regulation and associated compliance and enforcement) to follow.
273. Because it would not be possible to make changes in the application of the template law to suit individual jurisdictions, the text provided for approval by the ATC would have to be as close to a final text for enactment by the host jurisdiction as possible. It would therefore be necessary for all policy, legal policy and drafting issues to be resolved before the text was approved.

#### 6.4.2 NATIONAL BODY

274. There would be no national heavy vehicle regulator or national practice improvement agency.
275. The expectation of industry operators that laws with the same content would be administered in each jurisdiction in a similar way to produce the same outcome might see significant pressure for differences in administrative, operational and enforcement practices between jurisdictions diminish. The NTC would continue to produce guidelines which are reviewed and updated on a regular basis to help ensure consistency in the application of the laws. This again could be a matter for reporting to the ATC.

#### 6.4.3 NATIONAL PARTNERSHIP AGREEMENT

276. A new NPA would be needed to establish mechanisms for implementation of the law and measures that would ensure improvements on current arrangements are clarified and strengthened.
277. The rules under which agreement is reached by the ATC to amendments of the template law in the host jurisdiction would be set out in an NPA. For example, these might include:
- that the amendment of some parts of the template legislation may require unanimous support in the ministerial council, others only majority support, and (possibly) some minor matters may be amended by the host jurisdiction without reference to the ministerial council;
  - the process by which the NTC would develop proposals for further reform of the template law, or for matters to be added to the template law or for the outcome of maintenance reviews to be incorporated by means of amendment to the template legislation, and the stakeholders to be consulted in that process;

- some kinds of draft amendments being publicly circulated before and/or after consideration by the ATC;
- whether and how members of ATC might be consulted if amendments are proposed to amending legislation while it is in Parliament;
- timeframes within which any future amendments would come into operation; and
- jurisdictions undertaking not to introduce inconsistent legislation, or determine not to have any future amendments apply in the jurisdiction except in specified circumstances (including their prior consideration by the ministerial council).

278. The NPA would also contain a more detailed and effective mechanism by which the model law maintenance program would be undertaken by the NTC with ATC-approved outcomes feeding into the template law process.

#### 6.4.4 VARIATIONS TO ENHANCE LOCAL PRODUCTIVITY

279. Under this option, variations to enhance local productivity can be catered for (as described in Section 6.1.2) with the criteria to be agreed in the NPA and being set out in the template legislation. The relevant decision making agencies in each jurisdiction would have to take those criteria into account in doing so. The NTC could be required to report to the ATC on the operation of any such variations and their consistency with the criteria.

#### 6.4.5 REGISTRATION

280. With uniform registration laws passed in all jurisdictions, there would be no rationale for the ongoing Commonwealth registration scheme. This option would therefore see the ending of the existing FIRS and the repeal of the Commonwealth legislation.

#### 7.4.6 LICENSING

281. Work that has commenced on licence harmonisation (see Section 1.3.1) will continue for later decision by Transport Ministers.

#### 6.4.7 OTHER ISSUES

282. The role of the NTC remains the same (see Section 6.1.5) under this option, including in the monitoring, review and maintenance of reforms and reporting to the ATC. There would be no 'national' input to this review process from a national body that has overall responsibility for administering the national laws.

283. While the process for the development of policy for new heavy vehicle reform regulation or for changes to the heavy vehicle law would remain the same (ie through the NTC after a RIS and



consultation process to the ATC for approval), the likely interest and involvement of the jurisdictions and industry in that process would be substantially greater because of its direct application in each jurisdiction.

## 6.5 OPTION 4: UNIFORM NATIONAL LAW ADMINISTERED BY A SINGLE, NATIONAL, STATUTORY REGULATOR

284. This option represents the full implementation of the framework agreed by the ATC:

- a single regulation entity to administer a body of national heavy vehicle laws;
- a body of national heavy vehicle laws that encompasses existing heavy vehicle regulation, making provision for variations to enhance local productivity;
- a national heavy vehicle registration scheme, established under Commonwealth law;
- a consistent approach to minimum standards for heavy vehicle driver competency and testing and to heavy vehicle driver training school recognition; and
- a single, physical, national heavy vehicle driver licence.

### 6.5.1 NATIONAL LAW

285. A body of national law does not necessarily require one piece of law or even that the national law(s) be enacted in one jurisdiction. However it does mean uniform law of the same content applying across all jurisdictions being administered by one body.

286. As described in Section 6.1.5, a single scheme for the national heavy vehicle laws could be established by:

- a referral of powers from jurisdictions to the Commonwealth;
- 'templated' laws; or
- 'complementary' laws.

287. The question is which of those options would be most suitable and appropriate given the nature of the subject matter; possible approaches may vary as described below. The legislative complexity of complementary and template mechanisms inherently adds a risk of challenge to their validity and efficacy; much greater clarity, legal certainty and simplicity would be assured if there were a reference of powers to the Commonwealth. While in some areas of cooperative legislative arrangements the risk of constitutional challenge may be small, the size and nature of operators in the transport sector that are subject to its criminal penalties may see that risk increased. Even an ultimately unsuccessful legal challenge could result in a real disruption to the administration of the system. A referral of powers is considered the most legally robust means of producing seamless uniform legislation applying throughout Australia.

288. The law would be administered by a statutory National Heavy Vehicle Regulator (NHVR).

289. Section 6.1.1 discusses the content of national laws.

290. With a **referral of powers**, the uniform law would apply as Commonwealth law in each jurisdiction, therefore:
- offences would be offences against Commonwealth law;
  - the relevant criminal courts of the jurisdictions would deal with offenders but could be limited to dealing with offences with some connection to that jurisdiction (for instance, the offence occurred or started in the jurisdiction);
  - the laws of each jurisdiction on arrest, custody, criminal procedure and the related rules of evidence would apply as they apply to laws of the jurisdiction; and
  - both Federal and local police could enforce the law, and inspectors employed by agencies would also enforce on behalf of the National Heavy Vehicle Regulator.
291. It would be possible for all the heavy vehicle laws, including registration to be enacted as **template** law (see Section 6.4.1) although that is not the ATC's current preferred position.
292. Paragraph 270 under Option 3 sets out the reason why it is not expected that template legislation with a 'host' jurisdiction would have the same problems experienced with the early road transport reforms under the 1991 Agreement. The remaining problem is the question of Ministers' political accountability in relation to laws over which they have no direct or immediate control. That issue (and the resistance of jurisdictions to the template law approach) can be addressed by the existence of a credible national regulatory body upon which jurisdictions' Ministers can place accountability for compliance outcomes.
293. If a '**complementary**' laws approach was taken, the legislation passed in each 'participating jurisdiction' might contain provisions of the kind described as relevant for Option 3 in paragraph 268. Similar kinds of rules for the amendment of the Commonwealth template law would be set out in a new NPA as they would be for template law where a State was host jurisdiction (see Section 6.4.3).
294. Under a complementary laws scheme, Commonwealth template law would apply across Australia to those matters within its coverage such as corporations. The law of each jurisdiction would apply to the remainder within each jurisdiction. Therefore:
- any offence provisions would have to be drafted in such a way as to take account of the different legal environments in which the legislation was to operate;
  - the laws would be enforced just as they are now i.e. by a combination of inspectors employed by the respective agencies and the police for both the Commonwealth and jurisdiction offences with the Australian Federal Police also able to enforce the Commonwealth laws;
  - both the offences under the law of the jurisdiction adopted from the template and Commonwealth offences would be prosecuted in the criminal courts of the jurisdiction;
  - the laws of the jurisdiction on arrest, custody, criminal procedure and the related rules of evidence would apply in relation to those offences – any differences in court practices should not impact on the application of the content of the template law in the jurisdiction; and
  - should any differences in interpretation of the laws of each jurisdiction (which would be in the same terms and should therefore be to the same effect) would be resolved by appeal, eventually to the High Court.

### 6.5.1.1 MECHANISMS THAT MIGHT BE USED FOR COMMONWEALTH REGISTRATION LAW

295. The ATC expressed a preference for registration to be established under Commonwealth law. As the Commonwealth does not have the power to cover all heavy vehicles or all heavy vehicle operators, this could only be achieved by:
- a referral of powers from States to the Commonwealth allowing the Commonwealth to legislate for the registration of all heavy vehicles; or
  - 'complementary' laws where the Commonwealth legislates to the extent of its powers, with jurisdictions enacting legislation that is substantively the same to cover registration of the remainder.
296. As described at section 6.1.4.1, a **referral of powers** from jurisdictions could be specific in the form of the text of an agreed bill rather than a description of the subject matter. The reference would be limited to heavy vehicles not within the Commonwealth's constitutional powers such as those owned/operated by individuals. All heavy vehicles would then be covered by the Commonwealth law irrespective of their ownership or the purpose for which they are used. All the registration charges would go to the Commonwealth to be distributed, as required by the ATC decision, to jurisdictions "on the current basis".
297. The '**complementary**' laws alternative is for Commonwealth legislation to cover only those heavy vehicles within its constitutional powers (corporations, and, if appropriate, those engaged in interstate and international trade and commerce). Other jurisdictions would agree, through an NPA, to adopt the legislation unchanged, applying it to those heavy vehicles not covered by the Commonwealth legislation.
298. The Commonwealth has used the interstate trade and commerce power as a basis for the FIRS legislation. This has produced some uncertainty because of the difficulty in establishing whether a heavy vehicle is in fact being used, or an operator is engaged in, interstate trade and commerce within the constitutional meaning of that phrase. For this reason, Commonwealth coverage might be limited to the registration of heavy vehicles of incorporated operators, leaving the laws of each jurisdiction to cover the remainder.
299. It needs to be noted that, irrespective of how a Heavy Vehicle Regulator was established (see section 6.5.1.2), the charges collected under Commonwealth registration charges legislation would go to the Commonwealth. As required by the ATC decision, these would be distributed to jurisdictions "on the current basis".
300. Irrespective of the mechanism adopted, the registration law would set out the criteria to be applied by decision-makers in the exercise of discretions under the legislation for instance, in determining what kinds of vehicles should get conditional registration and the nature of the conditions. The national regulator would formulate guidelines and business rules to be applied by agencies in the exercise of those powers.
301. Pending any change to the current distribution of the registration charge, it would be necessary to retain the 'garaging' concept in the uniform law but it should be possible for operators to register/renew registration of their vehicle outside the 'home' jurisdiction subject to the appropriate proof of the 'home' jurisdiction being provided.

## 6.5.1.2 MECHANISMS THAT MIGHT BE USED FOR THE NATIONAL HEAVY VEHICLE REGULATOR LAW

302. The National Heavy Vehicle Regulator (NHVR) could be established by:
- 'template' legislation enacted by a 'host' jurisdiction (not the Commonwealth); or
  - a 'referral of powers' to enable legislation to be enacted by the Commonwealth.
303. If established by a host jurisdiction using '**template**' laws, the NHVR would have appropriate powers and functions conferred by the national heavy vehicle law applying in each jurisdiction. Registration powers under Commonwealth law would also be conferred on the NHVR.
304. Because of the High Court decision in 2000 in the *Hughes* case,<sup>135</sup> constitutional issues would arise if the NHVR were to be established by legislation enacted by the Commonwealth but the other national heavy vehicle regulatory laws were enacted by the jurisdictions.
305. The NHVR would exercise powers and functions conferred by the law of the each jurisdiction which might involve the exercise of a duty. To the extent that this involved the exercise of that duty in relation to a matter that is not within a Commonwealth constitutional head of power, there is a risk that it might be invalid. For instance, if the law of each jurisdiction conferred investigative powers on the NHVR in relation to possible breaches of the mass and dimensions regulation aspects of the national law, and the NHVR (as a Commonwealth body) took some enforcement action as a result, that action may be open to a successful constitutional challenge if, for instance, the heavy vehicle involved was engaged solely in intrastate trade and was owned/operated by an unincorporated entity.<sup>136</sup>
306. For this reason, a NHVR established by Commonwealth legislation would only be a practical and constitutionally secure option in relation to all vehicles if the Commonwealth itself were also to enact all the national heavy vehicle laws in full, including registration, based on a **reference of powers** from the jurisdictions. Those Commonwealth national heavy vehicle laws would confer the appropriate powers and functions on the NHVR.
307. Irrespective of which of the mechanisms described above was adopted to implement each element of the single national law, the NHVR would exercise the powers and carry out the functions which would be conferred on it by the relevant Commonwealth and/or State and Territory laws and:
- agencies in each jurisdiction would administer those laws under delegated powers from the NHVR;
  - 'transport inspectors' and the police of each jurisdiction would exercise powers under the relevant laws (just as they do now under heavy vehicle laws in each jurisdiction and under the Commonwealth Interstate Road Transport Act 1985 in relation to FIRS vehicles);<sup>137</sup>

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<sup>135</sup> *R v Hughes* 202 CLR 535.

<sup>136</sup> A national regulator was established under Commonwealth law by the *Water Efficiency Labelling Standards Act 2005*. The Act contains quite complex provisions to deal with the *Hughes* issues (see sections 13 – 15).

<sup>137</sup> Difficulties associated with the enforcement of the FIRS legislation by State and Territory inspectors and police in part arises from the need to establish an offence under FIRS that the heavy vehicle was on an interstate trip at the time of the offence. That would not be an issue under this legislation.




- all the laws would be enforced in courts of each jurisdiction, either because the relevant behaviour was an offence under the heavy vehicle legislation of that jurisdiction (adopted from the 'host' jurisdiction) or under Commonwealth law (with the court exercising federal jurisdiction for that purpose as currently happens in relation to many federal offences including offences under FIRS); and
- the law would look seamless to transport operators. The NHVR website would contain all the necessary information about what was required to register, maintain and operate heavy vehicles in any part of Australia and the face-to-face point of contact would remain the agency in each jurisdiction, acting on behalf of the NHVR.

## 6.5.2 ROLE OF THE NATIONAL HEAVY VEHICLE REGULATOR (NHVR)

308. The primary responsibility of this statutory body would be the administration of the body of national heavy vehicle law that would see it:
- undertake functions conferred/imposed by any relevant law and exercise powers (including of compliance and enforcement) conferred by those laws;
  - develop *operational* policy and guidelines for the consistent use by agencies (for example, of exemption mass, dimension and loading laws notices on a regional/sectoral basis); and
  - act as a central point for industry interactions with government, including regulatory services (registration, licensing, access permits etc) and information sharing and provision.
309. The administration of the body of national heavy vehicle law would encompass the full range of activities specified in the law including compliance and enforcement activities. Where elements of the law are aimed at safety outcomes, the national regulator would be responsible for administering the law and associated activities, to achieve those outcomes.
310. The law under which the NHVR is established<sup>138</sup> would contain provisions on its functions and powers (including delegation), constitution (including whether it was to have a board), operations, finance and staff. The NHVR would exercise the powers specifically conferred on it by the national laws.
311. In order to carry out these functions, the NHVR itself might employ around 40 to 60 staff. The legislation setting up the NHVR would contain provisions to allow the NHVR to make arrangements with jurisdictions and their agencies to provide the services of their officers or employees to assist the NHVR in performing its functions, duties and powers.<sup>139</sup> In this way, the NHVR would be responsible for the administration of the uniform law, but the 'day-to-day' operation of the national legislation would be delegated to, and carried out by, the staff of existing agencies in each jurisdiction. These activities would be carried out within guidelines set by the NHVR.
312. Consistent with best practice regulatory approaches, the NHVR would not be responsible for the development of heavy vehicle regulatory policy. That function would remain with the NTC, with input

<sup>138</sup> This could be the law of a host jurisdiction, or the Commonwealth, but only where there was a reference of powers to the Commonwealth covering the regulation of heavy vehicles, not just registration.


<sup>139</sup> See for instance, *Water Efficiency Labelling Standards Act 2005*, s.24.



from jurisdictions and industry. The NHVR would likely have input to the development of policy through, for example, the provision of data and information arising from monitoring and reporting on its own operations.

#### 6.5.2.1 SPECIFIC ROLES

313. See sections 1.3.1 and 1.3.2 for discussion of issues related to licensing and registration.
314. The primary responsibility of the national regulator would be to **administer the entire body of the national heavy vehicle law**. The NHVR would be responsible for the outcomes of administering those laws through delivery of the activities that requires: from the 'day-to-day' matters such as registering trucks and administering licence testing to setting the standards for and collating the results of compliance and enforcement activities, to achieve the broader operating and safety goals established in the laws.
315. The NHVR would **administer the national heavy vehicle registration scheme** including:
- maintaining a national register and collecting registration fees in accordance with the legislation;
  - administering a scheme for regulating heavy vehicle standards and inspections in accordance with the legislation, including determining inspection, roadworthiness test and defect notice regimes;
  - developing operating procedures and business rules for the exercise of powers under the scheme (including in relation to inspection and identification/clearance of defective vehicles);
  - ensuring agencies exercising delegated registration powers apply those operating procedures and business practices through training and reporting; and
  - monitoring and evaluation of scheme operation (law and practice).
316. Jurisdictional agencies, acting for the Regulator, would undertake the registration function, collecting registration fees. Revenues (such as registration fees) collected by the Regulator on behalf of the Commonwealth would be distributed as per the current basis, in line with the ATC decision.
317. A key role for the NHVR would be in **development of guidelines on decision-making** in implementing particular areas of the law where industry seeks consistency across jurisdictions, such as the provisions for variations for local productivity enhancement and access to local roads (see Section 6.1.2.1).
318. The NHVR would also **act as a 'one-stop shop'** for heavy vehicle business interactions with government where, for example, applications for access permits that cover a number of jurisdictions could be made and resolved. Section 6.3.2 (Option 2) outlines the kinds of activities the one-stop-shop could perform.
319. It would also **manage the PBS initiative on a national basis** and the driver fatigue, dangerous goods and accreditation panels.
320. Under Option 4 the national heavy vehicle law would make provision for the **issuing of notices for classes of non-general access vehicles and permits** for individual non-general access vehicles by



the NHVR. To ensure consistency in decision-making, criteria for the making of these decisions (including for instance, such matters as safety of the public, protection of assets etc) would be set out in the legislation after consultation with jurisdictions and agencies. The NHVR would in the normal course delegate the power to issues notices and permits to individual jurisdiction agencies in accordance with NHVR guidelines. It would be a pre-condition for the issuing of a notice or permit that the relevant asset owners/operators had been consulted and their permission obtained. No such notice or permit could be issued without the consent of the owner/operator. Conditions in the notice or permit relevant to the efficient and sustainable management of the asset would be formulated in consultation with the asset owner/operator.

321. In consultation with the States and Territories, the NHVR would **develop key business and operational strategies** for the overall delivery of heavy vehicle regulatory services that would focus on more effective and strategic use of resources to achieve national productivity and safety outcomes. This could include:

- identification of cost savings through shared approaches to service delivery or purchasing of equipment;
- undertaking (either itself, or promoting) research, analysis and evaluation of national heavy vehicle data and trends to inform and coordinate regulation compliance activities, establish best practice models and provide input into legislative review.
- developing consistent approaches to compliance and enforcement activities that focus on safety outcomes;
- Over time develop processes to deliver consistent outcomes in particular areas of regulatory compliance, including the administration of Chain of Responsibility investigations.
- developing processes to manage the exchange of compliance data and intelligence between agencies in the jurisdictions and itself;
- monitoring and evaluating the application of standards/body of law across all jurisdictions;
- monitoring and evaluating the implementation of "local productivity variations" under the relevant legislation;
- specifying of performance standards for equipment and information technology used by compliance and enforcement workforces; and
- liaising with relevant asset owners (agencies in each jurisdiction, local government) where relevant to its functions (eg developing policy on exemption notices and permits).

322. The NHVR would also itself provide services that can benefit from a consistent and national approach such as where **information dissemination** is key:

- developing and implementing national heavy vehicle education/information programs in relation to its area of statutory responsibilities to ensure all stakeholders meet their regulatory obligations;
- providing assistance and advice to all stakeholders (including to policy development bodies eg ATC, NTC) on their role, functions and adopted standards;

- acting as a central reference point for industry information for example, publication of heavy vehicle access routes approved by jurisdictions; and
- communication / liaison with industry, jurisdictions and other stakeholders and the public (as necessary).

323. The NHVR would facilitate consistency in **services delivered through agreements** with jurisdictional agencies acting as a delegate of the NHVR, by:

- establishing guidelines and criteria for the exercise of delegated powers under the national heavy vehicle laws, including for the making of notices and granting of access permits;
- establishing strategies, performance targets and operating procedures for jurisdictional agencies to implement the compliance and enforcement aspects of the national laws (including compliance and enforcement in relation to access approvals issued by agencies);
- establishing procedures and standards for agencies to report on the range of their activities carried out under delegation (including the exercise of compliance and enforcement powers);
- developing standards to enhance consistency and efficiency of administration across jurisdictions (including for the handling of access permit applications and formulation of conditions exemption notices); and
- providing education/training to agencies for systems implementation and administration (eg on the national registration scheme).

324. Through **reporting** functions and mechanisms, the NHVR would provide advice to the ATC on its operations and of the effectiveness of the legislation framework for heavy vehicle regulation including possible amendments. As a statutory body, it would also report annually to the Minister of the jurisdiction in which it is based and ATC on its operations.

325. While the NTC would have the ongoing role in providing regulatory policy advice, the range of activities and functions outlined above would ensure the NHVR **contributes to policy development**. The NHVR would provide information to the NTC, usefully contributing to reviewing the effectiveness and continuing relevance of the national heavy vehicle law and hence to the development of new heavy vehicle policy and laws. Additionally, it could undertake tasks requested by ATC in accordance with the legislation eg development of policy principles, guidelines and codes of practice etc (the relationship between the NHVR and the ATC would be set out in legislation).

#### 6.5.2.2 AGREEMENTS WITH JURISDICTIONS

326. The national regulator would (at least, initially) purchase the bulk of regulatory and administrative services from jurisdictions (as is done under current, Commonwealth/State FIRS arrangements, for example).

327. Agreements between the NHVR and jurisdictions covering operating arrangements would be formulated to provide for “standardised” regulatory outcomes (for example delivery of a vehicle registration function) with resourcing and accountability arrangements appropriate and relevant to each jurisdiction. The agreement would, as a minimum:

- set service levels, delivery standards and desired outcomes for the national regulator;

- establish resourcing commitments and the nature and extent of the services to be delivered by parties to the agreement, within those resources;
- establish reporting requirements for jurisdictions to report on the degree to which services, standards and outcomes have been achieved;
- establish an agreed compliance and enforcement strategy, including the use of compliance and enforcement resources. This could require an annual 'enforcement plan' to be agreed that would show how local enforcement needs (eg to meet seasonal changes in heavy vehicle activity) could be met while achieving national outcomes;
- establish how the relationship with local police forces on enforcement issues would be managed, given that responsibility for road safety remains with individual jurisdictions;
- establish accountability and 'day-to-day' decision making parameters to reflect NHVR accountability and accountability for those exercising the NHRV's powers on its behalf.

328. Agreements between the NHVR and agencies are likely to vary between jurisdictions to reflect different circumstances, resources, skills and other issues particular to jurisdictions.

### 6.5.2.3 ENFORCEMENT PLANS

329. An important part of the agreements between the NHVR and agencies would be an annual 'enforcement plan' that establishes service levels, outcomes and resourcing for enforcement activities in each jurisdiction. Enforcement plans would be developed jointly between the jurisdiction and the national regulator and would reflect both the key need for consistent enforcement outcomes from national laws across the country, and the particular circumstances and planning of jurisdictions.<sup>140</sup>

330. The plans would establish:

- a consistent enforcement approach across jurisdictions (arising from the national laws);
- identified enforcement priorities for jurisdictions that may, for example, be based around activity levels of industries; where seasonal activities result in more heavy vehicles on the road there may be value in focussing enforcement activities in a given area to improve compliance and safety outcomes;
- the resourcing to be applied to enforcement activities that would also allow appropriate responses to emerging risks;
- strategies to address particular, identified compliance and safety concerns eg speeding in a known safety risk area;
- the need for, and resourcing of, specialised training in specific heavy vehicle regulation for both police and other compliance officers who would be enforcing those regulations; and

<sup>140</sup> As an example, the Victorian and South Australian Governments have recently released a "Green Triangle Region Freight Action Plan" that aims to coordinate freight supporting activities across infrastructure provision, regulation, job and skills opportunities and community and socio-economic development. As a first step, "Timber Transport Load Management Guidelines" for the Green Triangle Region have been issued jointly by both Governments.

- provisions for compliance and enforcement data collection and reporting to the national regulator to further inform compliance and enforcement operational policy.

331. Such enforcement plans would need to be consistent with established national safety outcomes, as well as addressing, where necessary, issues particular to a jurisdiction. An enforcement plan for Tasmania may, for example, contain specific, resourced activities that aim to improve safety compliance in the movement of forestry products throughout the State.

### 6.5.3 NATIONAL PARTNERSHIP AGREEMENT

332. Irrespective of the mechanism adopted to implement each element of the national uniform law, an NPA would need to be agreed and would set out, amongst other matters:

- the procedures by which amendments to the legislation would be formulated and agreed by jurisdictions and would include a provision that the Commonwealth/host jurisdiction would not amend the legislation except in accordance with those procedures.
- the same kinds of provisions for templated legislation as described in paragraph 268 above.

333. Where a reference of powers mechanism is used, the NPA might :

- include an undertaking by the Commonwealth not to legislate beyond the referral unless determined through the ministerial council;
- indicate that the Commonwealth legislation will not exclude the operation of the law of jurisdictions that can operate concurrently;
- include provisions about future amendment by jurisdictions of the referring legislation, the termination of the reference, withdrawal from the agreement and future review;
- specify the circumstances, if any, where jurisdictions could introduce inconsistent laws;
- require the Commonwealth to notify the ministerial council of any legislative proposals that would affect the national law; and
- include an undertaking from the States not to amend the referral legislation unless the ministerial council is consulted.

334. It will also establish and clarify:

- that parties to the NPA agree to the role and responsibilities (in broad) of the National Heavy Vehicle Regulator (with specific responsibilities detailed in the relevant legislation);
- governance arrangements for the Regulator, including the role and composition of any agreed Board structure;
- the service delivery arrangements to be established via separate agreements between the NHVR and jurisdictions
- the criteria used to establish what 'variations to local productivity' would be and the parameters that must be taken into account when making decisions on variations (see Section 6.1.2.1).

#### 6.5.4 GOVERNANCE

335. The NHVR would be required to comply with the governance and reporting requirements in the legislation under which it is established. The NPA might provide for it to have a Board to provide general governance/oversight and strategic guidance for the operations of the NHVR. A Board might include members with experience in the development and delivery of regulation, regulation compliance, legal matters, financial management, workplace relations and or human resource policies and arrangements. The relevant law would require protocols for managing potential conflicts of interest. If it were considered beneficial, especially in a transitional period and to facilitate the cooperation between it and the NTC, its Chair might also be the Chair of the NTC.
336. Jurisdictions (and industry) could have more direct input to the NHVR through an Operational Advisory Group (OAG). The Group would operate as a feedback mechanism between the NHVR and jurisdictions in areas of the NHVR's functions and responsibilities (outlined above) and would be made up of representatives from all the jurisdictions. The NHVR would also be required to consult regularly with the heavy vehicle industry and other stakeholders.
337. The NTC would continue to be responsible for the development of draft amendments (both refinements to current legislation and the implementation of new policy) after consultation with the jurisdictions, industry and other stakeholders and the NHVR.

## 7. THE ECONOMIC ANALYSIS

338. The overarching principles for heavy vehicle regulatory reform were established at Section 1.4. Industry representatives have summarised their issues as regulation needing to produce the 'same outcome in the same circumstances' – a regulatory environment that could be expected to support productivity gains, rather than impose costs through differences.

339. In 2006, an NTC report<sup>141</sup> identified current pressures that might justify a changed approach to regulation:

- the difficulty that prescriptive regulation has in responding in a timely manner to technological advances, thereby delaying potential productivity gains;
- prescriptive regulation not facilitating productivity outcomes for industry; and
- the lack of relevant, national data that could inform regulatory and compliance approaches.

340. The ATCS proposed approach that is the basis of this RIS is focussed on achieving productivity gains through more consistent, streamlined delivery of the existing body of law, rather than providing, at this time, a move to outcomes-based regulation that these pressures may indicate is warranted. That said, it is anticipated the deliverables from this reform could form a solid basis for further content reform that would see sustainable productivity as a driver of regulation. Those deliverables are:

- greater certainty for owners, operators and drivers;
- greater uniformity in administrative and compliance activities and costs;
- efficiency gains by moving to a reformed system regulated by one national agency;
- reductions in compliance and administrative costs and complexity with a single regulatory system, for owners, operators and regulatory agencies;
- application of common and transparent decision-making frameworks that provide clarity and consistency for both industry and jurisdictions;
- uniformity in practice and building a body of national data to drive operations and future policy and reform;
- a 'one-stop-shop' for heavy vehicle operators to streamline their interactions with regulation;
- a regulatory framework that can accommodate innovation and technological improvements to achieve efficiency, productivity and safety outcomes;
- improved compliance behaviour driven by more effective compliance and enforcement activities developed and delivered consistently at a national level; and
- with a consistent approach to regulation and enforcement, an improvement in safety benefits such as those described at paragraph 176. The consultation process has identified that for many operators, the cumulative effects of greater certainty and clarity would allow them to

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<sup>141</sup> National Transport Commission, *Improving the Regulatory Framework for Transport Productivity in Australia*, 2006 at paragraph 3.3.



focus on their driving rather than the need to comply with regulations, resulting in less stress and arguably better health and safety outcomes.

341. In identifying deliverables, it needs to be remembered that the RIS is examining a national framework, rather than the content of specific regulation that could be expected to produce specific or quantifiable outcomes such as a measurable increase in safety.
342. Each of the reform options have some or all of these deliverables built into them, and naturally, the level of benefit will vary depending on the option chosen by decision makers. It also needs to be acknowledged that different kinds of operators will achieve benefits from some options that others won't; Option 3, for example, may have less beneficial impact for intrastate operators than it might for interstate operators and industry consultation has indicated this could be so. This does not mean, however, that any of the options should be ruled out; the significance of the reform as part of a national framework for a national economy, must be assessed at a national level.
343. A cost-benefit analysis provided as a submission to the RIS<sup>142</sup> in support of a contention that Option 4 is "the only reform option that will address the key elements behind the regulatory problems faced by industry", has listed the following deliverables that could flow from a move to an Option 4 framework:
- Reductions in compliance costs directly related to the labour costs of employing additional employees as in the compliance, scheduling and driving roles;
  - Reductions in training costs, both in direct costs and loss of productivity while staff are in training;
  - Reduction in barriers to competition; removing additional compliance burdens to ease expansion into other markets.
344. The analysis in the Natroad submission concluded that, even allowing for transitional costs of moving to an Option 4 framework, industry on the whole would achieve cost savings of at least \$100 million per year from reduced compliance costs, at a net present value of \$1.7 billion.
345. Chapters 2 and 5 of the RIS have attempted to place some context around the importance of the heavy vehicle industry, in all its forms and operations, to the wider economy. Reform that reduces the overall regulatory burden and that achieves more effective, consistent, efficient and uniform regulation and outcomes for industry and government will be a large step towards more seamless heavy vehicle transport and freight markets.

## 7.1 THE COST-BENEFIT ANALYSIS

346. A cost benefit analysis usually compares the major costs and benefits of options in monetary terms; this enables the outcomes of each option to be compared in order to evaluate and make decisions about a preferred option.

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<sup>142</sup> Castalia Strategic Advisors, "Securing a National Approach to Heavy Vehicle Regulation. Report to the National Road Transport Operators Association (NatRoad)", February 2009. The Submission is available on the Department's website at <<[http://www.infrastructure.gov.au/roads/vehicle\\_regulation/ris/index.aspx](http://www.infrastructure.gov.au/roads/vehicle_regulation/ris/index.aspx)>>

347. The BITRE has noted that, despite the importance of the heavy vehicle industry to the Australian economy, accurate measures of road freight's importance are typically difficult to obtain and that trucking, in particular, is under-represented in GDP estimates.<sup>143</sup> The difficulties around data gathering and reporting to a range of factors can be attributed to a range of factors, including;
- the value added by ancillary fleets (in, for example, mining, retail and construction industries) is not accounted for within the road freight transport industry data;
  - ongoing structural changes in the industry that result in changes to the way vehicles and freight are managed and accounted for;
  - the diverse nature of the sector and its activities; and
  - the dominance of the road freight industry by small establishments.
348. In conducting the economic analysis for this RIS, difficulties in gathering data have been experienced for reasons that reflect those provided above and others. For industry, the costing of a 'framework' as opposed to a piece of regulation with specific content has proved difficult, as has the provision of data within the timeframes established for this RIS process. The varying business models that heavy vehicle operators use to both meet regulatory requirements and their own operating needs are not 'standard', such that they can be extrapolated from or used to 'typify' operations. The large proportion of owner-operators who, by necessity, spend much of their time on the road driving their vehicles, are not easily in a position to assist in providing data.
349. The cost-benefit analysis was included in the Consultation RIS that was placed on consultation in April 2009. Only one comment was made on the analysis: "The Agencies on-going costs increase under option 4 in the revised RIS, which is unfathomable. While some initial transitional agency cost increases may be possible, logic and experience say savings must be available due to reduced duplication of effort." No other stakeholder feedback was provided on the costs, benefits, methodology or outcomes of the analysis.
350. This section summarises the results of a financial and economic analysis of the proposed frameworks for reform that was undertaken for the RIS by and independent consulting firm. The full report is at Appendix A to the RIS.

### 7.1.1 METHODOLOGY AND DATA COLLECTION

351. The data sources for this cost benefit analysis came from:
- completed survey templates that sought to obtain consistently defined data on costs, revenues (government only) and other relevant metrics;
  - more than 40 meetings, interviews and consultations (in person and via telephone) with government agencies, industry peak bodies and representative groups, and industry operators;
  - written submissions provided to the RIS; and

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<sup>143</sup> BITRE, report 112 "Freight Measurement and Modelling in Australia", Canberra, 2006.

- publicly available sources including the Bureau of Infrastructure, Transport and Regional Economic (BITRE) and the Australian Bureau of Statistics (ABS).

352. This data enabled the construction of a picture of the costs and benefits, firstly of Option 1 (the status quo) and then of the changes under the other possible future state options. However, while sufficient data was gathered from governments for the analysis, industry was unable, and in many cases, unwilling, to provide sufficient or reliable data to fully quantify the benefits of reform options; some of this inability stemmed from a difficulty in translating a 'regulatory framework' to business operations (rather than regulation content), some from the timeframes in which the data was requested.
353. As a result, the approach taken in the cost benefit analysis has been to measure the expected percentage cost increase (or decrease) of each option taking into account total government and industry costs. This has then been assessed against available quantitative and qualitative benefits to establish if the expected increase in costs would be offset by anticipated, but un-quantified, benefits.
354. The resulting incremental cost of each option, on a net present value basis, is considered to be a measure of the productivity and efficiency benefits required to achieve a net benefit for society after the implementation of a proposed regulatory option.
355. Governments' heavy vehicle revenue data was also collected and Table 11 below shows a breakdown of the overall estimate of government revenues.

**Table 11 - Estimate of total government heavy vehicle revenues, 2007-08**

Revenue Area	\$'m
Registration and Renewal of Registration	680.9
Heavy Vehicle Permit Fees	11.5
Heavy Vehicle Fines	24.4
Heavy Vehicle Driver's Licence Fees	19.4
Accreditation Fees	4.0
Stamp Duty	260.0
Compulsory Third Party Insurance	264.0
Other Revenue	41.9
<b>Total</b>	<b>1,306.0</b>

## 7.1.2 RESULTS OF THE ANALYSIS

356. The Net Present Value (NPV) cost of each reform option is set out in Table 12 below.

**Table 12 - Net Present Value (NPV) of the costs of Options 2, 3 and 4.**

		Calculation	Option 2 (\$'m)	Option 3 (\$'m)	Option 4 (\$'m)
A	Likely incremental cost of each option		503	567	480
B	Total Government costs (base case)		1,706	1,706	1,706
C	Total Industry costs		121,567	121,567	121,567
D	Total Costs	B + C = D	123,273	123,273	123,273
E	<b>Cost increase with each option</b>	E = A/D x 100%	<b>0.41%</b>	<b>0.46%</b>	<b>0.39%</b>

357. The cost increase percentage represents the incremental increase in cost under the various options, as a percentage of the total cost to society. Because of the difficulties in gathering data from industry, however, this analysis assumes only an incremental increase in government costs of regulation and any changes to industry costs would have an impact on the assessment.

358. Notwithstanding these limitations, the costs associated with the implementation of option 4 are marginally less than the costs associated with the other options. However, as discussed below, the consultations indicate the benefits associated with Option 4 are likely to be significant and industry considers that there is a higher likelihood of realisation of these benefits under option 4.

#### 7.1.2.2 COSTS TO JURISDICTIONS

359. The costs to jurisdictions of implementing each of the options are set out below; all estimates have considered costs for the existing range of regulatory activities, including policy and legislative development, registration and associated activities; licensing activities; compliance and enforcement; education and training; management and corporate administration, 'other' costs and transition costs. The costs for each of the options have been developed using a base set of assumptions (included in the report at Appendix A).

360. Estimating future IT costs as part of a framework provided some difficulties but it is recognised that IT will be a cost at some time in the operations of a national regulator. The figures quoted in this section do not include IT costs, however sensitivity analyses on the reform options (using a nominal \$200 million figure) are included in the full cost-benefit analysis at Appendix A. The analysis indicated that under an Option 4 framework, the anticipated NPV incremental impact of Option 4 changed from 0.39 per cent to 0.49 per cent of the total costs of the heavy vehicle system in Australia.

361. The costs of maintaining the status quo, **Option 1**, have been estimated at \$218 million.

**Table 13 - Costs to jurisdictions of administering Option 1 (\$2007-08)**

Functional Area	\$ 'm
Policy	20.2
Registration and Permits (inc. Inspections)	50.8
Driver Licensing	8.7
Compliance Monitoring & Enforcement	109.0
Education and Information Provision	5.4
Management, Administration, Corporate and IT Support	20.8
Other	3.9
<b>Total</b>	<b>218.8</b>

362. Jurisdictions have estimated that **Option 2** would result in a 31 per cent increase in the cost of regulating heavy vehicle, as shown in Table 14. Jurisdictions expected the large increase to result from implementing consistent business models, processes, procedures and guidelines.

**Table 14 - Costs to jurisdictions of administering Option 2 (\$2007-08)**

Functional Area	\$ 'm
Policy	21.4
Registration and Permits (inc. Inspections)	83.1
Driver Licensing	8.8
Compliance Monitoring & Enforcement	135.0
Education and Information Provision	6.1
Management, Administration, Corporate and IT Support	24.4
Other	5.4
<b>Total</b>	<b>284.2</b>

363. The anticipated costs for **Option 3** are shown below in Table 15 and are estimated to total \$288.9 million. Cost increases were expected in the same areas as for Option 2, with the exception of a small decrease in policy function costs. Although estimated as small decrease, it would be expected that some lessening of costs would occur from the reduced need to maintain jurisdictional legislation. An assumption that the national law would not be the same as their existing laws and would require changes to administrative systems, has resulted in the increased costs under this option.

**Table 15 - Costs to jurisdictions of administering Option 3 (\$2007-08)**

Functional Area	\$'m
Policy	20.1
Registration and Permits (inc. Inspections)	87.0
Driver Licensing	8.9
Compliance Monitoring & Enforcement	135.5
Education and Information Provision	6.1
Management, Administration, Corporate and IT Support	25.7
Other	5.6
<b>Total</b>	<b>288.9</b>

364. As shown in Table 16, under **Option 4**, the cost of regulation is expected to be less than both Options 2 and 3 at around \$270 million, an increase of around 24 per cent over the status quo.

**Table 16 - Cost of administering Option 4 (\$2007-08)**

Functional Area	\$'m
Policy	13.3
Registration and Permits (inc. Inspections)	82.5
Driver Licensing	8.3
Compliance Monitoring & Enforcement	134.6
Education and Information Provision	6.6
Management, Administration, Corporate and IT Support	19.9
Other	5.2
<b>Total</b>	<b>270.4</b>

365. However, as Option 4 is 'bedded down' and functions transfer to the national regulator, reductions for jurisdictions are expected in registration, licensing, compliance and enforcement, education and information provision, with a 'mature state' Option 4 expected to cost significantly less.

**Table 17 – Annual cost to jurisdictions under a 'Mature State' Option 4 (\$2007-08)**

Functional Area	\$ 'm
Policy	13.3
Registration and Permits (inc. Inspections)	0
Driver Licensing	0
Compliance Monitoring & Enforcement	0
Education and Information Provision	0
Management, Administration, Corporate and IT Support	19.9
Other	5.2
<b>Total</b>	<b>38.4</b>

366. The costs of operating a 'mature state' National Regulator established under Option 4, exclusive of the costs of services delivered by the jurisdictions under a 'service agreement' (ie \$232 million per year), are expected to be \$14.7 million per year.

**Table 18 - Annual cost of a 'mature state' National Heavy Vehicle Regulator (\$2007-08)**

National Heavy Vehicle Regulator	\$ 'm
'Mature state' Option 4	14.7

367. Governments can also expect **transition costs** in moving to a new regulatory framework. Estimates of these costs provided by jurisdictions varied considerably and appeared to reflect differences in jurisdiction size, current regulatory regimes and interpretation of the scope of transition. A summary of those transition costs is shown in Table 18.

**Table 19 - Summary of transition costs under all options (\$2007-08)**

Option	Year 1 \$ 'm	Year 2 \$ 'm	Year 3 \$ 'm	Total \$ 'm
Option 1	0	0	0	<b>0</b>
Option 2	1.9	0.04	0	<b>1.9</b>
Option 3	5.8	1.8	1.8	<b>9.4</b>
Option 4	12.9	4.4	1.4	<b>18.7</b>

368. Using the available data and assumptions provided to estimate the costs for jurisdictions, all relevant costs (including NTC, AustRoads, Commonwealth agency and transition costs) were extrapolated over a ten year period for each option. To project the growth in total cost over the ten year period, the Consumer Price Index (CPI) rate of 3.70% was utilised. These costs were then discounted back using a 9.65% nominal discount rate, recommended by the OBPR, to determine the Net Present Value (NPV) of the total government cost over the 10-year period. The details of these calculations are included in the full report at Appendix A.

369. The resulting estimate of **total incremental government costs** shown in Table 19 are those resulting from implementing and administering each of the Options and represents the difference between the NPV for each option compared to the base case.

**Table 20 - Summary of incremental total Government costs over 10 years**

Option	NPV cost over 10 years (\$'m)	Difference between base case and option (\$'m)
Base Case	1,706	0
Option 2	2,208	503
Option 3	2,273	567
Option 4	2,185	480

370. These costs represent the net additional cost that need to be offset by the benefits to be delivered under each option. Under a cost-benefit analysis, the move from the status quo (Option 1) to another model of heavy vehicle regulation must ensure a positive net benefit is achieved.

### 7.1.2.3 COSTS TO INDUSTRY

371. As discussed at Section 7.1.1, the difficulties in gaining data from industry participants resulted in the need to use published data (supported by data received) to estimate total industry costs. Road freight data is the most published and readily available public data and has therefore been used as the base for estimating the total industry cost. The full details of the methodology used to establish total industry costs are contained in the cost-benefit analysis at Appendix A to the RIS and incorporates direct and indirect costs (including environmental and social externalities).
372. An annual industry cost of \$17.4 billion dollars has been estimated, which projected as an NPV over ten years equates to approximately \$137.8 billion.
373. In the data collection process, industry also identified what it perceived as unquantifiable benefit offsets that included the loss of local productivity gains; the addition of a layer of bureaucracy under Options 2 and 4; the reduction in industry's 'voice' to regulators in a national approach; and the uneven impact of national laws on certain industry sectors.

### 7.1.2.4 BENEFITS

374. The key consideration arising from this analysis is whether the percentage increase in costs (Table 8) in implementing reform is acceptable to government and industry participants, if the benefits that may be derived from industry (as a minimum) offset the increased cost of reform.
375. The incremental government cost of each of the options is to be considered relative to the total cost of road freight (that is, the total industry costs). This allows the total costs (including the increased cost of regulation) to be contrasted against quantifiable and non-quantifiable benefits. For example if a non-quantifiable benefit is expected to have a major impact on industry costs, even though it cannot be quantified, it may be contrasted against the expected cost increase. For a small cost increase, this benefit may justify an option, while if it cannot be shown this benefit is sufficient to cover a high cost increase, other benefits may be needed.
376. To determine the percent increase in freight cost under each option, the base case cost of road freight needs to be calculated. This cost is made up of direct economic/financial cost of road freight, and the associated externalities, both in terms of environmental and social costs. Similarly, possible benefits of regulatory change can include economic, environmental and social benefits.
377. The benefits from the proposed change in the regulation of heavy vehicles primarily accrue to industry with likely indirect flow on effects to society. Consultations with industry identified a range of benefits for each proposed regulatory option and provided an indication about the likely productivity and efficiency benefits that should accrue when the option is implemented. These benefits should be achieved under all options, however the likelihood of achieving the benefits, including productivity and efficiency improvements, are considered to be maximised under Option 4, the regulatory framework that provides for uniform legislation administered by a single, national, statutory body.



378. The benefits for industry that are likely to arise from implementation of option 4 (and to a lesser extent from Options 2 and 3) are discussed in detail in the report at Appendix A and include:

- Monetised benefits:
  - Benefit 1: efficiencies in business administration and information management; these are expected to come from reductions in the current operational and administrative costs of obtaining information and completing multiple processes to ensure compliance with local and inter-jurisdictional regulatory requirements. Savings and efficiencies are also expected from reduced training needs and the redeployment of staff currently employed solely in compliance functions;
  - Benefit 2: reductions in industry's regulatory and operational burden to ensure vehicle compliance; application of uniform laws, regulation and standards is expected to reduce barriers for industry and encourage interstate operations or operators to expand into new markets;
  - Benefit 3: reductions in the proportional costs of compliance that result from existing compliance-focussed business models (Benefit 3); the implementation of uniform model law and associated streamlining of administrative processes would allow business to adopt more flexible and responsive business models;
- Quantifiable but not monetised benefits:
  - Benefit 4: increased certainty of regulatory outcomes for industry; the implementation of uniform national legislation, combined with consistent policy and interpretation, promoted by a national regulator, could lead to increased certainty of outcomes, increased and easier compliance;
  - Benefit 5: improved and consistent policy and decision making: a national regulator with sole responsibility for the administration of regulation would likely result in better access to, and quality and consistency in, the body of industry data. This should lead to better information available for more appropriate, targeted decision making;
  - Benefit 6: streamlined and more coordinated approaches to 'interacting' regulation that industry must also comply with: centralised and uniform heavy vehicle legislation could enable its better alignment with other jurisdiction-based legislation such as occupational health and safety, environmental, industrial relations, animal welfare etc, with which industry must also comply;
  - Benefit 7: improved responsiveness and flexibility of regulation: uniform regulation under a national regulator could be more responsive to developments in technology and wider policy considerations such as road safety and environmental outcomes;
  - Benefit 8: improved industry input to developing policy that influences regulation and outcomes: more coordinated and streamlined regulation development with stakeholder input, the focus that a single regulator provides and possible industry representation on the board of the national regulator, could increase industry's voice in ensuring regulation targets industry's needs; and

- Benefit 9: improved likelihood of continuing productivity reform through creation of a 'centre of excellence' for heavy vehicle issues; the creation of a national regulator or body could consolidate industry and regulator expertise, creating a 'centre of excellence' for heavy vehicle matters that could provide ongoing regulatory and policy reform based on best-practice approaches.

### 7.1.3 SUMMARY COMPARISON OF COSTS AND BENEFITS

379. Table 20 below is a summary of the costs, quantified benefits from case studies (from supplied industry data) and including those benefits identified above. The table is not intended to enable a net present value of costs and benefits as the comparative functions are not necessarily comparable (i.e. the case study information is only representative of the case study participant not the entire industry or Australia). The table is presented to show on a line by line basis, the comparison of each item with its alternative to enable an assessment of the relative comparative value of each individual line item, by option, in comparison to the base case.

**Table 21 - Summary comparison of the costs and benefits of Options 2, 3 and 4**

Category		Option 2	Option 3	Option 4
<b>Costs</b>				
Percentage increase in costs (%)		0.41%	0.46	0.39%
<b>Quantified Benefits (in % savings)</b>				
Case Study 1*	Medium sized operator (<100 vehicles)	0.13%	0.13%	1.01%
Case Study 2*	Large sized operator (>100 vehicles)	0%	0%	2.5%
Case Study 3*	Large sized operator (>100 vehicles)	3.82%	3.82%	9.08%
Case Study 4	Small sized operator (<10 vehicles)	N/A	N/A	60%
Case Study 5*	Large sized operator (>100 vehicles)	1.94%	7.77%	9.71%
<b>Unquantifiable Benefits</b>				
Benefit 1		✓	✓	✓✓
Benefit 2		×	✓	✓✓
Benefit 3		×	✓	✓✓
Benefit 4		✓	×	✓✓
Benefit 5		✓	✓	✓✓
Benefit 6		✓	✓	✓✓
Benefit 7		×	✓	✓✓
Benefit 8		×	×	✓
Benefit 9		✓	×	✓✓

\* The total cost over 10 years includes direct, indirect and associated externalities. Details of the case studies are included in the full report at Appendix A.



#### 7.1.4 CONCLUSION

380. Based on the information gathered over the course of the cost benefit analysis, Option 4 presents the preferred option. It has the lowest incremental cost increase and the greatest identified quantifiable and qualitative benefits, having considered the likelihood of achieving those benefits.

## 8. CONSULTATION

381. This section of the RIS provides a summary of the key issues raised and commentary provided through the public/industry consultation process. A full report on industry consultation is at Appendix B to this RIS.

### 8.1 CONSULTATION PROCESS

382. A Consultation RIS was released for public and industry comment on 18 December 2008 by the Department of Infrastructure, Transport, Regional Development and Local Government (DITRD LG). The RIS was placed on the DITRD LG's website and was distributed to and through industry representative bodies.

383. In January and February 2009, DITRD LG together with representatives of jurisdictions, sought industry's views on the options presented in the RIS through consultation sessions held in:

- Brisbane (Darra) and Townsville in Queensland;
- Darwin in the Northern Territory;
- Adelaide, South Australia;
- Perth, Western Australia;
- Melbourne, Victoria;
- Launceston, Tasmania;
- Albury-Wodonga, New South Wales and Victoria;
- Canberra, Australia Capital Territory; and
- Sydney, New South Wales.

384. The sessions were attended by a wide cross-section of the industry including; industry representative bodies, training organisations, truck owner/operators, crane operators, bus companies, agencies of each state and territory and police forces.

385. In total, 217 people attended these sessions, representing 147 organisations involved in the heavy vehicle industry. Only one industry representative attended the Tasmanian session. A number of organisations that attended sessions such as the Australian Trucking Association, the Cattlemens' Association, the National Farmers' Federation and their affiliate member organisations represent many more industry participants than the 217 people who attended sessions.

386. These sessions were particularly useful for owner/drivers in providing an easy way for smaller operators to voice their concerns and offer their feedback on the four options presented in the RIS; for many this provided an alternative to providing a written submission.

387. DITRD LG provided a number of channels for stakeholders to provide feedback on the consultation RIS. In addition to the public consultation sessions, stakeholders could provide written submissions by email, fax or a questionnaire (available on both the website and at consultation sessions), or by calling

the Department with their comments. A number of meetings were also held with small groups of industry.

388. At the closure of the consultation period, 30 written submissions were received from across the heavy vehicle industry, 5 submissions from state and territory governments, and 1 submission from a local government representative body.
389. A second round of consultation was undertaken following a revision of the Consultation RIS to incorporate the issues raised in submissions and a cost-benefit analysis. In the second round, emailed and/or written requests for input were sent to peak industry bodies and those who had attended consultation sessions or placed submissions. The requests for input were accompanied by copies of the revised RIS, the cost-benefit analysis and the consultant's report on the first round of public consultation. The need to report the RIS to the ATC in May dictated a condensed consultation period of two and a half weeks from 8 April 2009 to 24 April 2009.
390. At the closure of the second consultation period, 9 submissions had been received, two of which were from state agencies.

## 8.2 SUMMARY OF ISSUES RAISED

391. Issues raised through the consultation sessions and written submissions showed that the Consultation RIS had identified industry's key concerns. Although there was a real diversity of opinion that largely reflected the diversity of industry and its operations, a number of key 'themes' emerged:

- *'Reform fatigue'*
  - A sense that similar measures have been 'promised' before but have not resulted in real benefits was strong, as was a real level of scepticism about governments' commitment to the latest round of reforms. The recent implementation of fatigue laws was consistently cited as 'typical' of governments' inability to agree, coordinate or regulate to serve industry.

*"In many parts of the country, operators have been frustrated for years by the perception that governments haven't given clear signals about how to resolve conflicts between the separate roles (and often conflicts of) interests between the various arms of government involved in building, maintaining and regulating the use of the road system.*

*Operators often see the boundaries in government between asset construction concerns, asset use concerns and safety/regulatory concerns as very unclear. They see important decisions being made in a non-transparent manner and receive little assistance in understanding the rationale applied. Too often, operators find themselves fighting between either separate agencies (or areas within one agency) to secure even simple improvements."*

*Australian Livestock Transporters Association – submission to RIS*

- *Inconsistency is imposing costs and administrative burdens on operators.*
  - Additional labour costs (hiring 'compliance officers' for example), efficiency losses (time spent in training staff for all regulations) and the preparation and updating of multiple and duplicate pieces of paperwork are having financial impacts.
  - These issues are shaping/limiting business operations; operators are making choices not to operate in some areas or markets, or not to carry certain freight to avoid complexity and costs.

*"Currently national companies operating transport businesses in different jurisdictions are unable to achieve administration savings and operational efficiencies from uniformity in operating environments. Further they cannot simply transfer equipment and staff between jurisdictions. Each business unit needs to address the particular laws in its jurisdiction and same operations in different states often require different solutions due to the inconsistent laws. This often requires duplication in management and administration streams and therefore inefficiencies on a whole-of-business basis."*

*Australian Trucking Association – submission to RIS*

- *Reform is important, but not at any price.*
  - Uniform law will provide clarity and certainty, but a 'lowest common denominator' approach to national laws will defeat any benefits from reform.
  - For interstate operators, uniform law is of little benefit without uniformity of its administration and a national approach to compliance and enforcement; for intrastate operators, existing variations to laws that support productivity are important.
  - Safety must not be compromised in the move to reform.
  - Reform that just results in additional layers of bureaucracy (largely seen as Option 2) is not welcome.
  - The value of existing 'network' relationships with local regulators was viewed as important, particularly in jurisdictions where industry perceived itself as having 'won' productivity gains under the laws of that jurisdiction.
- *Asset management and access issues remain unresolved.*
  - None of the options addresses one of industry's key issues; gaining easier and more consistent access to more of the road network.
- *Clarity and transparency in regulatory development and decision-making process is needed.*
  - Industry perceives that policy and regulation development and implementation does not reflect industry needs or input. Stronger industry input would provide efficiencies.

- Regulatory decisions (particularly on access and enforcement) reflect the regulator’s needs and often cannot be questioned or appealed without substantial costs.
- Uniformity of enforcement approaches is as important as uniformity of law and its administration.
- The timeframes for the production of the RIS that resulted in what industry perceived as an inadequate level of consultation and time for consideration of the issues, was seen as indicative of governments’ approach to the industry.
- Governments need to do more to assist industry to understand and comply with regulation. Industry wants better access to clearer information on regulation and how they need to comply.

*"Governments must ensure that Australia’s road agencies and police forces enforce the uniform national laws as intended and consistently across the country".*

*Australian Trucking Association – submission to RIS*

### 8.2.1 WRITTEN SUBMISSIONS - STATISTICS

392. All written submissions raised the issues listed above in a variety of ways and using a range of different examples to illustrate points, many of which have been used throughout the RIS.

393. In the first round of consultation, 44 per cent of respondents indicated Option 4 was their preferred approach.

**Table 22 – Support for Options from written submissions – first round of consultation**

	Responses in support	Percentage
Option 1	2	6%
Option 2	1	3%
Option 3	4	11%
Option 4	16	44%
Comments only	13	36%
Total	36	100

394. In the second round of consultation, a total of 9 submissions were received; of those, 77 per cent of respondents indicated Option 4 was their preferred approach.

**Table 23 – Support for Options from written submissions – second round of consultation**

	Responses in support	Percentage
Option 1	0	0%
Option 2	0	0%
Option 3	0	0%
Option 4	7	77%
Comments only	2	23%
Total	9	100

395. The second Consultation RIS that was released for comment in April 2009 contained a specific question on each of the four options:

“Do you see this option as affecting your business operations:

- A. Significantly?
- B. Moderately?
- C. Not at all?”

396. No responses were received to this question.

## 8.3 INDUSTRY RESPONSES TO THE FOUR OPTIONS

397. A summary of the issues raised in both the submissions and consultation sessions is included below.

### 8.3.1 OPTION ONE

398. Views on this option were generally split based on the degree to which an operator needed to comply with only one, or more than one set of regulations – i.e. whether a business operated intrastate or interstate (including operating in more than one jurisdiction).

399. While intrastate operators were generally keen to maintain the status quo and keep any concessions available in their jurisdictions’ laws, interstate operators were largely of the view that maintaining the status quo is no longer a feasible option for industry.

400. An intrastate operator in Townsville who wanted to maintain the status quo could see the advantage of this option as “there won’t be any additional costs to change anything and there won’t be a need to re-train your drivers”. Having to move to any other jurisdictions’ laws was viewed by intrastate operators as a move to the ‘lowest common denominator’.



*"My personal feeling in regard to uniting with the rest of Australia (other states) is that we seem to have the best rules and regulations that suit our state and road system. We certainly don't want to go backwards following some of the eastern states regulations... Overall if you do decide to unite Australia wide we must not lose any of our current advantages we have over the other states."*

WA operator – submission to RIS

401. Interstate operators on the other hand, felt the administrative overhead and cost of complying with eight different sets of regulations and administrative arrangements is having a detrimental impact on the industry, on the ability of the industry to expand to meet the increasing freight task, and on Australia's overall productivity. Both their direct costs (administration, labour, compliance) and indirect costs (efficiencies and productivity) are forcing them to make decisions about their business operations and viability. While there was a strong desire not to move to a 'lowest common denominator' system, the current regulatory framework does not serve their business or operational needs.

### 8.3.2 OPTION TWO

402. This option was largely seen as resulting in an additional layer of bureaucracy that would have no power to make real change. It was generally seen as not addressing the real issues and its lack of statutory agency reinforced some of the scepticism about governments' ability and commitment to reform
403. While there was an acknowledged benefit in standardised administration and a one-stop-shop ("You could go to one place to get everything you need"), that benefit was going to be limited by the voluntary nature of governments' cooperation with the scheme, the national body's lack of ability to 'make states comply' with standards and particularly, about the lack of capacity in this option to achieve national compliance and enforcement approaches across jurisdictions.
404. A representative from the South Australian Road Transport Association felt that, "...an advantage [of Option 2]... in a quick space of time that organisation [the non-statutory body] would gather an enormous amount of proof for why we need a single national law. This would be incredibly valuable, as there is currently possibly not enough information to convince Ministers".
405. While some participants saw this option as a good 'interim' step to getting to uniform, national law administered by a national regulator (Option 4), others were concerned that this option "did not address the range of issues faced by the industry"; it doesn't address access; it doesn't deal with inconsistencies and difficulties in compliance; it could delay further reform (on the basis that governments would be satisfied that the issues had been met and no further reform was necessary); it would create additional costs in dealing with another government body. The role of this body was seen as similar to that of the National Transport Commission.

*"This option fell short on all issues. The principal reason being the proposed body would be non-statutory. That means the proposed body would develop 'best practices' but would be limited in ensuring the States followed them. There is no obligation for the States to comply, resulting in no real benefit to our operation. It would not result in 'same situation, same application, same outcome'. It would not make it easier for us to understand our obligations. It would not remove the burden of understanding 8 different State Acts. It would not give us an Agency for definite determinations. This option does not assist [my company] in any way, alternatively it is possible that this option will simply provide another level of bureaucracy, effectively, hindering our ability to understand and comply with our obligations."*

NSW operator – submission to RIS

406. Participants viewed Option 2 as an easy option for governments. The benefits from the 'one-stop-shop' would not provide the 'same outcome in the same circumstances' and would not deliver real change for the industry.

### 8.3.3 OPTION THREE

407. While there was agreement amongst interstate operators and industry associations that uniform law would simplify compliance, many felt those benefits would be lost without a common approach to enforcement of those laws. The different approaches to the administration of those laws – operators would still need to deal with different processes, systems, agency cultures – also diminished the benefits of this option.
408. Concerns about the loss of local concessions under this option were also raised; in some states and territories this was expressed as the 'eastern states' would dominate and that would inevitably mean a move to the 'lowest common denominator' law.
409. Many participants felt that uniform law would be very hard to achieve: the differences in parliamentary processes in each jurisdiction, and the need for all jurisdictions to accept the law of the 'host jurisdiction' without the ability to vary that law would mean that governments would never reach agreement on the content of the law.
410. Interstate operators felt this would deliver some cost savings for industry, particularly in the area of staff training and general benefits in having clarity and certainty of compliance; this was seen as having qualitative benefits in reducing stress and stress-related health issues.
411. As with Option 2, access issues were considered a critical barrier. Operators saw no advantage to Option 3 if access issues were not resolved.

*"This option provides for greater consistency allowing single business and finance processes to be adopted although it would retain the problem of duplicity of processes and carry the inherent problem of inconsistency of application."*

National operator – submission to RIS

### 8.3.4 OPTION FOUR

412. While many interstate operators and industry associations supported this option, some submissions and comments from industry sought to ensure existing local concessions remained in a national system; a few were opposed to it. Some submissions called for further analysis on the potential impact of this option on intrastate operators and operators in the agricultural sector.

*"This option is completely out of the ball park, the idea that two regulatory bodies the NHVR and the NTC will dominate industry regulation will see us going from bad to worse... Although it has been promoted as the preferred option... it like Option 3 is over complicated, obviously the produce of bureaucracy... I see this Option 4 as the one Government will adopt as it fits the bill to control the road transport industry to the point that we will all find it impossible to operate. All of this is about new and increased charges..."*

National Road Freighters Association – submission to RIS.

413. Interstate operators and industry associations were of the belief that this option would deliver the biggest reform to the industry and the biggest benefit, provided the national regulator has sufficient political clout to enforce the national law and provided the National Heavy Vehicle Regulator is set up under a strong and clear governance structure.
414. Interstate operators felt this option would significantly reduce the administrative burden on operators and operational costs in the longer term. They also felt that achieving compliance would be easier as there would no longer be a requirement to comply with 8 or 9 different regulations and work with 8 or 9 different agencies.
415. This option was favoured by interstate bus and coach operators, who feel they currently face issues with a 'one size fits all' regulatory approach that can create difficulties in meeting the particular operational and seasonal needs of this industry sector.
416. Asset and access issues were once again highlighted as a major problem. Industry felt this option would not be as effective without uniformity of access arrangements and some respondents took a view that the national regulator should have powers to resolve access issues.
417. Respondents recognise that there would be initial set up costs but the expected benefits were considered to be of more importance. Some intrastate respondents dismissed this option on the basis of cost; the time it would take to set it up and that there were no strong benefits for them. There was

also concern that red tape and the political will of agencies would prevent this option from achieving its aim.

418. There was a clear call for industry involvement in implementing Option 4 to ensure national laws and systems take account of their operational needs.

*"Only Option 4 will provide uniform regulation, registration and licensing across all borders."*

National operator – submission to RIS

*"The TWU supports Option 4 ... as the preferred way forward. It provides a platform for the targeted intervention of a resourced regulator in the transport industry to improve safety... All the other options may provide benefits to productivity by reducing compliance costs, but they do not address the significant and urgent safety issues that must be the first priority."*

Transport Workers' Union – submission to RIS

## 8.4 HOW THE RIS HAS RESPONDED

419. The results of the consultation process indicated that overall, the draft RIS had appropriately identified the issues relevant to industry, particularly the interstate operations sector; intrastate operators largely reflected concerns about the impact of the content of any new laws. The difficulty for industry in commenting on a framework rather than a detailed regulatory proposal must be acknowledged.


420. The RIS has responded to consultation in a number of ways:

- the document has been 're-structured' in parts to better clarify a number of issues that were raised in relation to all options:
  - the issues common to all options have been brought together into one section, rather than being addressed under each option;
  - the same structure for discussing each option has been adopted with the same (or similar) headings used for greater clarity;
  - the presentation of the advantages and disadvantages has been simplified and brought into one section;
  - language has been simplified across the document;
- to address intrastate operators' issues around possible loss of existing productivity measures in existing jurisdiction-based laws, the elements of the ATC's decision on 'local variations' has been made clearer:
  - a discussion of suggested decision making processes to allow for variations has been strengthened (and removed from its previous location under Option 4). A possible decision-making framework has been outlined;

- the ATC's position on access in relation to this RIS has been more clearly stated;
  - the role of local government as asset owner and manager in access decisions has been clarified;
  - a discussion on the possible content of national laws has been included;
  - examples provided by industry of how the identified issues affect their operations have been included, to better and more directly reflect their concerns;
  - differing views and comments put forward by industry have also been included throughout the document, to better reflect the diversity of views on the reform proposals;
  - an economic analysis has been conducted and incorporated to quantify the national impacts of the proposed framework and the final analysis and recommendations incorporate the outcomes of that work;
  - a process 'road map' for implementing a decision has been added to provide some clarity about timeframes and mechanisms for implementation and to show how stakeholders can input to the process; and
  - an additional principle has been incorporated to reflect a call from industry that any national framework should provide for monitoring and review of the effectiveness of the regulatory system.
421. A brief examination of regulatory frameworks in the United States and Canada has also been included to provide at least a contextual comparison for the existing regulatory framework in Australia and the four options presented.
422. The RIS has not responded to industry issues that relate to the content of current laws or how current laws interact with other laws in each jurisdiction. Where relevant, some of the examples have been used throughout the document to highlight the identified regulatory issues, however the specific content of current laws fall outside the scope of this RIS.

## 8.5 ISSUES SPECIFIC TO JURISDICTIONS

423. All governments have agreed to investigate options for heavy vehicle regulatory reform and have worked collaboratively through the development of the reform options and the RIS itself. The principles of heavy vehicle regulatory reform established at Section 1.4 of the RIS reflect agreed, desirable policy outcomes; the guiding principles for implementing reform (Section 10.1) reflect agreed approaches to achieving those broad policy outcomes. At COAG level, all governments have agreed to improve the effectiveness and quality of government services and to work towards a seamless national economy.
424. Jurisdictions however (not unlike industry), are not homogenous and face policy issues relevant to their state or territory that have been, and must continue to be, considered in progressing reform that arises from this RIS; the discussion below acknowledges those issues.
- Safety
    - All jurisdictions agree that safety is a priority. New South Wales has placed strong emphasis on



ensuring the 'shared responsibility' safety approach established in existing chain of responsibility frameworks is carried through to a national system and a national regulator. South Australia and Victoria have emphasised the need for a national framework to coordinate safety outcomes across all relevant jurisdiction-based safety and enforcement authorities, including police forces. All jurisdictions are keen to see a national system able to respond to 'local' safety issues in a way that meets community and industry needs.

- Flexibility and responsiveness

Queensland, Western Australia and the Northern Territory have emphasised that a national system must adequately consider the existing productivity measures that have been built into their current regulatory systems. Additionally, these jurisdictions face policy considerations around isolated/ remote areas that a national system would need to be able to respond to. All jurisdictions see a need for a national framework to enable 'local' responses to 'local' issues, while not working against the consistency that is key to the proposed reforms. New South Wales is strongly supporting best-practice approaches across all heavy vehicle regulation and associated activities, including a national risk-based inspection and compliance monitoring regime.

- Economic impact

Each jurisdiction has key industries that support their ongoing economic health; a national system needs to support these activities where heavy vehicles play supporting roles. For jurisdictions like Queensland and Western Australia, for example, where heavy vehicles support key industries such as mining, there is a need to ensure that heavy vehicle reform does not negatively impact on those industries. While the Northern Territory has fewer vehicles registered than other jurisdictions, the heavy vehicle industry plays a strong economic role in tourism and is vital in supporting freight movements and service delivery to regional and remote areas. Similarly, Victoria and South Australia have recognised the significance of supporting key industries in the Green Triangle Region, for example and have taken a joint strategic planning approach to freight management for the area.

- Relative impacts on jurisdictions

The ACT, Northern Territory and Tasmania are conscious of the size of their economies and governments relative to other jurisdictions and the size of the heavy vehicle industry within their borders. All three jurisdictions have fewer heavy vehicles registered and have emphasised that the relative impacts of implementing reform must be considered. Tasmania's remoteness from mainland interstate trade and markets also needs to be considered in developing national approaches and systems.

425. These issues, along with those that require further ministerial level consideration such as legal and funding mechanisms for reform and a determination on the full role of the national regulator, are not easily settled in the presentation of a framework for reform such is under consideration in the RIS; nor can their importance be minimised. They are, however, matters that can be resolved in the implementation of any decision to proceed with reform and the cooperative approach governments have taken to the development of the national framework has laid a solid base for their resolution.

## 9. SUMMARY AND RECOMMENDATION

426. This section draws together both the details of the Options described at Chapter 6 and the economic analysis of the Options described at Chapter 7 and provides an analysis of the advantages and disadvantages of each of them. Using that analysis, a recommendation is made on a preferred option, having weighed each of the options against the objectives of reform established in Chapter 1.

### 9.1 SUMMARY OF THE ADVANTAGES AND DISADVANTAGES

427. The summaries of each of the options provided below, are presented in terms of advantages and disadvantages for industry, governments and 'other' (ie more general considerations such as industry's customers, COAG's reform agenda, national policy development and the like).

#### 9.1.1 OPTION ONE

428. In maintaining the status quo, Option 1 retains existing systems for developing, implementing and enforcing regulation and the differing business and administrative systems that support regulation also remain. Existing inefficiencies, costs, replications and regulatory burden remain. Option 1 is therefore considered to have no overall gain for industry or governments. In the first round of consultation, six per cent of respondents to the RIS indicated that Option 1 was their preferred option; no support for this option was indicated in the second round of consultation.

429. The tables below summarises the advantages and disadvantages of this option.

**Table 24 - Advantages and Disadvantages of Option 1**

	Industry	Governments	Other
ADVANTAGES	<ul style="list-style-type: none"> <li>No transitional costs imposed from implementing a new framework.</li> <li>Variations that enhance productivity in some jurisdictions' existing laws are retained.</li> </ul>	<ul style="list-style-type: none"> <li>No transitional costs imposed from implementing a new framework.</li> <li>Variations that enhance productivity in some jurisdictions' existing laws are retained.</li> <li>Flexibility in adopting model law retained</li> <li>Legislation can be timed to consider specific circumstances (eg parliament sittings, elections etc)</li> <li>Retain direct control over revenue and can impose other charges</li> <li>Retain direct responsibility for outcomes</li> <li>Most direct means of managing assets.</li> </ul>	



	Industry	Governments	Other
<b>DISADVANTAGES</b>	<ul style="list-style-type: none"> <li>▪ Existing legal, administrative and enforcement differences remain, and could increase over time, along with costs.</li> <li>▪ No lessening of regulatory burden or costs.</li> <li>▪ Potential productivity gains from seamless systems are not possible.</li> <li>▪ No certainty for industry of outcome or uniformity of compliance requirements.</li> <li>▪ Cannot achieve 'same outcome in the same circumstances'</li> <li>▪ Provides no real impetus for jurisdictions to move to national uniformity.</li> <li>▪ Not a strong mechanism for implementing future access and pricing reforms.</li> <li>▪ Does not resolve access issues.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Continue to pay for replicated systems.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Provides no real impetus for jurisdictions to move to national uniformity.</li> <li>▪ Not a strong mechanism for implementing future access and pricing reforms.</li> </ul>

### 9.1.2 OPTION TWO

430. The non-statutory, best business practice mechanism maintains the existing differences in regulation, but is expected, over time, to provide greater clarity and uniformity in administrative and business and decision-making practices that support that regulation. The operation of a 'one-stop-shop' could be expected to provide savings to industry and provide information, guidance and clarity in compliance requirements. For jurisdictions, there is a benefit in maintaining regulatory status quo, but possible additional costs in reforming administration of regulation and in supporting the national agency.
431. The option relies on agreements between jurisdictions to both work cooperatively and to fund the agency. These agreements and common approaches to administering regulation may also act to build momentum for further regulatory reform. Where industry begins to see benefits from reform, it may also begin to generate a strong demand from industry for wider reform, including regulatory.
432. This option was costed as the second most expensive to implement in the economic analysis. Three per cent of respondents in the first round of consultation indicated Option 2 was their preferred approach; no support was indicated for this Option in the second round of consultation.



433. The tables below summarises the advantages and disadvantages of this option.

**Table 25 – Advantages and Disadvantages of Option 2**

	Industry	Governments	Other
<b>ADVANTAGES</b>	<ul style="list-style-type: none"> <li>▪ Greater consistency and transparency in decision making processes, particularly around issues such as access.</li> <li>▪ Greater uniformity in business practices may achieve cost reductions.</li> <li>▪ Variations that enhance productivity in some jurisdictions' existing laws are retained.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Variations that enhance productivity in some jurisdictions' existing laws are retained.</li> <li>▪ Flexibility in adopting model law retained.</li> <li>▪ Greater uniformity in business practices may achieve cost reductions.</li> <li>▪ National approach to technology use may allow efficiencies in purchase and/or deployment arrangements.</li> <li>▪ Legislation can be timed to consider specific circumstances (eg parliament sittings, elections etc)</li> <li>▪ Retain direct control over revenue and can impose other charges.</li> <li>▪ Retain direct responsibility for outcomes.</li> <li>▪ Retain direct means of managing assets.</li> <li>▪ Collection of national data can inform policy, regulatory development and enforcement.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Could act as a starting point for later implementation of a single national regulatory and body of national regulation.</li> <li>▪ Collection of national data can inform policy and regulatory development.</li> </ul>



	Industry	Governments	Other
DISADVANTAGES	<ul style="list-style-type: none"> <li>Existing legal and enforcement differences remain, and could increase over time.</li> <li>No lessening of regulatory burden or costs.</li> <li>No certainty for industry of outcome or uniformity of compliance requirements.</li> <li>Cannot necessarily achieve 'same outcome in the same circumstances'.</li> <li>Differences in regulation may mean that uniform business models, procedures and guidelines are difficult to achieve.</li> <li>Provides no real impetus for jurisdictions to move to national uniformity.</li> <li>Not a strong mechanism for implementing future access and pricing reforms.</li> <li>Costs of complying with different regulation remain.</li> <li>Non-statutory nature could make it 'toothless in achieving consistency / uniformity.</li> <li>Does not resolve access issues, although decision making framework will provide clarity.</li> <li>Limited opportunity for productivity gains.</li> </ul>	<ul style="list-style-type: none"> <li>Differences in regulation may mean that uniform business models, procedures and guidelines are difficult to achieve.</li> <li>Jurisdictions would have to agree to resource the agency.</li> <li>Jurisdictions continue to carry costs of replicating regulatory systems.</li> <li>Second most costly option to implement.</li> </ul>	<ul style="list-style-type: none"> <li>Provides no real impetus for jurisdictions to move to national uniformity.</li> <li>Not a strong mechanism for implementing future access and pricing reforms.</li> <li>Differences in regulation may mean that uniform business models, procedures and guidelines are difficult to achieve.</li> <li>Perceived by industry as 'an additional layer of bureaucracy'.</li> <li>Non-statutory nature could make it 'toothless in achieving consistency / uniformity.</li> <li>Limited opportunity for productivity gains.</li> <li>Second most costly option to implement.</li> </ul>

### 9.1.3 OPTION THREE

434. Achieving uniform law under this option could be expected to provide industry benefits in greater clarity and certainty in regulatory requirements that, in turn, have been identified in the economic analysis as providing some savings in compliance activities. However, inconsistencies in administering and enforcing regulation would remain with their associated costs.

435. Jurisdictions will need to agree legislation and there may be time delays in achieving this and jurisdictions would face costs in developing and implementing uniform law. There would be no change

to the administrative systems that support the provision of regulatory services and functions by jurisdictions and the costs of replicated systems would continue to be borne by jurisdictions.

436. Eleven per cent of respondents to the RIS indicated Option 3 was their preferred approach; in the second round of consultation, no further support was given to this Option.

437. The table below summarises the advantages and disadvantages of this option.

**Table 26 - Advantages and disadvantages of Option Three**

	Industry	Governments	Other
ADVANTAGES	<ul style="list-style-type: none"> <li>▪ Certainty of 'black letter' law makes compliance requirements clearer.</li> <li>▪ Regulatory burden could lessen with disappearance of differences in regulation.</li> <li>▪ Possibility of 'same outcome in the same circumstances' substantially increased.</li> <li>▪ When fully implemented, provides a faster means of implementing ATC agreed reform.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Retain direct control over revenue and can impose other charges.</li> <li>▪ Retain direct means of managing assets.</li> <li>▪ Savings in legislative resources and time in enacting agreed laws.</li> <li>▪ Retain direct means of managing assets.</li> <li>▪ When fully implemented, provides a faster means of implementing ATC agreed reform.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Uniform law could be expected to result in industry pressure for uniform administration.</li> <li>▪ Could act as a starting point for later implementation of a single national regulator and best-practice business operations.</li> <li>▪ When fully implemented, provides a faster means of implementing ATC agreed reform.</li> </ul>
DISADVANTAGES	<ul style="list-style-type: none"> <li>▪ Uniform law will take time to develop and may result in implementation costs.</li> <li>▪ Will not resolve access issues.</li> <li>▪ Benefits of uniform law could be lost if not supported by uniform administration and enforcement approaches.</li> <li>▪ Will not result in uniform enforcement strategies or approaches.</li> <li>▪ Resolution of policy issues behind current differences may be difficult.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Uniform law will take time to develop and may result in implementation costs.</li> <li>▪ National law may be more difficult to change and have some inflexibility in updating to meet emerging issues.</li> <li>▪ Resolution of policy issues behind current differences may be difficult.</li> <li>▪ Some of the problems around 'template' legislation encountered in early reforms may remain.</li> <li>▪ It is the most costly option to implement.</li> </ul>	<ul style="list-style-type: none"> <li>▪ National law may be more difficult to change and have some inflexibility in updating to meet emerging issues.</li> <li>▪ Resolution of policy issues behind current differences may be difficult.</li> <li>▪ It is the most costly option to implement.</li> <li>▪ Full effect of efficiencies from uniform law could be lost if not supported by uniform administration and enforcement approaches.</li> </ul>

#### 9.1.4 OPTION FOUR

438. When fully implemented, this option provides clear benefits to industry: greater certainty of regulatory requirements will provide savings in operational and compliance activities; agreed and transparent approaches to enforcement will also provide certainty and provide increased safety through a lessening of stress and a greater certainty in operations; standardised administrative practices across jurisdictions and transparency in decision making by governments will relieve costs, simplify business operations and enable easier and higher levels of compliance.
439. Jurisdictions maintain their role in managing their assets under uniform law, continuing their input to national policy and regulatory development, possible savings from one-stop-shop operations and standardised administration systems.
440. Both industry and jurisdictions would face establishment/transition costs but these could be expected to be offset by efficiencies as the national system is fully implemented. Jurisdictions will need to agree legislation and there may be time delays in achieving this.
441. Forty four per cent of respondents to the RIS, supported Option 4 in the first round of consultation; of nine submissions received in the second consultation round, seven supported Option 4.
442. The table below summarises the advantages and disadvantages of this option.



**Table 27 - Advantages and disadvantages of Option Four**

	Industry	Governments	Other
<b>ADVANTAGES</b>	<ul style="list-style-type: none"> <li>▪ Certainty of 'black letter' law makes compliance clearer and cheaper to achieve.</li> <li>▪ Enables national strategies to be developed and implemented in areas such as compliance, enforcement, chain of responsibility.</li> <li>▪ Clarity and transparency in decision-making provides greater certainty and likelihood of 'same outcome in the same circumstances'.</li> <li>▪ When fully implemented, provides a faster means of implementing ATC agreed reform.</li> <li>▪ 'One-stop-shop' operations simplifies business interactions with governments and greater clarity in information provision.</li> <li>▪ Development and analysis of national body of data will provide evidence base for future reform and policy development.</li> <li>▪ Access decisions made in a clear, transparent and consistent manner.</li> <li>▪ Will facilitate consistent approaches to productivity improvements.</li> <li>▪ Clear lines of responsibility for administration of regulation.</li> <li>▪ Regulatory burden will lessen with disappearance of inconsistencies and duplication.</li> </ul>	<ul style="list-style-type: none"> <li>▪ When fully implemented, provides a faster means of implementing ATC agreed reform.</li> <li>▪ Development and analysis of national body of data will provide evidence base for future reform and policy development.</li> <li>▪ Maintain direct role in asset management.</li> <li>▪ Reduced duplication of strategic development.</li> <li>▪ Clear lines of responsibility for administration of regulation.</li> <li>▪ Least costly option to implement.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Enables national strategies to be developed and implemented in areas such as compliance, enforcement, chain of responsibility.</li> <li>▪ When fully implemented, provides a faster means of implementing ATC agreed reform.</li> <li>▪ Development and analysis of national body of data will provide evidence base for future reform and policy development.</li> <li>▪ Will facilitate consistent approaches to productivity improvements.</li> <li>▪ Least costly option to implement.</li> </ul>































	Industry	Governments	Other
<b>DISADVANTAGES</b>	<ul style="list-style-type: none"> <li>▪ Uniform law and common business practices will take time to develop.</li> <li>▪ Changes will result in implementation costs.</li> <li>▪ Will not fully resolve access issues.</li> <li>▪ Resolution of policy issues behind current differences may be difficult.</li> <li>▪ Legislative complexity may impede implementation.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Uniform law and common business practices will take time to develop and may result in implementation costs.</li> <li>▪ National law may be more difficult to change and have some inflexibility in updating to meet emergency issues.</li> <li>▪ Resolution of policy issues behind current differences may be difficult.</li> <li>▪ Some of the problems around 'template' legislation encountered in early reforms may remain.</li> <li>▪ Legislative complexity (eg use of both template and Commonwealth law) may impede implementation.</li> <li>▪ Set-up costs and resource implications vary between jurisdictions.</li> <li>▪ Stamp-duty, CTPI and fee concession/exemption issues will need to be resolved.</li> <li>▪ Changes will result in implementation costs (eg splitting heavy vehicle registration from 'general' registration law and systems).</li> <li>▪ Perceived loss of control of day-to-day and political responsibility in jurisdictions.</li> </ul>	<ul style="list-style-type: none"> <li>▪ National law may be more difficult to change and have some inflexibility in updating to meet emergency issues.</li> <li>▪ Resolution of policy issues behind current differences may be difficult.</li> </ul>

## 9.2 SUMMARY OF THE OPTIONS AGAINST THE PRINCIPLES OF HEAVY VEHICLE REFORM


443. The principles supporting the proposed reforms were established at paragraph 36. The table below rates each of the options against each of those principles, having considered the policy (qualitative) and economic (quantitative) issues discussed in the document.

444. Option 4 shows the strongest correlation with the principles of heavy vehicle reform.

**Table 28 - Assessment of the reform options against the reform principles**

	Option 1	Option 2	Option 3	Option 4
<b>Principle</b>				
Uniform laws and administrative practices should achieve the 'same outcome in the same circumstances' across Australia				
Regulatory burden will not increase overall as a result of the reform				
Legal and administrative costs of regulatory compliance will be minimised				
Productivity, effectiveness and safety of the heavy vehicle industry are enhanced				
Efficient, productive and sustainable freight and heavy vehicle operations will be facilitated, consistent with sustainable management of state and territory assets				
The framework should allow for regular review and evaluation of the regulation and supporting systems to ensure their ongoing national relevance and efficacy				
<b>TOTAL</b>				


KEY:  Achieves principle

 Does not achieve principle

## 9.3 RECOMMENDATION

445. Both the qualitative and economic analyses presented in the RIS indicate that Option 4 is the preferred option. It presents the clearest overall benefits (stronger for industry than for governments), is the least cost option to implement, and achieves stronger correlation between the principles of heavy vehicle reform. The majority of respondents to the RIS who indicated a preferred reform option (44 per cent), indicated Option 4 as the reform option that would best resolve their issues and provide a framework for more productive operations.
446. Option 1 cannot provide a framework that meets the principles behind the reform. It does not resolve inconsistencies, promote uniformity in either regulation or productivity improvements, or promote simple regulatory compliance for either industry or governments. The regulatory inconsistencies that result from Option 1 also add costs and complexity for both governments and industry and work against a national approach to transport.
447. While Option 2 addresses inconsistencies in the administration of regulation, it does not provide any lessening of burden of cost, provide certainty or uniformity in regulation that can result in the 'same outcome, same circumstances' and, like Option 1, relies on cooperative mechanisms that have not traditionally supported strong reform. The inconsistencies in regulation that would remain under Option 2 would continue to work against strong and coordinated safety outcomes.
448. The uniformity of law provided under Option 3 is a strong move to reform that would achieve some of the reform principles: some industry compliance costs would lessen and greater clarity in law would provide greater certainty in compliance, with some associated health and safety benefits. Without the guarantee of uniform approaches to administration, decision-making and enforcement, the likelihood of 'same outcome in the same circumstances' is diminished. By addressing the key issue of inconsistency in regulation, it would represent a large step forward and could provide a strong base for further reform.
449. As well as being the relatively cheapest reform option to implement, Option 4 can deliver a strong reform message consistent with the wider COAG-agreed reform agenda. A fully implemented and 'bedded-down' Option 4 would streamline regulation and its administration, provide clarity and certainty to industry, deliver efficiency gains and cost savings to governments and industry, promote new and already achieved productivity enhancements and as a result of these deliverables, can be expected to produce greater safety outcomes consistently over time (of the kind discussed in Section 5).
450. Option 4 also has the strongest correlation with the reform objectives established in the RIS:
- it will provide uniform law, administrative and enforcement practices that can achieve the 'same outcome in the same circumstances';
  - in ensuring provision for local productivity enhancements, the overall burden of regulation will not increase;
  - the legal and administrative costs of regulatory compliance will be minimised through uniformity of regulation, administration and enforcement;



- 
- uniformity, clarity and productivity provisions will enhance the effectiveness and safety of industry and allow for ongoing improvements in those important areas;
  - infrastructure assets can be managed in clear and transparent decision making frameworks; and
  - A single regulator administering a single body of law will have more opportunity to focus on and critically evaluate the interface between the law and its operations and how it results in 'on the ground' outcomes, not least of which is safety, and could therefore provide strong input for the review of regulation through established ATC processes.

451. A single regulatory framework as represented by Option 4 is that which Transport Ministers have agreed to explore.

## 10. IMPLEMENTATION AND REVIEW

452. If COAG decides that any of Options 2, 3 or 4 will proceed, there will clearly need to be a planned process for implementing the decision. This section aims to identify:
- some principles to be used to guide the development and implementation processes;
  - a 'road map' to the implementation that sets out anticipated timeframes, structures, activities and processes for achieving reforms.
453. While recognising the importance of implementing the reforms in a timely manner to enable the expected benefits to flow through, the scope and the significant level of detailed work required to do so must also be acknowledged; this has been reflected in the suggested implementation timeframes.

### 10.1 GUIDING 'PRINCIPLES'

454. Building on the principles for reform identified in this RIS and on key issues that emerged during consultation, it is important that any reform be implemented in a way that builds efficiencies and opportunities for both industry and governments; that establishes a framework for ongoing improvements; and that genuinely involves all parties to the reform.
455. Given this, a number of 'principles' to implementing the content of the reform have been suggested (and could be considered for inclusion in an NPA):

- *The products of reform should aim for national best practice and a reduction in regulatory burden. 'Outcomes based' approaches should be considered as part of any 'solution';*

Ministers agreed that a national framework should consider securing world-class economic efficiency and safety outcomes and delivering excellent and professional regulatory and compliance services. Industry has also provided a consistent message through this RIS process that reform will fail if a 'lowest common denominator' approach is taken to the content of laws, their administration and enforcement.

In line with the principles of best-practice regulation outlined at Section 1.1, implementation of the national system should examine the approach to regulation as well as its content; excellence in service delivery need not rely on prescriptive standards. Existing regulation has taken steps towards a performance based approach (eg PBS), and where best practice can be achieved by 'outcomes based' regulation and systems, this should be genuinely considered; industry can play a role here, too. It needs to be acknowledged, too, that where circumstances genuinely differ, that outcomes can be different; the local variation and decision making frameworks outlined in the RIS provide a mechanism for those considerations.

The current stocktake of existing laws (see Section 6.1.1) is forming a solid basis for jurisdictions to affirm the policy intent of legislation covering heavy vehicles and therefore, to agree its content. Jurisdictions have been integrally involved in the cooperative development of this reform and will clearly continue to be so, on an ongoing basis. There is good opportunity to ensure national outcomes aim for best practice that reduces the regulatory burden.

- *Reform is not an end in itself: it must provide ongoing quantifiable and qualitative improvements across heavy vehicle regulation.*

Building on the 'outcomes based' approach, implementing this reform should not just result in a new system. It should be designed to achieve improved economic efficiency and enhanced road safety; a stronger cooperative alliance with the industry; and capacity to identify and provide opportunities for further operational and regulatory efficiencies from the new structure.

Further development of the national framework should build in review mechanisms that involve the regulator, service providers, enforcement bodies and industry to properly evaluate whether reforms and systems are achieving results 'on the ground' and to establish where ongoing improvements can be made.

- *Good policy frameworks will achieve the best long-term outcomes*

The longer-term benefits of ensuring appropriate and relevant policy frameworks may mean some elements of national reform take time; some may benefit from a staged approach; yet others may be able to be implemented relatively quickly. Section 11.2.5 below provides an overview of the anticipated timeline for implementing an Option 4 over a three to four year timeframe.

Elements of the reform could be prioritised: if Option 4 is chosen, establishing the National Regulator as an earlier step will help shape ongoing reform and start to build consistency; under Option 3, early implementation of a national registration scheme and vehicle standards legislation could provide a 'quick hit' for industry, and also smooth the path for any later move to establish a national regulator. A strong initial focus on reforms that achieve efficiencies and productivity gains for industry would see later development of, for example, a role in 'chain of responsibility' investigations for the national regulator.

Governments together, will need to establish these priorities and include these in the supporting NPA.

- *Implementation and delivery models need to be cost-effective and support the aims of the national system.*

The economic analysis in the RIS has shown that the current cost of regulation to governments is \$218 million and that each of the options would cost jurisdictions, overall, only marginally more to implement. Overall revenues, on the other hand, have been estimated at \$1.3 billion.

Implementation will have its costs, particularly in the short-term as jurisdictions will input to development of the new framework while continuing to regulate and administer existing laws and agencies until national delivery can be achieved (assuming an Option 4 decision).

Governments will need to agree on funding arrangements for implementation. As part of its wider competition reform agreements (see Section 1.5), COAG has incorporated heavy vehicle reform into the National Partnership Agreement framework.

- *Industry involvement is important to the ongoing development, implementation and success of reform measures.*

If reform is to achieve the principles established in the RIS, industry input to the implementation design and delivery will be needed. Mechanisms to consult with industry and gain its input and support for the development of the national system need to be established and used consistently (see Section 11.2.1.3 below). Such mechanisms should be carried on as part of the 'day-to-day' operations of the national regulator, to help ensure the ongoing relevance of regulatory activities and to build industry cooperation and improved compliance, particularly in key areas such as safety outcomes.


456. There is no doubt that a decision to implement Option 4 will change the existing cost and revenue structures across and between jurisdictions and between States and Territories and the Commonwealth.
457. The RIS identifies principles to guide the shape of reform it proposes and it also propounds principles which might underpin the reform implementation. For such matters of a particularly government-to-government nature – constitutional issues and Federal/State financial relations such as defining the scope, role, and functions of the national regulator and drafting national laws; agreeing the total costs of regulation and cost recovery and apportionment mechanisms; and agreeing revenue collection and distribution and maintenance mechanisms - there may be benefit in governments establishing in identifying guiding principles that can shape the way forward in implementing reform.
458. Decisions on these issues are clearly for Ministers and Governments, and the RIS proposes mechanisms to provide certainty for governments as part of an implementation process.

## 10.2 IMPLEMENTATION 'ROAD MAP'

459. The 'road map' outlined below has been considered from a viewpoint of implementing Option 4, as it reflects the framework Transport Ministers put forward. The 'road map' is indicative and can be adjusted to cater for ATC and COAG decisions made at key points in the implementation process. That said, the individual elements, appropriately scaled and modelled, can be considered as relevant to implementing any of the options put forward in the RIS.
460. Each of the 'elements' represents an activity/area for consideration and management in developing and implementing the decided framework; they reflect both the 'guiding principles' outlined above and the issues that require consideration under the Commonwealth Office of Best Practice Regulation guidelines.

### 10.2.1 Administrative / Governance

461. If COAG decides to implement Option 4 and agrees that the Commonwealth should host the national regulator and the national laws, it is proposed that the Commonwealth would coordinate the implementation; under Options 2 or 3, the Commonwealth would not have a clear role in the framework and would not therefore propose to coordinate implementation activities. There would be merit in the agreed 'host jurisdiction' coordinating implementation of an Option 3 decision.

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462. The development and implementation work would be guided by and reported through the ATC governance framework (see Section 6.1.8), including the Standing Committee on Transport (SCOT). As with all national transport initiatives, the ATC will remain the main policy decision-maker.
463. The development and implementation work could be overseen by an intergovernmental decision-making group (the Project Board) that would be responsible for a coordinating body (a Heavy Vehicle Project Management Office). That body would coordinate and lead a series of 'Delivery Teams' that would develop and implement the agreed framework. This structure is explained further below.

#### 10.2.1.1 Project Board


464. The Project Board would consist of senior executive level representatives of the relevant agencies of jurisdictions, with decision-making powers sufficient to move the implementation forward to each point where further SCOT/ATC guidance would be needed. The Board would:
- provide high-level guidance and decision making on key matters of implementation activities;
  - report to their own agencies and governments on progress and key matters;
  - report on implementation progress to the ATC.

#### 10.2.1.2 Heavy Vehicle Project Management Office

465. The coordination activities of the Commonwealth would be through the Heavy Vehicle Project Management Office. This body would be led by a senior executive officer of the host jurisdiction and would :
- lead and coordinate the work of 'Delivery Teams' (see Section 10.2.1.3 below) to develop and implement the outcomes of the COAG decision;
  - progress implementation and clarify issues through the Project Board;
  - provide a mechanism for all jurisdictions and industry to have input to implementation development activities;
  - progress with the NTC the work required by the ATC decision on alternative funding arrangements (see Section 1.3.4);
  - provide a 'secretariat' service to the Project Board; seeking and coordinating its project guidance and input; arranging and conducting regular decision-making meetings; implementing its decisions; coordinating reporting its arrangements; ensuring all jurisdictions are represented and consulted.
466. The role of this body would expect to lessen over time as key elements of the implementation are achieved; as the national regulator is established, the roles responsibilities and activities of the Project Management Office would be transferred to it.

#### 10.2.1.3 Delivery Teams

467. Reporting to the Board through the Project Management Office, these teams would be responsible for developing, carrying out and implementing the key activities and elements of the implementation,



including industry liaison. Delivery teams could operate on an inter-governmental 'working group' basis, led by a given jurisdiction, with all jurisdictions contributing appropriate agency resources to achieve implementation outcomes. Another option could see key staff from jurisdictional agencies being involved (possibly on a time and purpose prescribed secondment basis) in the Delivery Teams to ensure they have the requisite skills, knowledge, background and input to the development of the national system. Either option could make use of consultancies to target and maximise the value of jurisdictional input. The suggested Delivery Teams are:

468. **Governance:**

This group would be responsible for development of the National Partnership Agreement including the nature of the cooperative legal scheme and host jurisdiction for legislation, mechanisms for selection of the Regulator and for Ministers to formally refer matters to the Regulator, funding and service delivery arrangements and governance parameters for a national scheme and national regulator (eg the suggested Board and Operational Advisory Group and internal operations). There would need to be strong links with the Legal Delivery Team to ensure appropriate regulatory issues are captured in the NPA.

469. **Legal:**

Working closely with the Governance Delivery Team and the NTC, this Team would develop national legislation policy, the basis for which has already commenced with the stocktake of existing legislation (see Section 1.3). It would also coordinate the timing and implementation of national laws and other matters relevant to the development of national legislation. It would liaise with Parliamentary Counsels' Committee in relation to legislative drafting and related matters and would examine and develop the legal approaches for ensuring jurisdiction-based regulation (criminal codes, workers' compensation, CTPI, stamp duty etc) interacts appropriately with national heavy vehicle laws.

470. **Operational Policy:**

This group would begin the work needed around developing: national guidelines and decision making frameworks; outcome and performance standards for service delivery, including compliance and enforcement activities; operational recording and reporting details; information collection and sharing and protocols; and developing national panel management arrangements. This Team would also consolidate the operational dimensions of the licensing and competency strands that are currently being carried out by Queensland Transport and Austroads (see Section 1.3.1).

471. This delivery team would also be responsible for liaising with jurisdictional police forces, occupational health and safety agencies and local governments to ensure consistent frameworks are developed for the enforcement of national laws and ensuring improved safety outcomes.

472. **Systems and Processes:**

Working closely with the Operational Policy Delivery Team, this Team would focus its activities on developing standardised workforce capability and administrative arrangements that would support a national regulator and national laws. This would include analyses of existing business systems to develop best-practice national models; existing IT systems and usage for possible national systems (including data collection and sharing). It would also work through the operational requirements and logistics of a 'one-stop-shop' mechanism, including for example, management of in-road and roadside assets.

473. **Industry Liaison:**

This working group would be responsible for coordinating and carrying out consultation with industry and all stakeholders across the range of implementation activities being undertaken by the working groups. Its sole focus would be to ensure industry input is gathered and fed into ongoing development and implementation of the national framework and its systems.

It could function using existing industry networks such as the Industry Advisory Group established under the NTC, or work with industry to develop alternative, relevant and appropriately representative means of consulting with industry.

### 10.2.2 Actions for regulated parties

474. Industry and other stakeholders would need to be identified and appropriate mechanisms established to ensure relevant and timely input to the implementation process. Recognising the diversity of the industry, it would need to ensure it was appropriately resourced and prepared to provide coordinated and relevant expertise, information and input.

### 10.2.3 Actions for jurisdictions

475. Agencies of jurisdictions, including central agencies, would need to be prepared to provide and be involved in the full range of implementation activities and at all levels of the governance structure. Depending on any staging decisions made, jurisdictions would need to continue to administer their existing regulation and provide existing services until relevant aspects of the national framework are developed and implemented.

476. Ideally, all jurisdictions would participate in all Delivery Teams; smaller jurisdictions may prefer to target their input and expertise to particular Teams, noting the different levels of resourcing generally available to them. Recognising the need to ensure the appropriate level of skill and time is provided to the implementation process, this could possibly be established through time and purpose-prescribed secondment arrangements to the Heavy Vehicle Project Management Office. As existing regulators with a more complete understanding and knowledge of operational and business systems issues, their input would be particularly essential to the Operational Policy and Systems and Processes working groups.

### 10.2.4 Transitional arrangements

477. Depending on the Option chosen and the staging decisions made in implementing a national framework, jurisdictions would need to continue to administer their existing regulation and provide existing services. Agencies would also need to continue to operate within existing frameworks and decisions, until the national framework is fully developed and implemented.

478. The **priorities** for implementing the national framework would need to be confirmed by the ATC, but a number of key activities would need to be focussed on:

- Establishing an implementation framework as quickly as possible to ensure reform progresses;
- Negotiating and agreeing an NPA;

- Establishing the essential regulatory activities: deciding on the appropriate legal mechanism; agreeing the policy intent of legislation and the staging of its development; are there any 'quick wins' eg national registration;
- Resolving the stamp duty revenue and CTPI issues through the ATC agreed mechanisms (see section 1.3.4).

479. Central agencies of each jurisdiction, Treasuries in particular, will be integral to the resolution of these priorities and other implementation activities; all jurisdictions will need to ensure their early engagement in the process.

### 10.2.5 Implementing the National Heavy Vehicle Regulator (NHVR)

480. The role of the NHVR under an Option 4 decision has been described in Section 6.5.2. Recognising the scope and complexity of the activities that have to be undertaken to enable the NHVR to assume its role and the possible issues this could present a new body, a two-staged approach to establishing the NHVR is proposed.

481. **Stage 1** would see the NHVR incorporate functions that currently exist but that could be quickly implemented to provide industry with some certainty of reform, and to start to shape the wider role of the Regulator. Stage 1 is anticipated to be implemented by the end of 2010 and might include:

- Operate and administer registration scheme (established under national law) but 'outsourced' to jurisdictions based on service agreements (see section 6.5.2.2), including administering a scheme for regulating heavy vehicle standards and inspections in accordance with the legislation;
- Taking on existing 'national' functions such as the PBS Review Panel, driver fatigue, National Heavy Vehicle Accreditation Scheme panel activities;
- Work with (or begin to take on the functions of) the Heavy Vehicle Project Management Office in the areas of operational policy and systems and processes;
- Develop and implement national heavy vehicle education/information programs for industry ready for Stage 2 administration of full body of law;
- Report to NHVR Board and ATC on activities and programs in accordance with establishing legislation; and
- Reviewing service agreements with jurisdictions towards the end of Stage 1 to cater for Stage 2 activities.

482. In **Stage 2** which could be expected to commence at the end of 2012, the NHVR would:

- Assume administration of remaining body of law and administer in accordance with service agreements;
- Implement 'one-stop shop' operations, including handling of application for access permits (also across borders);

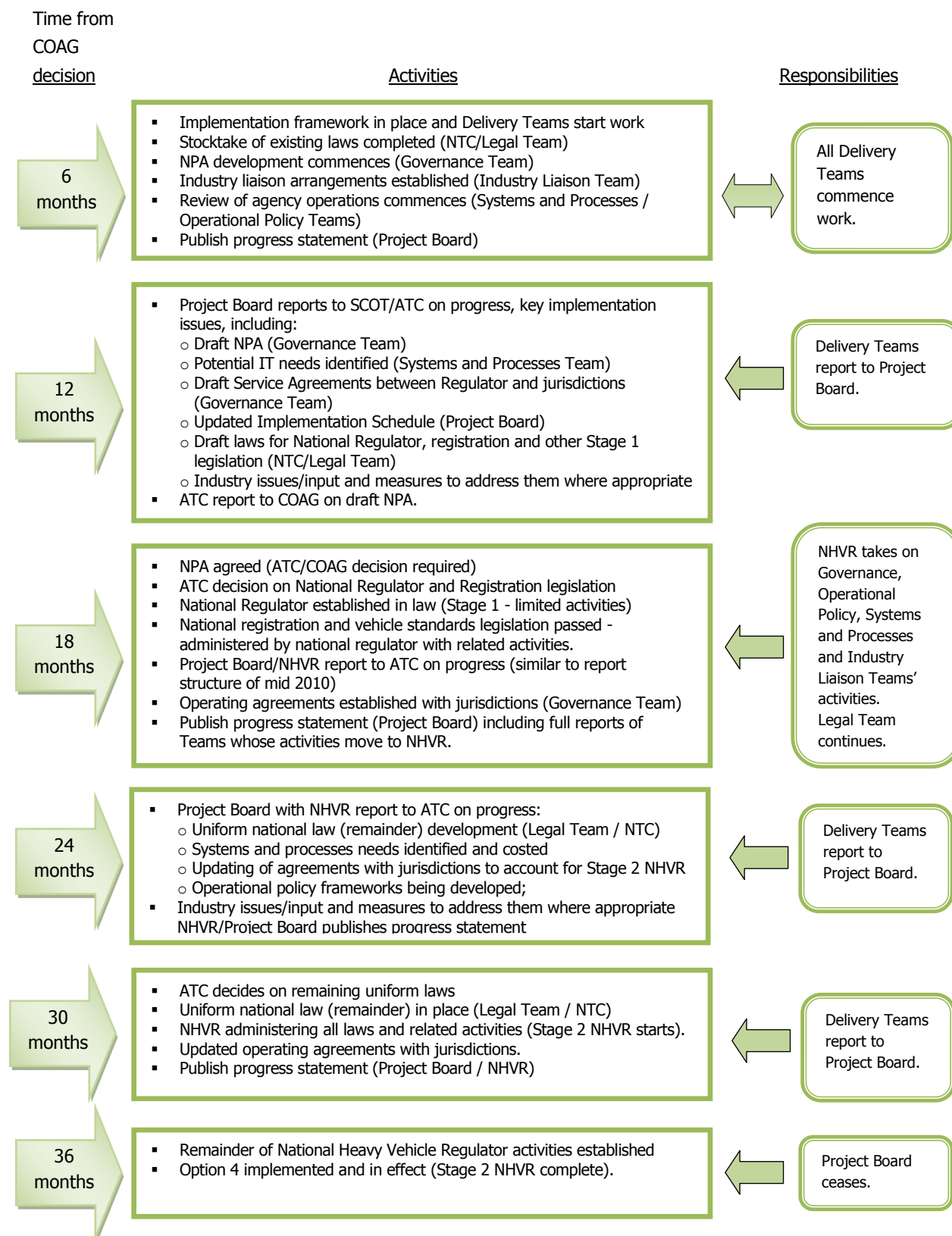


- Monitor and evaluate operation of law for input to policy and regulatory reform through NTC/ATC processes;
- Analysis of national data collected (through established reporting) to input to policy and regulatory reform through NTC/ATC processes;
- Industry liaison/stakeholder activities (including education) to ensure compliance responsibilities are understood; and
- Continue working with jurisdictions to further develop business practices and models to improve service delivery.

### 10.2.6 Implementation timeframes

483. Figure 3 below is an indicative timeline showing 'milestones' that might be expected to be achieved in 6 monthly increments, from the time of a COAG decision to proceed with reform (Figure 3). An indication of Delivery Team responsibilities has also been provided. It is important to note that ATC guidance and or decisions will be required at key stages and for key elements of the implementation activities and this has also been noted in the diagram.
484. At points along the timeline, it is proposed that progress statements be published by the Project Board; these statements would have been considered by the ATC and would detail progress made as well as anticipated activities for the forthcoming period. The statements would be published and available on governments' websites (including the NTC's), the ATC's website and on the website of the national regulator, once established.

**Figure 3- Indicative timeline of national framework implementation from time of COAG decision to proceed with reform.**





### 10.3 REVIEW MECHANISM

485. An ongoing role of the NHVR would be to monitor and report on the operation of the national framework and its elements; regulation, administration, enforcement, and compliance with service agreements. This would be reported the ATC at each of its meetings.
486. The nature and level of reporting requirements for the NHVR would be established in the NPA, as would a review mechanism and timeframe.