



NATIONAL ROAD TRANSPORT ASSOCIATION

Submission to the Inquiry into the Victorian On-Demand  
Workforce

6 February 2019

## Introduction

1. The National Road Transport Association (NatRoad) is pleased to provide a submission to the Victorian On-Demand Workforce Inquiry.
2. NatRoad is Australia's largest national representative road freight transport operators' association. NatRoad represents road freight operators, from owner-drivers to large fleet operators, general freight, road trains, livestock, tippers, car carriers, as well as tankers and refrigerated freight operators.
3. 75 percent of NatRoad's members are small businesses in that they own and operate 5 trucks or less as part of their business.
4. Around 25 per cent of NatRoad's members are located in Victoria.
5. More than three quarters of Australia's non-bulk freight is transported by road. The road freight transport industry plays a major role in Australia's supply chain, with the ability to provide quick and reliable door-to-door delivery nationwide. It is anticipated that this capacity will be enhanced through improved technology.
6. This submission sets out some critical elements of reform that we believe would assist with the regulation of digital platforms as well as strengthening the chain of responsibility obligations under the Heavy Vehicle National Law (HVNL). Enhanced legal responsibility along the supply chain for safety outcomes is central to enhancing the protection of workers, including on demand workers. We also discuss the distinction between employees and independent contractors with a view that this distinction be strengthened rather than set aside or muddled.

## Freight Platforms

7. The freight task in Australia is growing rapidly. For example, by 2030, the total national road freight task is projected to be 1.8 times its 2010 level.<sup>1</sup>
8. The nature of the freight task is also changing. In relation to the Inquiry's terms of reference, this change in part emanates from changing community preferences and demographics linked with technology developments. For example, it has been recently noted that:

*(H)ouseholds increasingly expect the type of highly customised, 'just in time' logistics for their groceries that until recently, would have only been common in high value, complex manufacturing businesses or very valuable perishables. Some of these changes are attributable to macroeconomic factors – such as the decline of heavy manufacturing across much of Australia and the massive growth in resource exports over the past 20 years. Others are due to shifts in industry – for example, technology appears to be changing the fundamental logistics needs across retail and other consumer products.*<sup>2</sup>
9. Technology brings both challenges and opportunities to the road freight industry, as it does to other parts of the community. As the Productivity Commission has noted:

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<sup>1</sup> BITRE Freightline 1: *Australian Freight Transport Overview* (2014) [https://bitre.gov.au/publications/2014/files/Freightline\\_01.pdf](https://bitre.gov.au/publications/2014/files/Freightline_01.pdf)

<sup>2</sup> Infrastructure Partnerships Australia *Fixing Freight: Establishing Freight Performance Australia* (2018) <http://infrastructure.org.au/wp-content/uploads/2018/04/Fixing-Freight-Establishing-Freight-Performance-Australia-1.pdf>

*With rapid advances in computing power, connectivity, mobility, and data storage capacity over the last few decades, digital technologies offer opportunities for higher productivity growth and improvements in living standards. But they also pose risks of higher inequality and dislocation of labour and capital.*<sup>3</sup>

10. There is also the issue of trust in the new technology; in particular social acceptance will affect the roll out of autonomous vehicles, the introduction of which will have revolutionary impacts on labour force issues. The Productivity Commission has said:

*(T)he uptake of technology takes time and is strongly dependent on changes in consumer preferences and their attitudes to technology. The wider community is more likely to ‘trust’ and adopt technology when the consequence of something going wrong is relatively small. For example, it is one thing for a credit assessment to go awry, but quite another for a self-driving vehicle to make an error (MHFI 2014). Even when machines are able to perform risky tasks more reliably than humans, trust needs to be earned and new ways of thinking about accountability and liability need to be developed — both of which take time.*<sup>4</sup>

11. In the Inquiry’s Background Paper<sup>5</sup> the novelty of digital technology in context is said to be “the capacity for technology to facilitate the matching of available workers with those who are seeking services, and the emergence of technology driven businesses existing solely for this purpose.”<sup>6</sup>
12. The road freight industry has also been affected by this development. Members have informed us that there are a large number of digital platforms that “match” freight tasks with transport companies. They essentially offer a limited form of freight forwarding, often without assuming any of the liabilities which accompany the traditional manner in which freight forwarding tasks occur.
13. A freight forwarder would rarely be in the business of moving goods itself. Instead, the freight forwarding company acts as an intermediary/paid agent between a shipper and the providers of various transportation services such as ocean shipping on cargo ships, trucking, expedited shipping by air freight, and moving goods by rail.
14. In contrast, members have indicated to NatRoad that most online platforms pass the onus of compliance onto the transport provider and have terms and conditions of use which preclude any agency relationship or other formal connection with either party to the transactions which they facilitate. Members have indicated that compliance is therefore given a low priority when dealing through digital platforms.
15. All digital platforms, however, do not appear to operate in a similar way. One digital platform informed NatRoad that it considers itself to be “just like any type of business engaging a form of marketing (online, print, media etc) with the aim of generating leads/business.”<sup>7</sup> The platform considered itself to equate to “a marketing service for carriers, payable by a monthly fee for service” or “a search engine for transport.” The company indicated that it did not see itself as “a participant in transport transactions.”

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<sup>3</sup> Productivity Commission *Digital Disruption: What Governments Need to Do* June 2016

<http://www.pc.gov.au/research/completed/digital-disruption/digital-disruption-research-paper.pdf> at p1

<sup>4</sup> Id at p73

<sup>5</sup> [https://djpr.vic.gov.au/data/assets/pdf\\_file/0011/1751258/11895-E4729-DEDJTR-IRV-On-Demand-Inquiry-Report\\_V6\\_WEB.pdf](https://djpr.vic.gov.au/data/assets/pdf_file/0011/1751258/11895-E4729-DEDJTR-IRV-On-Demand-Inquiry-Report_V6_WEB.pdf)

<sup>6</sup> Id at page 7

<sup>7</sup> Private communication with NatRoad

16. NatRoad considers that if an entity that might otherwise be classified as a freight forwarder is paid a fixed fee unrelated to the size, weight or destination of the consignment, and does nothing more than provide a platform which introduces senders/receivers to carriers, they would exercise little influence or control over the execution of the freight task. As such they would have no influence over the compliance or otherwise of the movement of the relevant freight and might reasonably claim that chain of responsibility (CoR) obligations as set out in the HVNL, would not apply in the context of that type of transaction. However, if the digital platform issues invoices associated with the freight task, and therefore has control over the execution of the task, then they would have CoR obligations.
17. As set out in detail below the determinative question is whether the digital platform has influence or control over the freight task. This factor **should be the trigger for the imposition of chain of responsibility duties.**

### Dearth of Data and Analysis

18. There are numerous data gaps along the freight and supply chain as identified in the federal Government's *Inquiry into the National Freight and Supply Chain Priorities*.<sup>8</sup>
19. The lack of data extends to the use of digital platforms and the share of the freight task that is now undertaken through these "matching" service offerings in whatever form they manifest.
20. Accordingly, in order to inform the Inquiry of member dealings with these platforms, NatRoad conducted a survey of its members. The survey was undertaken at the time of year when a number of members were only gearing up again after the Christmas/New Year close down, so it is merely indicative.

### Results of Survey

21. There were 59 respondents to the survey. This is just under 5% of NatRoad's members. 19 respondents were based in Victoria. Paragraph 29 contains member qualitative responses about the experience with digital platforms. All are negative.
22. Question 1 asked the number of trucks that the respondent owned. This question was asked so that it could be ascertained if smaller companies were more likely to use digital platforms. But that proposition could not be proven or disproven. 26 respondents had 1 or 2 trucks.
23. As the inquiry is based in Victoria, question 2 asked what State or Territory the respondent mainly operated from. 50% were located in NSW with just over 32% operating from Victoria.
24. Question 3 asked whether the respondent was an owner driver. 32 respondents or just over 54% identified in this category. Question 4 asked how many people the respondent employed. 12 of the 32 respondents who answered this question had 5 or fewer employees.
25. Question 5 asked if respondents had used a digital platform to obtain work in the last 12 months. 19 respondents skipped this question. Of the 40 who answered, 9 respondents said that they had used a platform.

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<sup>8</sup> All Cttee documents including the Report are available at this website <https://infrastructure.gov.au/transport/freight/freight-supply-chain-priorities/index.aspx>

26. Question 6 asked the respondents to identify the digital platform. Only 9 respondents answered. Some had used more than one platform. The platforms identified were Channel40 (5), Loadshift (7), Truckit (2), uShip (1) and unspecified (2).
27. Question 7 asked for the total value of work obtained from digital platforms in the financial year ended 30 June 2018. Only five respondents gave a monetary answer. Three had small amounts, all under \$5,000. Two reported \$30,000 and \$50,000 respectively as earned through digital platforms.
28. Question 8 asked for the percentage of turnover represented by the amounts reported in question 7. The company that reported a \$30,000 use indicated that this represented 7% of turnover by far the highest amount reported from any respondent. Despite this level of turnover, the respondent reported negatively about the experience and its comments are included in those set out at paragraph 29 below. All other reports were that the amount was insignificant as a percentage of turnover.
29. Question 9 was an open ended question about the member's level of satisfaction "with the process of obtaining work from the digital platform." 5 comments were received that related to the question as follows:
- "Seems to be bottom feeding for price. Not a good way to find work."
  - " Are only used to fill an occasional load. But there are no checks and balances in place to ask if we have the capacity to complete the job, the right insurance or safety measures in place. They really do not meet the COR requirements at all."
  - "Past experience has been unsatisfactory, so we don't use them, too often like a race to the bottom of rates or a Dutch auction."
  - "Not good."
  - "A poor way to get work. Only used for back loads. Or to top up loads. Low price is the only consideration of the client."

### Chain of Responsibility

30. NatRoad's solution to the regulatory issues that arise in relation to digital platforms is to extend chain of responsibility laws to these platforms under certain circumstances. It is clear from the limited but useful feedback from the member survey that regulation through the chain of responsibility would be welcomed by members.
31. Changes were introduced from 1 October 2018 to the HVNL and involve a new chapter of regulation directed at chain of responsibility parties and the principle of shared responsibility. They include a proactive primary duty on specified chain of responsibility parties to ensure the safety of transport activities.<sup>9</sup>
32. The new primary duty supplements the prior provisions where parties were only liable once breaches were detected. The new provisions also include a 'due diligence' obligation on executive officers of entities with a primary duty and prohibit requests and contracts that would cause a driver or chain of responsibility party to breach fatigue requirements or speed limits.
33. The definition of a 'party in the chain of responsibility' under the HVNL limits the primary duties to specific persons and does not capture everyone who influences **or** controls the

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<sup>9</sup> A detailed explanation of the laws appears here: <https://www.nhvr.gov.au/safety-accreditation-compliance/chain-of-responsibility/changes-to-cor>

safety of transport activities in the supply chain. A **party in the chain of responsibility** for a heavy vehicle is limited to:

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

34. Although NatRoad has welcomed the changes that expand the chain of responsibility provisions, they are limited to specific parties and only to the extent each party has the capacity to “influence **and** control” rather than “influence **or** control” the safety of the transport activity. Clearly in the current context, there is a need to vest responsibility in those persons who promote “platforms” for the undertaking of work but who protect themselves from any legal responsibilities related to the transport task.
35. Implementing a broader test of who is a party in the chain would make all parties in the supply chain more responsible for what happens on-road, including those who currently escape liability such as digital platforms which influence the transport task.
36. Relevant to the Inquiry, the harmonised WHS laws cast a much wider net than the HVNL by applying duties to ‘persons conducting a business or undertaking’ and to ‘workers’, broadly defined. In the Victorian legislation, s 21(3) *Occupational Health and Safety Act, 2004 (Vic)* extends the duties of employers to an independent contractor engaged by an employer and any employees of the independent contractor. We prefer the approach where WHS laws apply to “workers” under the harmonised model.
37. Transport operators must comply with the duties under WHS law in addition to the HVNL. Ultimately, transport safety requirements could be rationalised by accommodating specific regulations for heavy vehicles under the WHS laws. This should improve compliance and efficiency where heavy vehicle safety is managed holistically as part of a safe system of work under the WHS laws. It will also ensure that contractors and employees are treated in the same manner when safety obligations are considered.
38. However, NatRoad notes that whilst section 16(3) of the harmonised WHS law states that each person must discharge their duty to “the extent to which the person has the capacity to influence and control the matter”, the test of influence and control is not used in the *Occupational Health and Safety Act, 2004 (Vic)*.
39. **NatRoad recommends that the chain of responsibility duties in the HVNL are invoked where a party in the chain has influence or control over a transport activity. We also recommend that the Victorian OHS legislation better reflects the terms of the harmonised WHS laws so that the concept of influence or control provides the basis for when parties must exercise a duty and as a test for the boundaries of that duty.**

#### **Industrial Relations Considerations**

40. NatRoad rejects that there is a failure in the workplace relations system which requires the creation of the class of worker known as a dependent contractor. This solution has been

proposed for workers who earn their living by providing regular services through a technological platform on a regular basis – examples include Air-tasker, Uber, Deliveroo and related operations.

41. For the heavy vehicle industry, the issue is one of placing responsibility on intermediaries that are able to have influence or control in the supply chain, as discussed earlier. They must be recognised as being part of the chain of responsibility.
42. More broadly, the distinction between an employment relationship and an independent contractual relationship should be strengthened not supplanted by the amorphous notion of a dependent contractor relationship. Economic vulnerability, the key underlying principle of the flawed notion of dependent contracting, is not a concept that should underpin the existence of a legal relationship.
43. The idea of dependency based on economic vulnerability purportedly has relevance where there is a contractor who works only for one client, but exclusivity and vulnerability are not one and the same. To determine whether the relationship is one of dependency, the test of whether the worker is in the category of employee or contractor must still be applied.
44. The courts in Canada, where the category of dependent contractor has been recognised, apply a highly discretionary test.<sup>10</sup> The elements that are applied do not have a sufficiently clear application to become part of Australian law. Further, which protections would be extended from the laws that currently govern employment are unclear. If they are to be equated with employees should the full range of protections be available? Concepts which blur the distinction between employee and independent contractor should be rejected and the tests associated with the distinction strengthened. The protections that are currently available to independent contractors are discussed below.
45. NatRoad also believes that greater enforcement of the current law is required rather than new laws introduced where award wages and conditions are being undercut because of independent contracting arrangements. NatRoad is aware for example that the TWU has alleged that “many riders and ridesharing workers are made to become ‘independent contractors’ and as a result they are effectively paid below award rates and are denied basic benefits.”<sup>11</sup>
46. This statement ignores the protections currently available to independent contractors and to workers under the *Fair Work Act, 2009 (Cth)* (the FWA) and the *Independent Contractors Act, 2006 (Cth)* (the ICA).
47. Sections 357, 358 and 359 of the FWA provide protections against “being made” to become an independent contractor. As the Productivity Commission has noted:

*Currently, there are three sections in the FW Act that are aimed at curbing the incentives for employers to instigate sham arrangements. These provisions prohibit an employer from:*

- *misrepresenting an employment relationship or a proposed employment arrangement as an independent contracting arrangement (s. 357)*
- *dismissing or threatening to dismiss an employee for the purpose of engaging them as an independent contractor (s. 358)*

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<sup>10</sup> See for example *McKee v. Reid's Heritage Homes Ltd.*, 2009 ONCA 916

<sup>11</sup> Transport Workers Union of Australia *Submission to the Select Committee on the Future of Work and Workers* 30 January 2018 p3

- *making a knowingly false statement in order to persuade or influence an employee to become an independent contractor (s. 359).*<sup>12</sup>

48. The Commonwealth also has in place legislation which protects independent contractors. Indeed, the signal case showing the effectiveness of the ICA arose in the context of a transport industry matter: *Keldote Pty Ltd & Ors v Riteway Transport Pty Ltd*<sup>13</sup>. That decision made it clear that one of the powers vested in the court by the ICA was to avoid the undercutting of wages:

*Section 15(1)(c), like its predecessors, was partly designed to prevent the undercutting of wages.*<sup>14</sup>

49. NatRoad supports the application of commercial law to owner driver arrangements rather than an extension of labour law based regulation. **But NatRoad would not oppose the ICA being changed so that the proscription on undercutting Award wages was made more palpable. This prohibition would have to exclude payments where the independent contractor clearly chose a lesser rate because they would otherwise be travelling empty or they were involved with a backload. Hence, informed consent to such an arrangement should override any strengthened proscription.**

50. Any rules that remove us from the underpinning notion of a fair bargain should be resisted. As the Chief Justice of the Federal Court has said:

*Our conception of the bargain has taken us (depending upon the jurisdiction) to the point of acceptance of implications into the binding contractual fabric of requirements of a reasonable degree of good faith in support of the bargain made as the subject of free will. The bargain is the tool of human interaction, not just commerce. Its binding force lies in the rooted concept of the promise, the faithfulness to one's word, and the place of trust in the building of human social relationships and structures including those in commerce. The bargain is not a creature of Benthamite philosophy or laissez-faire free market philosophy. It inheres in human conduct.*<sup>15</sup>

51. Owner drivers are small business operators, not employees who require the paternalistic protection of labour laws. They want to be treated as independent operators of commercial businesses and be free to negotiate their own terms of trade. They hold fiercely to that outlook. Owner-drivers should be regulated by commercial laws rather than by laws which are built on an industrial relations perspective.

52. In its submission discussed earlier, the TWU specifically supports the system in New South Wales that is labelled as being designed to mitigate the vulnerabilities of owner-drivers. NatRoad does not support the legislation. Similar legislation should not be introduced in Victoria.

53. Since 1984, a little known and largely under-utilised industrial determination has prescribed rates of pay for certain owner-drivers working in restricted geographical areas of NSW (primarily metropolitan Sydney and short journeys of less than 50 kilometres elsewhere in NSW).

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<sup>12</sup> Productivity Commission *Workplace Relations Framework Vol 2* (2015) at p813

<sup>13</sup> [2008] FMCA 1167 (22 August 2008)

<sup>14</sup> Id at para 124

<sup>15</sup> <http://www.fedcourt.gov.au/digital-law-library/judges-speeches/chief-justice-allsop/allsop-cj-20150925> at para 26

54. In December 2013, the TWU applied to the Industrial Relations Commission of NSW (the Commission) to increase the rates payable to owner-drivers operating in restricted parts of NSW, and also to expand the geographical and industry coverage of a legal determination known as the General Carriers Contract Determination (the GCCD). As stated, the GCCD had operated in limited parts of NSW since 1984, covering all freight tasks undertaken in metropolitan Sydney.
55. Among other things, the GCCD prescribes rates of pay based on variables such as vehicle configuration, age, running costs, vehicle maintenance, and office expenses. Just like the now abolished RSRT (see below), the GCCD sets the rates independent owner-drivers must charge if they are operating in certain parts of NSW. This prescriptive approach undermines the independence and competitiveness of business. Business owners should have the right to negotiate the best competitive rates for their business, and they want control over how business is done. That is why they elect to become business owners rather than remain employees – and that is why their business should be regulated by commercial law rather than labour law.
56. The most significant change for owner-drivers though, is the introduction of a new freight corridor for single trips commencing in Sydney and finishing close to either Newcastle or Wollongong. This is a significant expansion of the coverage of the GCCD and it creates duplication, confusion and control of freight rates for a single sector of the freight industry – the owner-driver. This distorts the market and was a failure when the Road Safety Remuneration Tribunal (RSRT) sought to regulate the same sector (see below).
57. There is no necessity for this industrial instrument. Its application is complex and confusing, and it undermines productivity by fostering misunderstanding among transport operators within and outside NSW. The TWU is wrong in commending its operation.
58. The TWU also favourably mentions the now repealed Australian safe rates legislative model. As is evident from the prior comments about the GCCD, NatRoad was active in seeking the abolition of the RSRT in 2016.
59. Relevant to this inquiry is the flawed way the RSRT system prejudiced owner drivers as independent contractors, part of the workforce that may undertake “on demand” work. One of the fundamental flaws in the RSRT model of regulation was that the relevant payments order applied a minimum freight rate to owner drivers, an order that worked in a discriminatory manner. As a result, owner drivers found themselves unable to compete with the rates offered by their competitors in the marketplace, including those operating under employer/employee arrangements.
60. The establishment of the RSRT in 2012 (and the Fair Work Ombudsman’s related education and compliance function),<sup>16</sup> was intended to promote safety in the road transport industry.<sup>17</sup> However, this reform was based on a tenuous link between setting mandatory minimum freight rates and improving road safety. Unsurprisingly, the intended goal was not achieved.
61. In fact, the very opposite occurred because the complex and controversial workings of the RSRT diverted owner-drivers’ attention away from the developments in the HVNL - the primary instrument governing heavy vehicle safety and the legislative scheme under which the chain of responsibility reforms discussed earlier have been introduced and which NatRoad seeks to expand.

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<sup>16</sup> *Road Safety Remuneration Act 2012 (Cth)*

<sup>17</sup> *Ibid* section 3

62. The Contractor Driver Minimum Payments Road Safety Remuneration Order 2016 (the Payments Order) was issued by the RSRT on 18 December 2015 and was initially due to commence on 4 April 2016. It set minimum rates of pay on a per kilometre and per hour basis for contractor drivers undertaking routes either in supermarket distribution or long-distance operations. The Payments Order contained schedules setting out minimum rates hirers were required to pay contractors depending on factors such as the driver's transport worker grade (based on the type of vehicle being driven) and the class of vehicle.
63. Two reviews of the Road Safety Remuneration system (the System) found that the *costs of the system far outweighed its benefits*.
64. A review undertaken by PricewaterhouseCoopers Australia (PWC Report)<sup>18</sup> was certified as being informed by a process and analysis equivalent to a Regulation Impact Statement (RIS) as set out in the Australian Government Guide to Regulation and the corresponding guidance note.<sup>19</sup> It therefore has particular cogency.
65. The PWC Report reinforced the criticism found in an earlier report by Jaguar Consulting, dated 16 April 2014 but released only in 2016.<sup>20</sup> The PWC conclusion was that abolition of the System would result in significant net benefit to the economy and community at large. PWC found that by 2027, the costs of the RSRT's activities would have been more than \$2 billion greater than its benefits. The PWC report also found that the administration costs for small business associated with the RSRT were \$56 million a year for each order, or approximately \$2,000 per business impacted.
66. It is plain from the PWC Report that the Payments Order could not materially affect road safety as indicated by the following extract [emphasis added]:

*According to our analysis, the **costs of the Road Transport Order outnumber the benefits**, by \$3 in cost to every \$1 of benefits. Our best case scenario analysis shows the Road Transport Order **would have to decrease the impact of road accidents in the economy by over 20 per cent for the benefits to outweigh the costs**. In 2013, the driver was only at fault (due to speed, fatigue etc.) in **18 per cent of heavy vehicle fatalities**. Since the Road Transport Order operates to control fatigue and speed, but **cannot impact the behaviour of small vehicle drivers, pedestrians, road conditions and other factors**, it is highly unlikely a 20 per cent reduction can be realised, if these factors where the driver is at fault only amounted to 18 per cent of fatal crashes in 2013. Furthermore, we have used **conservative estimates in our analysis leading to the likely conclusion that an appropriately enforced Order would impose far greater costs on industry than safety benefits**.<sup>21</sup>*

67. The thrust of the PWC Report is quite clear: remuneration of owner drivers cannot be expected to in any way affect the behaviour of other motorists who share the road and the link between regulating freight rates and increasing road safety is, in any event, far from proven. The PWC Report found [emphasis added]:

*While some of these studies have found a link between remuneration and road safety, there remains **limited research and conclusions vary as to the extent and nature of this relationship**. While there remains the potential for concern about the link between remuneration and road safety, PwC has not found any additional information to change our original view expressed in the Regulation Impact Statement we prepared for the Department of Education, Employment*

<sup>18</sup> Summarised at this web site <https://www.jobs.gov.au/review-road-safety-remuneration-system>

<sup>19</sup> Noted in the Explanatory Memorandum for the Road Safety Remuneration Repeal Bill 2016 [http://www.austlii.edu.au/au/legis/cth/bill\\_em/rsrb2016327/memo\\_0.html](http://www.austlii.edu.au/au/legis/cth/bill_em/rsrb2016327/memo_0.html)

<sup>20</sup> See <https://www.jobs.gov.au/review-road-safety-remuneration-system> for an explanation

<sup>21</sup> PWC Review of the Road Safety Remuneration System Final Report January 2016 p 46

*and Workplace Relations in 2011 prior to the establishment of the System. Namely, that the focus of the System should be on the link between remuneration and road safety and **only once the link has been appropriately established should those issues be targeted proportionately and directly**.*<sup>22</sup>

68. NatRoad is confident that the changes to the HVNL relating to chain or responsibility will have a positive effect on safety in the road freight industry. That said, it should be noted that the figure of 18 per cent quoted in the extract at paragraph 66 above, is indicative of the low level of fault attributable to the drivers of heavy vehicles.
69. Critical factors that affect an enhancement to road safety include improvements in road conditions and design, greater general public awareness about interacting with heavy vehicles, and more investment in enforcement against rogue operators. "Safe rates" is a misnomer which erroneously links road safety with rates of pay. Safe rates would not assist on-demand workers, especially owner drivers.
70. The report issued by the Australian Small Business and Family Enterprise Ombudsman (ASBFEO)<sup>23</sup> following its far-reaching inquiry into the impact of the RSRT on small business, found that the operation of the RSRT Payment Orders had an extremely detrimental effect on owner/drivers.
71. The report found that the tragic effects of the operation of the RSRT's orders included being a trigger for suicide. Two key findings by ASBFEO which highlight the fundamentally flawed role of the RSRT are:
- *It is with great regret and sympathy that it was reported to the Inquiry that some owner drivers found they were unable to cope with further hardship caused by the Payments Order and took their own lives.*
  - *The effect of the Payments Order on individual owner drivers and small businesses was significant, with financial hardship and stress placed on personal relationships and mental and physical health.*<sup>24</sup>
72. Mandating rates of payment for owner drivers is not the way to achieve protections for workers whether in the on-demand sector or otherwise. Not only is safety not enhanced by such regulation, but as the ASBFEO made clear, market distortions are created [emphasis added]:

*The challenge with setting payment rates to address safety or other industry concerns can distort the market by **eliminating the price differential which allows owner drivers to compete against larger competitors**. At the same time, an **imposed payment rate sets limitations on how owner drivers can operate their business** in addition to the national heavy vehicle safety regulations. The RSRT, in setting the Payments Order, **demonstrated the disastrous effect that this can have on many small businesses in this industry.***<sup>25</sup>

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<sup>22</sup> Id at iii of the Report

<sup>23</sup> *Inquiry into the effect of the Road Safety Remuneration Tribunal's Payments Order on Australian small businesses*

<sup>24</sup> Ibid page 4

<sup>25</sup> Id at 29

## NatRoad Recommendations

73. Extending legal responsibility along the supply chain for safety outcomes is a reform that will be central to enhancing the protection of workers, including on demand workers. The expansion of those who are a party in the supply chain to include digital platforms should be investigated by the Inquiry and a recommendation made to change the national law to that effect.
74. The ICA could be strengthened to proscribe contractual conditions that undercut modern award rates save with informed consent.
75. The Inquiry should firmly reject the notion that introducing a category of dependent contractor into the law would be a useful reform.
76. The Inquiry should firmly reject any arguments for the re-introduction of “safe rates” into the transport industry and reject the utility of the scheme established via the GCCD.