

National Transport Regulatory Reform

Productivity Commission Draft Report

9 January 2020

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2. Background

The Motor Trade Association SA/NT (the MTA) is an employer organisation representing the interests of over 1,200 members and their more than 15,000 employees in the automotive retail, service and repair sector throughout metropolitan and regional South Australia (SA) and the Northern Territory (NT).

Eighty per cent of these businesses employ less than 20 employees. The automotive retail, service and repair sectors in SA and the NT adds more than \$3 billion to the economy annually and employs over 30,000 people.

The MTA also operates a Training and Employment Centre in SA, comprised of both our Registered and Group Training Organisations. It is the automotive industry's training provider of choice with more than 900 apprentices in training and is the largest employer of automotive apprentices in South Australia with 500 employed through over 240 host businesses.

As a representative body, the MTA has 12 divisions representing the full range of trades within the automotive industry including:

- Australia Automotive Dealers Association
- Automotive Dismantlers
- Auto Repair and Engineering
- Body Repair Specialists
- Commercial Vehicle Industry Association
- Farm and Industrial Machinery Dealers Association
- Licensed Vehicle Dealers
- Motorcycle Industry Association
- Towing Services
- Service Stations
- Tyre Dealers
- Vehicle Rental

3. Industry Consultation

This submission summarises the views of the MTA's members. In developing this submission, the MTA has consulted with members in the bus and coach, and heavy vehicle sales, repair and transport sectors.

4. Introduction

The Productivity Commission has, *inter alia*, requested stakeholder feedback on the implementation of the national transport regulation reforms, including the development of the three national regulators; the capacity of local government in supporting the implementation; the delivery against agreed COAG and Intergovernmental Agreement (IGA) objectives; and the scope for future reforms to national transport regulation, including areas for further harmonisation and integration of the transport sector and the remit of the regulators.

The Draft Report, entitled *National Transport Regulatory Reform: Overview & Recommendations* relates to the reform packages of three transport sectors: road, rail and maritime.

As the peak body representing South Australia and the Northern Territory's automotive industry, including heavy vehicle dealerships, freight transport, heavy vehicle repairers, tow truck operators, bus and coach operators, and agricultural machinery dealers, the MTA's response is limited to the *Heavy Vehicle National Law Act 2012 (HVNL)* and the operation of the independent national regulator for all vehicles over 4.5 tonnes gross vehicle mass, known as the National Heavy Vehicle Regulator (NHVR).

The MTA notes that the Productivity Commission is seeking to identify new reforms which could advance the objectives of the 2009 COAG reforms. In 2009, harmonisation was a practical, co-operative reform to improve safety and lower business costs. In 2019, with harmonisation largely achieved, the next opportunities for reform will be different, and should include new more flexible approaches to safety regulation, policy changes in critical areas such as infrastructure provision and funding, and using emerging technologies to lift both safety and productivity.

5. MTA Position

The MTA considers that with regard to the implementation of the national transport regulation reforms, the HVNL's objective to minimise the compliance burden, reduce duplication and remove inconsistencies in heavy vehicle regulation across state and territory borders, and drive sustainable improvement in safety, productivity and efficiency outcomes has largely not been met.

This is due to the design of the HVNL, rather than a failing of the NHVR, and the MTA considers that the current legislative review of the HVNL being undertaken by the National Transport Commission is likely to respond to many of industry's concerns.

Consultation with our members have identified the following areas where further action is needed by Government and the NHVR:

Access and Permits

The Draft Report notes that while some productivity gains have been achieved with respect to heavy vehicle access, processing times for some approvals remain problematic.

The MTA consulted with its members regarding improving heavy vehicle access, and a clear priority identified was that the requirements to be met when applying for a permit be reduced. MTA Members have requested that permits be broad, standardised and easier to obtain. Furthermore, it is desired that permits be more readily available via a streamlined approval process.

While members have reported some productivity increases from national heavy vehicle reform efforts through gazetted routes, members are still reporting issues with access. The current decision making process regarding the provision of permits is prescriptive and inflexible, and operators have found that there are many opportunities for road managers to lose sight of, or delay, a permit application.

In consulting with members, the MTA also observes that some heavy vehicle operators experience difficulties in obtaining a permit in a timely way, impacting on the lawful operation of their business. For example, tow truck operators, unlike transport companies that can plan their routes well in advance, must be available to drive anywhere, at any time, to retrieve a vehicle that has been involved in an accident or break down. In the event that this occurs outside of standard business hours, without the ability to obtain a permit immediately, tow truck operators face the dilemma of abiding by the law or risking heavy penalties to provide a service to a member of the public in need.

Members have also sought more consistency with regard to decision making around the provision of permits. For example, the MTA is aware of circumstances in which one coach operator has been issued with a permit for a certain location for a period of six months, whereas its direct competitor enjoys a permit for the same location, and with the same type of vehicle, for three years. The MTA is unaware of the reason for the varying length of permit under the same operating conditions, but notes the unfair consequence that one operator will have to go through the difficult and time consuming process of obtaining a permit within a few months, while the competitor in this example paid the same permit fee.

MTA members have also advised that the provision of automatic renewals when the details or conditions of an access permit have not changed would be beneficial to their business operations.

The MTA is of the view that industry needs to be more involved in the NHVR's processes, including being consulted with for technical and operational issues. For example, MTA members have advised that technical specifications for buses are set on metropolitan buses, not coaches that travel the countryside. This is a clear example of when industry should be consulted when setting requirements under the HVNL.

Additionally, moving forward, MTA members are of the view that more regular reviews of the legislation are required to keep up with advances in technology, at least on an annual basis. For example, the manoeuvrability of buses has seen major changes due to technological advancements improving their turning circle, yet there are still restrictions that mean a bus needs a permit when they probably do not require one.

Fatigue management and flexibility

The Draft Report notes that while effective management of fatigue is critical to safety and should not be compromised, prescriptive fatigue management can have perverse effects, compelling drivers to take risks to comply with the rules.

The MTA agrees that the HVNL does not have the flexibility needed to regulate the diversity of freight types and tasks and differing compliance capacities of operators. Members have expressed the view that fatigue management should be determined by business owners based on risk profile, rather than strict regulatory compliance.

For example, the MTA observes that it might be satisfactory for a driver transporting furniture nearing the end of their maximum hours period to stop anywhere on the side of the road to commence a rest period. However, if a driver was transporting people on a coach tour, it would be completely unsatisfactory to stop when thirty minutes down the road there is a suitable rest stop, where the passengers can also alight and utilise the rest stop's amenities.

The National Transport Commission has identified that the HVNL is not stopping people impaired by fatigue from driving heavy vehicles. However, as observed above, the HVNL operates in an inflexible way, so as to prevent a perfectly capable, unfatigued, coach driver from continuing to drive an extra thirty minutes, for the comfort of their passengers, without the risk of heavy penalties. This outcome is produced by the complex and prescriptive nature of the current law.

It is the MTA's view that to have a truly flexible outlook when developing the new HVNL, serious and concerted consultation with industry will be required to deliver real life insights into what is required to follow safety protocol for each heavy vehicle transport type, while still completing transport tasks in a demanding and competitive industry.

The MTA and its members believe that the HVNL should nurture a safety first culture among heavy vehicle operators, with a view to continuous improvement.

Accreditation

The MTA's members are of the view that accreditation schemes rely on a cooperative and open relationship between regulators and regulated parties to be effective, and that the process of developing the scheme should be transparent and collaborative.

There is some concern amongst members that inspection standards are not uniform across all states and territories, and that in some cases the standards fall below what is expected.

The MTA holds the views that when government hands over risk management roles to a regulated party that has greater risk management expertise, it can result in better outcomes. It can also free up public resources, allowing more efficient compliance and enforcement activities. Regulated parties may be able to choose risk controls that suit their operations and are therefore more efficient. This frees regulated parties from having to use onerous prescriptive processes and systems to meet their obligations. In exchange, they take on more responsibility for risk management and demonstrating compliance.

However, MTA members are of the view that there must be a level playing field. If all heavy vehicles operators fall under one accreditation scheme then that would be considered fair. However, currently, those who sign up to various schemes (the NHVAS, for example) are perceived to have an advantage over those that don't.

Furthermore, MTA members believe that there is currently too much 'tick and flick', which is counterproductive in that the vehicles are seldom physically inspected. MTA members are concerned that compliance relies on the operator providing paperwork, and that this can lead to an operator signed up to the scheme having really solid paperwork processes, but very sloppy maintenance processes. The consequence is that there is a poorly maintained vehicle on the road.

Members agree that there should be a strengthening of the safety culture of industry through education and regulatory incentives for capable businesses to switch from 'tick the box' compliance to accredited, risk based safety management systems.

During our consultation, members have suggested that there should be kilometre limits. For example, annual inspection of a heavy vehicle that does 50,000 kms per year might be appropriate, but if a heavy vehicle does 300,000 kms per year then, arguably, it should be inspected more often.

The MTA advises that our members would prefer to have a single body to deal with regarding the accreditation process, particularly when it comes to disputes.

However, such a body would need to have an efficiently run complaints authority (or tribunal or mediator) to ensure minimal operator/regulator disharmony.

Members identified that an independent dispute resolution process was particularly necessary for operators to be able to challenge defect notices.

Compliance costs

The MTA's consultation highlighted cost considerations as a barrier that prevent operators from actively incorporating safer vehicles into their fleets.

Many business owners operate on very small margins and therefore choose to operate at a compliance level that satisfies legislation only. To incorporate safety mechanisms that are over and above what is required to be compliant can be seen as unnecessary and in some cases risks the viability of a business's operations.

Members also advised that a lack of understanding regarding the benefits of expensive safety technology leads to a lower uptake. Furthermore, with increased technology comes increased maintenance requirements, which, for a risk averse consumer, can be seen as simply one more thing that can go wrong. This is particularly the case in regional areas, where access to appropriate specialised equipment and training can be problematic.

Some operators are also concerned for the future short term viability of their business so are reluctant to invest in something with perceived long term gain.

There are also strong concerns about inspection locations for those in remote areas and the financial and time burden an inspection scheme will place on them. There are also concerns about the flexibility of the inspection scheme with regard to busy activity periods such as cropping or harvest seasons.

Looking to the future

Looking to the future, members report that there is uncertainty about how the heavy vehicle inspection scheme will work, and members are frustrated by the delays to the inspection tender in South Australia. There is also concern that national heavy vehicle reform efforts may ultimately be abandoned.

One member has reported that they have invested approximately \$100,000 for heavy vehicle inspection plant and equipment which is not realising its full potential due to the delays in the inspection scheme.

Some members have also expressed concern that national heavy vehicle reform has not been achieved due to Western Australia and the Northern Territory not participating in the reforms. Beyond this, it is noted that even those States signed up to the NHVR have variations and differing arrangements.

6. Next Steps

The MTA is available to provide further information in relation to this submission and to clarify any aspect of it.

This includes meeting with agency representatives and facilitating further consultations with industry on proposed changes.

7. Submission Contact

For further information relating to this submission please contact:

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