



National Farmers' Federation

Submission to the National Transport Commission Heavy Vehicle National Law Review Consultation Regulatory Impact Statement

Prepared by Mr Liam Watson

20 November 2020

NFF Member Organisations



National
Farmers
Federation



The National Farmers' Federation (NFF) is the voice of Australian farmers.

The NFF was established in 1979 as the national peak body representing farmers and more broadly, agriculture across Australia. The NFF's membership comprises all of Australia's major agricultural commodities across the breadth and the length of the supply chain.

Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations form the NFF.

The NFF represents Australian agriculture on national and foreign policy issues including workplace relations, trade and natural resource management. Our members complement this work through the delivery of direct 'grass roots' member services as well as state-based policy and commodity-specific interests.

Statistics on Australian Agriculture

Australian agriculture makes an important contribution to Australia's social, economic and environmental fabric.

Social >

There are approximately 85,000 farm businesses in Australia, 99 per cent of which are wholly Australian owned and operated.

Economic >

In 2018-19, the agricultural sector, at farm-gate, contributed 1.9 per cent to Australia's total Gross Domestic Product (GDP). The gross value of Australian farm production in 2018-19 is estimated to have reached \$62.2 billion.

Workplace >

The agriculture, forestry and fishing sector employs approximately 318,600 people, including full time (239,100) and part time employees (79,500).

Seasonal conditions affect the sector's capacity to employ. Permanent employment is the main form of employment in the sector, but more than 26 per cent of the employed workforce is casual.

Environmental >

Australian farmers are environmental stewards, owning, managing and caring for 51 per cent of Australia's land mass. Farmers are at the frontline of delivering environmental outcomes on behalf of the Australian community, with 7.4 million hectares of agricultural land set aside by Australian farmers purely for conservation/protection purposes.

In 1989, the National Farmers' Federation together with the Australian Conservation Foundation was pivotal in ensuring that the emerging Landcare movement became a national programme with bipartisan support.

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Executive Summary

Freight costs equate to 21 per cent of the value of farm production. As such, any regulation which affects the cost of freight will significantly impact the profitability of the agricultural sector. The Heavy Vehicle National Law (HVNL), in its current form, imposes significant costs on the sector. It imposes these costs through prescriptive requirements which constrain business operations, vague provisions which create uncertainty as to whether regulated parties are acting legally and restrictive access arrangements.

The agricultural industry is predominantly characterised by owner-operators who use their heavy vehicles infrequently, on rural and regional roads and for relatively short distances. These operators will for the most part choose not to demonstrate compliance by developing sophisticated management systems, adopting innovative technologies or enrolling in complex accreditation schemes. Clarity and simplicity in their legislative obligations is what these operators are seeking.

With Australian farmers subject to tight margins in the domestic market and high-levels of competition in export markets, it is important to the long-term growth of the agriculture industry that this review removes regulations which stifle freight productivity and safety improvements and replaces them with regulations which are clear, flexible and fit-for-purpose.

To this end, the NFF makes supports the following reforms:

- Option 5.1, the establishment of a Code or Practice mechanism in the HVNL that allows the regulator to develop, vary and revoke Codes of Practice.
- Option 5.3, the establishment of a remote zone which places unique regulatory obligations on operations in remote regions.
- Option 6.1, establishing an overall technology and data certifier under the HVNL.
- Option 6.2a, permitting all documents to be carried and produced electronically.
- Option 6.2b, permitting certain documentation to be produced to the NHVR or police within a specified period of time rather than immediately upon request.
- Option 8.2, Revision to Tier 2 and 3 of fatigue management framework.
- Option 9.1, expanding as of right general access to vehicle classes that are not currently captured.
- General Mass Limits being increased to the current Concessional Mass Limits for all heavy vehicles and a tolerance on axle-mass loadings for heavy vehicles transporting freight which exhibits fluid dynamics.
- Option 9.1d, that general access length be increased from 19m to 20m for all vehicles.
- Recognition of precedent and expand expedited process to include equivalent or lower risk applications, opt-in road manager delegation, geospatial mapping given authority in the law, third party consent requirements being amended, amendments to access decision making criteria, amendments to permit timeframes and procedures, and harmonisation of pilots and escorts.
- Option 10.1, a streamlined PBS approvals process.

Introduction

The NFF welcomes the opportunity to provide a submission to the National Transport Commission's Heavy Vehicle National Law Review consultation regulatory impact statement (CRIS).

Freight costs equate to 21 per cent of the value of farm production. As such, any regulation which affects the cost of freight will significantly impact the profitability of the agricultural sector. The Heavy Vehicle National Law (HVNL), in its current form, imposes significant costs on the sector. It imposes these costs through prescriptive requirements which constrain business operations, vague provisions which create uncertainty as to whether regulated parties are acting legally and restrictive access arrangements.

The NFF considers that a better legislative regime is achievable through this reform process and believes that many of the options identified in the CRIS would optimise this regime. Critically, the new HVNL must strike the right balance between flexibility and clarity, establishing provisions which enable operators and other parties in the Chain of Responsibility to meet their legislative obligations in the way best suited to their particular circumstances, while at the same time giving those parties certainty that they are complying with the law. This is a difficult balance to strike, and a large portion of this submission is dedicated to setting out views on how it should be achieved with respect to the many, varying aspects of transport activity regulated by the HVNL.

The agricultural industry is predominantly characterised by owner-operators who use their heavy vehicles infrequently, on rural and regional roads and for relatively short distances. These operators will for the most part choose not to demonstrate compliance by developing sophisticated management systems, adopting innovative technologies or enrolling in complex accreditation schemes. Clarity and simplicity in their legislative obligations is what these operators are seeking.

The success of the new HVNL in driving productivity gains will depend, more than anything else, on the extent to which it improves heavy vehicle access. The failure of the current HVNL to establish an efficient, fit-for-purpose system for heavy vehicle access has seen freight productivity decline by 0.6 per cent from 2010 to 2018.

With Australian farmers subject to tight margins in the domestic market and high-levels of competition in export markets, it is important to the long-term growth of the agriculture industry that this review removes regulations which stifle freight productivity and safety improvements and replaces them with regulations which are clear, flexible and fit-for-purpose.

Primary Duties and Responsibility

The primary duty is a point of significant concern and anxiety for the agricultural industry. The vagueness of the wording in section 26c leaves many producers and other parties in agricultural supply chains uncertain as to whether their behaviour contravenes the legislation.

We consider that it is not possible to entirely remove this uncertainty without introducing a discord between the effect of the primary duty and its intent: the primary duty was introduced in an attempt to prohibit all behaviour that can affect the safety of a heavy vehicle journey while capturing the nearly infinite number of forms this behaviour can take (including verbal instructions, operating procedures, corporate policy, business culture etc), which cannot possibly be identified exhaustively. The NFF does not see a viable way to legislate a primary duty which gives parties in the Chain of Responsibility complete certainty as to whether their behaviour satisfies the primary duty without it becoming self-defeating.

In broad terms, the NFF is in favour of non-prescriptive transport regulation, as it allows flexibility and gives the parties best placed to understand the risks of a given activity and address those risks the ability to enact the most appropriate and effective mitigation tactics.

However, where the move away from prescriptiveness brings with it uncertainty as to what behaviour is acceptable – as is the case with the primary duty –, legally recognised guidance should be developed such that adherence to those guidelines constitutes a ‘deemed to comply’ status and protects the party from prosecution. There is also an important role for general guidance material that is not legally-binding.

We recognise that such guidelines will be difficult to develop, as they are inevitably exhaustive and will fail to capture certain behaviours, simply due to the inability to conceive of every possible dangerous situation related to transport activity. There may be a small number of situations where a party in the CoR has failed to do what is ‘reasonably practical’ to ensure safety but is protected from prosecution because they have adhered to the ‘deemed to comply’ guidelines.

This is regrettable, and care should be taken when developing the guidelines to ensure the possibility of such occurrences are minimised. The NFF considers this preferable to the existing situation, where no legally recognised guidelines apart from the Master Code of Practice exist and the only means by which a CoR party can understand whether they are complying with the legislation is a court ruling. Currently, a party has no way of knowing whether they are breaking the law until they have been prosecuted for doing so. This situation is unacceptable to the agricultural industry, creating high levels of compliance anxiety.

The NFF does not consider that any of the four options identified in this chapter address this problem. Option 4.1, expanding the primary duty to encompass ‘parties who influence the safety of transport activities’ would introduce an additional uncertainty into the law. Not only would parties be uncertain whether their behaviour complies with the law – they would also be uncertain whether they are captured by the law. There is a high risk that this would bring the primary duty into

conflict with existing regulatory requirements. For example, the preparation of livestock before transit is subject to numerous regulatory and legislative regimes, including state-based animal welfare legislation, Land Transport Standards and Guidelines and the National Vendor Declaration. While it is certainly possible to design regulation in such a way that two or more different regulatory regimes can regulate the same activity without creating contradictory responsibilities, it is something that requires careful consideration and extensive consultation with the affected parties during the design process. This consideration has not even been attempted in this CRIS.

Option 4.2, the introduction of a separate driver duty which substantially replicates the duty of workers under s 18 of the Work Health and Safety (WHS) legislation, would not only duplicate responsibilities placed on drivers through the WHS laws but would also duplicate the responsibilities placed on them by other provisions of the HVNL. The five examples of driver behaviour identified in the CRIS as the sorts of behaviours this reform would address are all prohibited in legislation:

- Driver competency is addressed in state and territory licensing regimes;
- Safe load management is addressed through the mass, dimension and loading (MDL) provisions of the HVNL;
- Fitness for duty is not specifically addressed in legislation, but the NFF considers that fitness for duty should not be explicitly regulated¹;
- Driving safely according to road conditions is addressed in jurisdictional traffic law through speed limits and the Australian Road Rules; and
- Safe route planning is captured by state and territory licensing regimes which ensure driver competency. If the standard of competency in these regimes is not sufficient to guarantee that licensed drivers can safely travel on all routes, then these licensing regimes require amendment.

Duplicating this duty in the HVNL would also require extensive education and training for NHVR authorised officers. Feedback provided to the NFF from transporters and producers indicates that authorised officers are already overly burdened by the quantity and complexity of legislation and regulations they must enforce.

It is difficult to identify any possible benefits to Option 4.3, applying the primary duty to drivers. As has just been set out, a number of laws exists to guarantee safe driver behaviour. As the options paper points out, the primary duty must be discharged to the extent that the person has capacity and influence to control the matter. The capacity of drivers to influence and control a safety matter is often severely constrained by the behaviour of operators, employers, prime contractors and other CoR parties.

As has already been outlined, the behaviours identified in the CRIS as likely to be captured by extending the primary duty to drivers are already captured in other legislation (or should not be captured in legislation). We concur that with the assessment in the CRIS that 'it is hard to see how it would lead to any road safety

¹ <https://nff.org.au/submission/submission-to-the-national-transport-commission-vehicle-standards-and-safety/>

benefits'. The NFF's preferences for improving the primary duty are provided in our comments on Chapter 5, Regulatory Tools.

Regulatory Tools

Codes of Practice are an important mechanism for providing industry with guidance on how to meet certain regulatory obligations which are ambiguously defined in the HVNL.

The NHVR does not currently have the legal authority to develop Codes of Practice which can provide operators and other parties in the Chain of Responsibility with guidance and legal protection in the event that they are prosecuted for a breach of the law. The onus for developing a Code of Practice – should a need be identified – therefore lies with industry. This is an issue, as industry often has neither the resources nor the expertise to develop a Code of Practice.

For this reason, the NFF support Option 5.1, the establishment of a Code or Practice mechanism in the HVNL that allows the regulator to develop, vary and revoke Codes of Practice. The establishment of this mechanism would provide several benefits for industry, including:

- Providing clear and tailored guidance to particular industries on how they should best meet their legislative obligations;
- Allowing operators and other parties to clearly demonstrate their compliance with the law; and
- Allowing regulations placed on industry to keep pace with developments in technology and operating practices by avoiding the need to make changes to the primary legislation.

However, the NFF's support for Option 5.1 is conditional on the following features being included.

1. The development of a Code of Practice must be either (a) initiated at the request of industry or (b) initiated by the NHVR with the endorsement of industry. Should the NHVR identify a need for a Code of Practice to assist a particular sector meet a particular legislative obligation, the NHVR must present a case to the relevant sector and seek endorsement before the process can move ahead. Should the sector most affected by a prospective Code of Practice not provide endorsement, the Code should not be developed.
2. The implementation of a developed Code of Practice should not occur without the approval of the sector most affected by that Code. The final contents of a Code may differ significantly from what was first proposed, as understanding of the legislation and the regulated industry evolves through the development process and various rounds of consultation with possibly competing interests shape and distort the Code away from its original intent. It is therefore possible that even where industry has endorsed the development of a Code, the final product may be undesirable from an industry perspective. To safeguard against this type of situation, we request that the HVNL stipulate that all developed Codes of Practice be endorsed by industry before being presented to the Transport and Infrastructure Council for sign-off.

The NFF does not support Option 5.2, the establishment of a safety standard mechanism in the HVNL. We consider that the Code of Practice mechanism will provide all the benefits that would be provided by this option, with the advantage that it will provide CoR parties with flexibility to meet their legislative requirements by adopting equivalent or better practices.

Option 5.3, establishing a remote zone which places unique regulatory obligations on operations in remote regions, is tentatively supported by the NFF. The operations and risk profiles of operators in these regions are unique due to the distance covered, lack of appropriate rest areas and facilities, extreme temperatures and limited interaction with other road users. Imposing slightly different regulatory obligations on these operators – for example, longer work and rest hours – is therefore aligned with the principles of risk-based regulation, which the NFF supports.

However, further consultation is necessary before the implementation of this option. This consultation must clarify the treatment of vehicle movements across the remote zone boundary, specifically whether these movements must operate under the more stringent (non-remote zone) regulations for the entire journey or whether the regulatory obligations change once the boundary has been crossed. If obligations change mid-journey, the complexity and resulting compliance burden may outweigh the benefits of establishing the remote zone.

The consultation must also seek assurances, and provide these assurances to industry, that all jurisdictions will implement the remote zone as it is set out in the HVNL or subordinate instruments. Derogation from the primary legislation on this issue will create enormous complexity for operators travelling between jurisdictions, which may outweigh the benefits of establishing the remote zone.

Technology and data

Where the HVNL is advertently restricting innovation and the uptake of new technologies, potential costs savings are being lost. The current HVNL contains detail on specific areas where technology could be used to demonstrate compliance but does not contain an overarching framework for the use of technology and data to achieve regulatory compliance.

It is important to note that for the majority of primary producers, technological innovations will not be suitable. Agricultural transport is typified by small owner-operators who use their vehicle/s infrequently. The operational efficiencies arising from sophisticated on-board mass devices, driver-distraction monitoring technologies and similar instruments are unlikely to cover the upfront cost of installation for these operators.

It is crucial that the HVNL is technology neutral. It must allow for the uptake of innovative technologies by those operators who will benefit, while not in any way disadvantaging those operators who choose not to adopt these instruments. Australian producers are concerned that the new legislation will disadvantage small operators by creating various incentives for the adoption of sophisticated compliance methods, effectively placing more onerous regulations on operators who do not have the capacity to comply in this fashion.

The NFF supports Option 6.1, establishing an overall technology and data certifier under the HVNL. This would allow the HVNL to recognise emerging technologies and data with demonstrable safety or efficiency benefits in a way it currently cannot.

However, the NFF has concerns with the suggestions that data generated from compliance technologies may be used by the NHVR for industry development, industry or operator profiling and road manager performance. A clear framework should be established for the permitted collection and use of data for government, industry and regulators. Identifiable data must be used only to the extent that it is needed to ensure compliance, and no further.

Documentation

The NFF supports Option 6.2a, permitting all documents to be carried and produced electronically. This would provide stakeholders with flexibility in how they carry and produce documentation.

The NFF is also supportive of Option 6.2b, permitting certain documentation to be produced to the NHVR or police within a specified period of time rather than immediately upon request. As noted, where documentation is needed to demonstrate that the remainder of the journey can be completed safely, immediate production of documentation should be mandated.

Assurance and accreditation

Operator licensing and enrolment

The NFF does not support any of the sub-options identified under Option 7.1, operator licensing or mandatory enrolment. These options all involve significant cost to industry and are unlikely to significantly improve safety outcomes. We note the findings of the CRIS, that:

- It is unclear whether the NHVR can obtain any additional information under either operator enrolment or licensing that would assist it to move to a more effective risk-based approach to compliance and enforcement;
- Licensing and mandatory enrolment may enable the NHVR to better communicate with all entities, but it is unclear how effective additional early preventative regulatory intervention would be in improving risk management practices of operators; and
- Licensing and to a lesser extent enrolment could act as a barrier to entry into the freight industry for new, smaller operators. This, in turn, could reduce competition in the freight and logistics industry which could ultimately reduce economic efficiency more generally.

Given that the benefits of these reforms are small and uncertain, and the costs are large and probable, the NFF recommends against adoption of any of the four sub-options.

Accreditation

The National Heavy Vehicle Accreditation Scheme (NHVAS) is well-regarded by the agricultural industry, as it provides producers with access to regulatory concessions by proactively managing safety risks related to mass, maintenance and fatigue. Certain administrative aspects of NHVAS are considered overly burdensome and could be streamlined, but the principles and basic framework of the scheme are sound. For this reason, the NFF does not support Option 7.2, redrafting the law to remove the regulatory assurance framework or Option 7.4, redrafting the law to enable multiple regulatory certification schemes and removing the NHVAS.

The industry's support for the principles and basic framework of the current NHVAS leads the NFF to oppose Option 7.3, revamping the NHVAS so that it better links to obligations under the primary duty. This shift in the purpose and focus of the NHVAS is likely to erode the well-regarded benefits it currently provides operators. Furthermore, the NHVAS is not the best placed regulatory instrument to motivate and guide compliance with the primary duty. As outlined in our response to Chapter 4 of this paper, an enhanced Code of Practice mechanism in the HVNL will be an effective tool to assist CoR parties to meet their obligations under the primary duty.

Option 7.3 is also likely to have the unintended consequences of making smaller operators, particularly owner-operators, less competitive and – in certain cases – possibly unviable. As noted, the goal of enabling third parties to rely on NHVAS accreditation to meet their primary duty is to encourage uptake of the accreditation scheme by operators. Uptake is encouraged because consignees will be incentivised to purchase goods from operators who are accredited and discouraged from purchasing goods from operators who are not accredited. Small operators who

currently choose not to enrol in NHVAS because the cost exceeds the efficiency gains will be faced with two options: lose business as customers move to larger operators enrolled in NHVAS or retain the current level of business by enrolling in NHVAS, thereby incurring a cost for efficiency gains that are of minimum value. Both options are highly undesirable.

Fatigue

The NFF is supportive of Option 8.2, Revision to Tier 2 and 3 of fatigue management framework. This would create a framework which reflects the diversity of operators in the heavy vehicle industry, providing flexibility to those operators sophisticated enough to develop their own fatigue management systems and certainty and simplicity to smaller operators.

Under Tier 2 of this system, operators should be empowered to develop their own compliance methods and have them approved against regulate fatigue standards. The NHVR should also develop a range of compliance options between which operators can choose.

Within Tier 1 of this system, certain aspects Option 8.1 should be adopted. The 1-hour transfer and split-rest break should be adopted to provide greater flexibility and operators should be empowered to develop alternative work schedules and have them approved. The NFF does not support any changes to the counting of work/rest hours.

The reforms described in Option 8.4 should be incorporated into Tier 2 of this system as one option among many. Prescriptive work diaries *should not* be removed from Tier 1, as these provide a straightforward and simple way of demonstrating compliance. We do, however, support offences for simple administrative breaches of work diaries being removed from all tiers of this system.

Option 8.6, a national health assessment standard and periodic assessments against this standard, should be incorporated as an option within Tier 2.

The NFF does not support any reform that would eliminate the *National Primary Production Work Diary Exemption 2018*. This notice greatly relieves the administrative burden on the agricultural industry and the NHVR considers that there is no evidence that the notice is detrimental to safety².

In the rollout of this tiered system the NHVR and the National Transport Commission should undertake an extensive public education campaign to ensure operators and other parties involved in the road transport industry are aware of the changes.

² <https://www.nhvr.gov.au/news/2018/09/10/primary-producer-work-diary-exemption-to-be-extended>

Access

The current arrangements for obtaining access impose excessive compliance and delay costs on industry. No aspect of the Heavy Vehicle National Law causes as many issues for the agricultural industry as access arrangements. The NFF considers that several of the options identified in this chapter would have major productivity improvements for the industry.

General access

Expanding as of right general access to vehicle classes that are not currently captured, as outlined in Option 9.1, would significantly decrease the compliance burden on industry. We note that general access limits have not changed since the 1990s, resulting in mass and dimension limits having not kept pace with advances in the heavy vehicle fleet, despite vehicles becoming safer, more efficient and longer.

The NFF supports General Mass Limits being increased to the current Concessional Mass Limits for all heavy vehicles, subject to an assessment of the road network capability to accommodate the higher limits. This should be accompanied by a tolerance on axle-mass loadings for heavy vehicles transporting freight which exhibits fluid dynamics.

Freight such as grain and gravel inevitably shift around the carriage during transport. This means that a vehicle which is underweight on its general mass may be overweight on its axle weight at particular times throughout the journey. The only viable way for an operator to manage this risk is to underload the vehicle to such an extent that even the maximum possible load shift will not exceed axle-mass limits.

GrainCorp – the largest handler of bulk grain on the east coast of Australia with operations in Queensland, NSW, Victoria and South Australia – has recently been issued with an Improvement Notice by Queensland Department of Transport and Main Roads (TMR) because of breaches on their axle-mass limits resulting from the load-shift of grain. While the vehicles are within general mass limits at all times and within axle-mass limits at the start of the journey, there are particular times throughout the journey when they are in breach of mass limits on a certain axle-grouping, and therefore liable to action by TMR.

Analysis conducted by GrainCorp has found that each vehicle would need to be loaded 10% below the general mass limits in order to ensure compliance with axle-mass limits at all times. A retrospective cost analysis from 2011 to 2020 found that, if this underloading policy had been implemented, the impact to the industry would have been:

- An additional \$4.63/tonne in freight costs, borne by the grain producer. This equates to approximately \$80 million per year;
- An additional 77 000 vehicle movements per year to transport the same quantity of grain; and
- An additional 6.5 million tonnes of carbon emissions per year, resulting from the increased number of vehicle movements.

There is a high likelihood that the cumulative impact of the 77 000 additional movements per year on safety, public amenity and road infrastructure would be greater than the current impact of vehicles being occasionally over-mass on a single axle-grouping.

For this reason, the NFF supports a tolerance of 10% on each axle-grouping being introduced for all freight which exhibits fluid dynamics during transit, providing that the vehicle is within its General Mass Limits at all times. We acknowledge that this may have to be revised downwards should GML be increased to CML, as this would increase the average mass on each axle group by 5%.

The NFF is also supportive of Option 9.1d, that general access length be increased from 19m to 20m for all vehicles. As noted in the CRIS, longer vehicles have lower bridge loading impacts and are already granted general access by most road manager. This option would therefore recognise an existing arrangement and reduce the need for these vehicles to apply for permits.

The permit process

The current process for permit application and approval is too long and too onerous. The industry's strong preference is for gazettal wherever possible. Notwithstanding this preference, the NFF is supportive of all reforms outlined under Option 9.2 except 9.2d. We outline the benefits of each reform to the agricultural industry:

- *Recognise precedent and expand expedited process to include equivalent or lower risk applications:* This would free up road manager resources, promote consistency in access decisions and align the permit process to the principles of risk-based regulation. The notion of 'equivalent or lower risk combinations' should be guided by the Envelope System outlined in the *2018 Review of Oversize Overmass Access Arrangements*. Data from the NHVR Access Portal (appropriately de-identified) should be used by the NHVR to identify routes with repetitive permit applications and granted consents, and the NHVR could then use this information to present a case for gazettal to the road managers. A mechanism should be introduced, linked to the NHVR Access Portal, that provides operators with visibility over routes where repeated permit applications for a particular combination have been rejected. This would save industry from expending time and capacity on futile permit applications.
- *Opt-in road manager delegation:* A lack of capacity and expertise to conduct road network assessments and make properly informed permit application decisions based on these assessments is a major factor causing slow and inconsistent permit application decisions. Allowing road managers to delegate their access decision-making powers would alleviate some of the resourcing and expertise constraints faced by road managers.
- *Geospatial mapping given authority in the law:* A geospatial map which provides information on approved routes, no-go zones and precedent decisions and has legal standing in the HVNL would have clear benefits from an ease-of-use perspective. This map should be available to all operators – we see no rationale for restricting it to operators who are enrolled with the NHVR and share telematics data.

- *A risk-based approach to heavy vehicle classes:* The NFF does not consider there to be any compelling reason to recategorize restricted access vehicles.
- *Third party consent requirements:* Where consent from a third party is required for access, that party should be listed as a party in the decision-making process and captured in the statutory timeframe. It is important to note that these third parties may be unreasonably risk averse, as they do not have to bear the costs or responsibilities of rejecting an access request. Option 9.2f should help overcome this risk aversion.
- *Amendments to access decision making criteria:* The freight task does not change in response to access being granted or otherwise. Access decisions only affect the types of vehicles used and the number of movements needed. The amount of road freight transported in Australia is independent of the types of heavy vehicles used. The current law only supports road managers considering access for individual vehicles rather than considering the effects of fleets of vehicles. The NFF therefore supports road managers being required to make access decisions with regard to strategic transport network considerations.
- *Amendments to permit timeframes and procedures:* The NFF considers it problematic that there are no implications arising for road managers when access decisions exceed statutory timeframes and that decisions made by road managers are only open to internal review. We are supportive of road managers being required to respond to the applicant within 7 days advising them whether a route assessment is required. If a route assessment is required, the road manager should have the remainder of that 28 days to make that decision. If the road manager fails to respond within 7 days, the permit application should be referred to the relevant road authority. If both the road manager and road authority exceed the statutory timeline, an external review should be initiated, and penalties imposed if their conduct is found to be lacking. It is unacceptable that an operator should be forced to wait 28 days and then receive a deemed refusal simply because the road manager and road authority did not properly discharge their duties. We also recommend a Heavy Vehicle Liaison Officer be implemented in each jurisdiction where one does not currently exist. The role of these Officers would be to facilitate a dialogue between industry and the road manager prior to the expiration of the timeframe, to work constructively through any issues that may be preventing the permit being approved. This would reduce the likelihood of external review being necessary.
- *Pilots and escorts:* In the interests of harmonisation, the NFF supports a national accreditation scheme for pilot and escort vehicle. A national scheme must retain the special provisions available to primary producers under current state and territory-based schemes.

Safer vehicle design

The PBS scheme is important to agricultural producers, providing them with access to safer and more productive vehicles that do not comply with the Australian Design Rules (ADRs) which are, in many cases, not aligned to international design standards.

However, the lengthy application timeframe and the requirement for independent certification of vehicle designs impose high compliance costs, which act as a deterrent to the uptake of safer and more productive vehicles. The absence of a link between vehicle design approval and access permit approval also acts as a deterrent to uptake by creating uncertainty for the applicant.

Feedback from primary producers indicates that the transfer of ownership of PBS-approved vehicles is onerous and overly-complex, and in need of simplification and streamlining. To address these issues and encourage greater uptake of PBS-designs, the NFF supports the streamlined PBS approvals process outlined in Option 10.1. Heavy vehicles whose only departure from the ADRs is that they exceed the permitted widths should be subject to approval through an expedited version of this process.

The NFF is also supportive of Option 10.2, amending PBS standards to allow for recognition of technology as an alternative means of complying with PBS scheme standards. For reasons which have already been given, it is important that the PBS scheme remains technology neutral.

Roadworthiness

The NFF does not consider there to be sufficient flaws with current state/territory-based roadworthiness schemes to justify the introduction of a national scheme. There is already a high degree of harmonisation between these schemes, with most relying on the procedures and standards set out in the National Heavy Vehicle Inspection Manual.

However, should a National Transport Commission decide to pursue national harmonisation in this area, the preference of the agricultural industry is for Option 11.1, a standard maintenance and roadworthiness assessment. This scheme should mandate self-clearing defects for non-safety cases. The absence of self-clearing defects results in significant and unnecessary delays for repaired vehicles.

It is critical that any national regime recognise the impracticality of requiring frequent inspections for older vehicles, especially in regional and rural areas. Roadworthiness regulations in South Australia require all vehicles older than 10 years to undergo annual inspections for roadworthiness. The shortage of inspection centres in regional and rural areas, coupled with these regulations, place a huge compliance burden on the agricultural industry. For those agricultural producers who operate their heavy vehicles several times per year for very short distances, the compliance burden of this is hugely disproportionate to the safety risk.

Should you have any questions regarding this submission please contact Mr Liam Watson on 02 6269 5666 or at lwatson@nff.org.au.

Yours sincerely



TONY MAHAR

Chief Executive Officer