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Dear Maintenance Team

### **Effluent and load restraint – Discussion Paper**

Australian Pork Limited (“APL”) welcomes the opportunity to make a submission to the National Transport Commission (NTC) *Effluent and load restraint Discussion Paper* (“the paper”).

APL is the peak national representative body for Australian pig producers. It is a producer-owned company combining marketing, export development, research and innovation and strategic policy development to assist in securing a profitable and sustainable future for the Australian pork industry. The Australian pork industry employs more than 36,000 people in Australia and contributes \$5.2 billion in gross domestic product to the Australian economy.

APL acknowledges the importance of the Heavy Vehicle National Law (HVNL) and fully supports its objectives. We recognise the importance of clarifying the roles and responsibilities of individual parties within the supply chain and support any approach to harmonise the interpretation of the HVNL by law enforcement authorities nationally. In saying this, transportation of livestock via public road networks is a crucial element of our producer supply chain.

APL and its members recognise the importance of managing livestock effluent on roads to ensure public safety, amenity, environmental and biosecurity impacts are recognised and effectively managed. As such, we support the opportunity for greater certainty around safe work practices throughout the supply chain and issues such as minor, incidental and unavoidable spills and the application of duties (responsibilities) for parties. Through our research programs and collaboration with governments at all levels, and other industry and academic bodies, APL is always striving to achieve a higher standard of outcomes and promotes initiatives that bring about positive change to our industry.

Other legislative requirements at the national and state levels and industry-specific standards such as the Model Code of Practice for the Welfare of Animals – Pigs (“the model code for pigs”) and the Australian Pork Industry Quality Assurance Program (APIQ<sup>✓</sup>) recognise and require that producers take responsibility to manage the risks associated with pig production. These requirements, including the Australian Animal Welfare Standards and Guidelines for the Land Transport of Livestock, set out the roles and responsibilities for all parties in the transportation of livestock, and if breached, parties are subject to penalties. Equally, APL advocates that where control of livestock is passed

to another party, such as a livestock transport company, the duty and legal responsibility for the livestock is also passed as the animals have left the production system and are no longer within the farmer's control. Therefore, penalising producers for offences committed outside of their immediate and foreseen control is unreasonable and potentially illegal.

APL does not encourage amendment to the HVNL, rather we seek clarification and certainty around several definitions to ensure all parties within the supply chain are aware of their legal responsibilities and to minimise the freedom for interpretation by law enforcement authorities. More specifically, APL is not supportive of amendments to the HVNL whereby producers can be implicated either automatically or through chain of responsibility. Therefore, APL encourages the NTC to reach a balanced and reasonable interpretation of spills that are the result of normal animal behaviour rather than negligence of the supply chain parties, including producers.

With respect to the paper, APL makes the following comments:

**1. Issue 1: Chain of responsibility parties**

***Is reform of existing laws required to clarify the application of chain of responsibility duties for parties in the livestock supply chain?***

APL believes that the provisions in the HVNL are sufficient and do not require reform to meet the objective of clarifying the application of chain of responsibility duties for parties in the livestock supply chain. Specifically, NTC could undertake the following actions without recourse to legislative change:

- Clarifying the roles and responsibilities of parties under the chain of responsibility to reduce the locally applied current freedom of interpretation by enforcement agencies and the varied resultant penalties
- Making a clear distinction between requirements for public safety as opposed to animal welfare – noting that transportation of livestock is not a fixed system as there is an unavoidable element which is the behaviour of the animal
- Providing certainty to livestock producers and service suppliers as to what is meant by minor, incidental and unavoidable effluent spills in a practical sense. Noting we are discussing living creatures, which by definition, are dynamic and unpredictable so in effect spills will never be completely avoided and as such must be defined to avoid frivolous penalties being applied across the supply chain

**2. Issue 2: Minor, incidental and unavoidable effluent spills**

***Is reform of existing laws required to allow for minor, incidental and unavoidable (in any practical sense) spills that do not compromise the overriding safety objectives of the load restraint provisions?***

APL believes it is better to provide clarity around existing laws than to change them. As such, legal reform should not be required to allow for minor, incidental and unavoidable spills where public safety is not compromised. Pig producers need certainty around what is meant by the term 'minor, incidental and unavoidable', as animals will excrete unavoidable effluent during the transportation process and - at this stage - APL is unaware of any additional cost-effective modifications that can be made to trucks that will mitigate these spills while maintaining the required animal welfare standards.

Once the subjective terms of the HVNL are defined, APL recommends to the NTC that education and awareness be the focal point to ensure that those involved throughout the chain of responsibility and enforcement authorities are made aware of the practical assessment and application of these requirements. APL suggests that such an approach will be seen as proactive by industry rather than the existing compliance-focussed alternative.

Noting the array of industry-specific guidelines and standards, APL proposes that where practical these are considered and adopted to avoid further development or amendment of legislation and regulation. As such, NTC could undertake to review the industry based national guidelines and standards to identify where and how the management of effluent spills can be undertaken. APL would be very happy to provide its suite of industry best practice standards and guidelines if the NTC was open to this approach.

***Are minor, incidental and unavoidable effluent spills a road safety issue?***

APL would contest that this question cannot be truthfully answered without an understanding or definition of what is 'minor, incidental and unavoidable' in the context of road safety. Even once this is done we believe there is still no simple answer. Under the current application of the law, it is the judgement of an individual that determines if a spill is a road safety issue. This is typically based on the individual's experience with other enforcement officers or the education they have or have not received. This adds further weight to the NTC taking an educative rather than regulatory and compliance approach in an environment where variability is inevitable.

If road safety is the ultimate objective of the HVNL then clarifying the intent, interpretation and application of laws is paramount. Once these are agreed, undertaking to educate and inform in a consistent manner in partnership with peak bodies such as APL will shift the thinking and understanding of producers, transporters and enforcement officers to an informed member of the community rather than an uninformed party.

***Should small, minor or incidental effluent spills be prosecuted?***

As stated above, APL does not believe that a compliance and enforcement approach is going to achieve the best outcomes in this process given the very nature of animal transportation. Should future prosecutions be imposed, these must only be as a direct result of breaches following clarification of what is meant by 'small, minor or incidental effluent spills'.

APL questions why the NTC is using different terminology within the discussion paper and questions for submissions. An example of this is:

1. 'minor, incidental and unavoidable spills', as opposed to;
2. 'small, minor or incidental effluent spills'.

Until the NTC considers and implements consistency in terminology there cannot be any expectation that local enforcement authorities will cease to impose unnecessary and frivolous charges and prosecutions on parties throughout the supply chain.

***Should a small amount of effluent or other material, such as hay, be allowed to incidentally fall out of the truck in order to meet animal welfare standards, i.e. to allow adequate ventilation and reduce stress?***

APL agrees that small incidental spills be allowed given these are largely unavoidable while maintaining the necessary animal welfare standards during transportation. As indicated previously, by its very nature, animal transportation has variables outside of those required

for transporting other products. As required by law, the priority for any person consigning or undertaking live animal transport is to ensure the welfare standards of the animals are such to ensure the animals are not physically stressed in any way.

As an example, it is an animal welfare requirement (particularly in summer) that pig transport vehicles have misters to cool the pigs. If a part of this mist inadvertently lands on a car following the truck, should those along the supply chain be prosecuted for something that achieves an animal welfare outcome. APL suggests not.

By defining these terms and then setting limits on spills, which consider variables including road type, intensity of traffic, location (regional or rural), climate (particularly rainfall) and vehicle speed would put some practical boundaries around what is acceptable by the NTC. Without such due consideration of variables, interpretation of incidents would be purely subjective and open to dispute.

***Do you have evidence of small, minor and/or incidental effluent spills causing injury or damage or otherwise compromising road safety?***

APL understands that effluent discharges from livestock trucks have resulted in community complaint, however, we are unaware of any specific incidents directly related to the pig industry where effluent spills have been cause to injury or damage or otherwise compromise road safety.

**3. Options**

***Of the three proposed options, what is your preferred approach and why?***

- a. *Option 1: Amend the definition of party in the chain of responsibility*
- b. *Option 2: Amend section 111 to specifically include other chain of responsibility parties*
- c. *Option 3: Allow for a minor, incidental or unavoidable loss of part of a load*

APL supports Option 3: Allow for a minor, incidental or unavoidable loss of part of a load.

As described previously, the practicalities of transporting livestock demonstrate that minor, incidental losses of effluent are inevitable because of the very nature of transporting live animals that have welfare, feed and water needs. APL cannot see how any other approach is adopted unless:

- further restrictions are placed around access to feed and water prior to and during transportation, which would most likely breach animal welfare requirements
- vehicle and trailer design is changed, which would again most likely breach animal welfare requirements
- regular effluent dumping points on livestock transportation routes throughout Australia are established.

APL would suggest that this approach reduces the need for adding further regulatory confusion and burden by amending an already confused piece of legislation. This approach allows the NTC to clarify a set of terms and definitions relating to the intricacies of transportation of livestock and the management of effluent; develop guidance documentation for producers, transporters and enforcement authorities; and, educate

parties within the chain of responsibility and enforcement officers so they are clear on the management and enforcement expectations of the NTC.

In complying with the model code for pigs, producers take every reasonable step to prepare their animals for transport, and to control potential effluent and load restraint discharges while meeting their required animal welfare standards. Beyond this, producers are limited in their level of control once the animals are loaded for transport and leave their responsibility. As such, any action undertaken by compliance officers in the act of animal transportation is beyond the control of the producer and therefore should not be passed on retrospectively.

APL would contest that under Options 1 and 2, if producers were identified as responsible parties under the HVNL, they could be implicated in a breach or offence over which they had no control. To safeguard producers, APL would recommend that suitable parties are protected from implication by association if they can demonstrate they have met the standards required under the model codes for pigs and they had no control over the actions or equipment of the accused party. APL would also suggest that the NTC protect those who act in good faith to identify the point within the chain of responsibility where duties or parties have been exposed. This should be encouraged to give feedback to the NTC and law enforcement authorities as to where the point/s within the supply chain are failing. This is preferable to blaming and charging a single point in the chain of responsibility as this may have undesired impacts to law abiding individuals and businesses and cause significant financial and emotional distress.

***How would the proposed options impact upon you and/or your business?***

APL contends that Option 3 will have the least impact upon pig producers. Should Option 1 be adopted, any person within the chain of responsibility is liable under any breach of the HVNL. This would have a massive impact on our producers because they can be implicated in a breach at any point in the chain of responsibility, for which they have no control. We believe this would result in an unfair outcome to producers.

Option 2 places responsibility on individual parties within chain of responsibility and producers must be protected from prosecution once the animals have left the farm gate unless it can be proven that they have been negligent in their preparation of the animals prior to transportation.

Under either option, APL would be deeply concerned if the ability for effective decision-making by all parties within the chain of responsibility is jeopardised through increased legislative and regulatory burden.

***Is there a cost-effective commercial product alternative that would allow ventilation while limiting the spillage of effluent?***

APL is unaware of any such products at this time.

***What alternative approaches do you support to improve effluent control on Australian roads?***

As indicated above, APL proposes several options for consideration by the NTC other than additional regulatory burden and increased compliance.

As suggested above, APL recommends that under Option 3:

- NTC undertakes consultation with peak industry bodies that have existing industry-specific best practice standards and guidelines and subsequently provides clarification of definitions and application to supply chain parties

- a range of guidance material be prepared to promote the agreed approach
- education be provided to relevant parties within the chain of responsibility and law enforcement authorities

APL also supports the establishment of effluent waste dumps and wash bays along known livestock transportation routes throughout Australia. APL is aware that in NSW the Department of Roads and Maritime Services is prioritising the development of Heavy Vehicle Rest Stops to ensure transporters comply with fatigue management legislation. This would seem a highly suitable opportunity to co-develop these rest stops with the positioning of effluent waste dumps and wash bays to improve the management of animal waste effluent and load restraint along these crucial transportation corridors.

### **Summary**

APL supports the consideration by the NTC of options to improve the HVNL and its application in the field. We support any approach to harmonise the interpretation of the HVNL by law enforcement authorities nationally while recognising that transportation of livestock via public road networks is a crucial element of our producer supply chain.

APL and its members are committed to ensuring all reasonable efforts are made to effectively mitigate and manage any impacts to public safety, amenity and environment, through incidents such as spills of effluent on public roads. APL welcomes greater certainty around safe work practices throughout the supply chain to ensure our producers are operating in accordance with all national, state and territory requirements.

APL would be happy to discuss the comments provided in this submission and provide any clarification or industry standards and guidelines if required by the NTC. Should you require further information or have any questions, please contact Grantley Butterfield, Policy Manager – Planning and Environment, on 02 6270 8820 or [grantley.butterfield@australianpork.com.au](mailto:grantley.butterfield@australianpork.com.au).

Yours sincerely



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