Australian Government
Department of Infrastructure, Transport, Cities and Regional Development

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National Transport Regulatory Reform
Productivity Commission
Locked Bag 2, Collins Street East
MELBOURNE VIC 8003
Via electronic submission

The Department of Infrastructure, Transport, Cities and Regional Development (the Department) welcomes the opportunity to comment on the Productivity Commission's draft report on National Transport Regulatory Reform. This submission provides contextual information on a number of issues covered in the draft report which the Department considers may be of assistance to the Commission in preparing its final report.

Introduction

Consistent national transport legislation and regulation has been a priority for successive Australian Governments. The strategic reforms agreed by the Council of Australian Governments (COAG) in 2009 for the regulation of heavy vehicles, rail and domestic commercial vessels were, and continue to be, ambitious in nature. The Department recognises that the expected benefits to the national economy have not yet been fully realised. The Department supports the progress that has been made through transport regulatory reforms over the last decade, and considers that further reforms of this nature will continue to deliver benefits.

As the Commission has acknowledged, the COAG reforms reflect the outcome of negotiation and compromise between jurisdictions. On some issues, jurisdictional differences are firmly entrenched, with derogations being the necessary by-product of securing agreement to the overarching reforms. Nevertheless, it is important that efforts to improve the national regulatory systems continue. Just as all levels of Government have had a hand in developing the national systems, all levels of Government will have responsibility for progressing any proposed changes to deliver future benefits. This will again require a collaborative, negotiated approach. We have seen that there is an appetite to do this, for example through the National Freight and Supply Chain Strategy and National Action Plan agreed by the Transport and Infrastructure Council on 2 August 2019.

The Department welcomes the breadth of issues identified by the Commission, but suggests it may be beneficial for the Commission to consider prioritisation of its recommendations to ensure actions that are likely to be of greatest safety benefit can be addressed first.

Transition process and achievements to date

The establishment of national regulators and the move towards nationally consistent regulation has met a variety of challenges and obstacles, however regulators and governments have taken appropriate steps to monitor and address issues as they have arisen.

For example, the Department considers the transition of responsibility for domestic commercial vessel safety regulation and services to the Australian Maritime Safety Authority (AMSA) in 2018 was successful and well managed. AMSA and state and territory agencies prepared collaboratively for transition of service delivery over several years. Upon transition, AMSA was able to manage services immediately with few issues or complaints,

and adapted to overcome challenges such as handling a high volume of applications in progress (including a backlog transferred to AMSA from some jurisdictions at the time of transition), and amalgamating data from seven systems. The variable quality of applications inherited from the jurisdictions also presented a significant challenge for AMSA, with most applications requiring additional information from applicants. From 1 July 2018 to 30 June 2019, AMSA managed over 188,000 calls and 3,300 walk-in customers, supported over 340,000 website visits, and over 20,000 applications for vessel and seafarer certificates.

Harnessing Data Capabilities

The Department agrees with the Commission's view that there are significant future opportunities arising from better use of nationally consistent data. The establishment of the national regulators has led to, in some cases, the availability of harmonised data for the first time. Access to consistent and comprehensive data is an important element in allowing for efficient, risk-based regulation across all transport modes. While there is still a way to go to achieve this outcome, the Department considers that improved data access and sharing will lead to significant safety and productivity benefits, and supports initiatives that improve data capabilities.

A particular challenge for all three national transport regulators has been the variable quality and consistency of data inherited from the states and territories. Each jurisdiction had different methodologies for the collection and analysis of data, resulting in differences in datasets for the same metrics between jurisdictions. All three regulators have been investing in improving data collection and systems to build a national understanding of safety matters across each sector. This will allow for the monitoring of safety risks nationally, facilitating improved regulatory targeting and the sharing of lessons and best practices. Over time this can be expected to improve safety and productivity outcomes across each sector.

As one of the early actions under the National Freight and Supply Chain Strategy, the Australian Government is investing in a National Freight Data Hub[1], to help businesses and government plan and make better operational and investment decisions, and evaluate the performance of Australia's freight system. While we recognise that states and territories are also taking action in this space, there is still a need to bring data together at a national level.

Over the next 18 months the Department will be working closely with freight and data industry stakeholders, governments, researchers, regulators and others – nationally and across all freight transport modes – on the Freight Data Hub design. This design process will establish the priorities where investment in a Freight Data Hub will deliver the greatest value. We expect the Freight Data Hub will be developed iteratively, focussing on the highest value uses in the first instance, and will be expanded over time.

The Department also considers that the Commission's **draft recommendation 8.2** for a regulatory framework for transport and telematics data has application beyond the Freight Data Hub project.

Historically, there has been a lack of nationally consistent data which presents a challenge in assessing the success of the COAG reform objectives. AMSA's assumption of national service delivery for domestic commercial vessels in 2018 presents the opportunity to collect and analyse nationally consistent data on vessels, seafarers, services and safety incidents, which will be important to provide the evidence base for future safety policy and operational matters. AMSA and the Department are working on a strategy for improving data collection and analysis for domestic commercial vessels.

[1]See https://www.infrastructure.gov.au/transport/freight/national-freight-data-hub/index.aspx for further information

In relation to rail, ONRSR is progressing its National Rail Safety Data Strategy Action Plan, with a view to achieving relevant, consistent and quality national rail safety data that is readily available to stakeholders to make rail safety decisions. With respect to economic data for the rail sector, the Department currently faces challenges in gaining access to national rail freight task data, as one major operator has recently elected not to provide the Bureau of Infrastructure, Transport and Regional Economics and the Australasian Railway Association with details of its annual tonnages. The Department considers that, pending the outcome of the Commission's Inquiry, future collaboration with ONRSR could assist with the Department's role in collating and publishing national rail data.

The NHVR is similarly investing in improved data collection and IT systems for heavy vehicles. This includes upgrading the NHVR Portal, which is currently used for access permit applications and managing and applying for accreditation in the National Heavy Vehicle Accreditation Scheme.

Regulatory approach

The Department supports fit-for-purpose regulatory regimes that allow for innovation, while ensuring that safety is not compromised. A regulatory regime that strikes a balance between the flexibility of a risk-based approach and the certainty of prescriptive rules is likely to be best placed to deliver on the goals of improving safety while accommodating productivity and innovation.

Across the three modes, the Heavy Vehicle National Law is the most prescriptive in approach, and this is a key element of the HVNL Review currently being led by the National Transport Commission (NTC). The HVNL Review aims to generate performance-based and outcomes-focused regulation that will improve safety for all road users, support increased economic productivity and innovation, simplify administration and enforcement of the law, support the use of new technologies and methods of operation, and provide flexible compliance options. Capturing and bringing together individual jurisdictional requirements and perspectives to deliver appropriate policy under revised heavy vehicle laws that minimises disengagement will be a key challenge.

The HVNL Review process is also monitoring the outcomes and progress of other reviews, such as the Review of Oversize Overmass Access Arrangements, the Review of Heavy Vehicle Accreditation Schemes and the NHVR Services Transition Assurance Review. The HVNL Review is considering all aspects of the HVNL and subsequent regulations, including many of the proposed recommendations in the Commission's draft report.

With respect to domestic commercial vessels, the Department considers further investigation and consultation is required to ensure any potential changes to grandfathering are driven by the most significant safety risks (based on safety evidence and data), appropriately targeted and facilitate urgent safety improvements while having regard to the cost and other impacts for industry over time. The Marine Safety (Domestic Commercial Vessel) National Law (MSNL) is intended to cover all domestic commercial vessels operating in Australian waters. Transitional/grandfathering provisions were designed to ensure introduction of the MSNL occurred in a progressive and structured manner. Grandfathering arrangements continue to apply unless incident data dictates the need to adopt an alternative approach. The proposal to phase out all grandfathering arrangements within five years (**draft recommendation 5.5**) would impose significant costs, and may even put smaller operators out of business, without necessarily increasing safety outcomes. For example, anecdotal advice from AMSA indicates the cost to industry to upgrade vessels to more modern (but not current) standards may be in the order of several hundred thousand dollars per vessel.

Under s 91 of the MSNL, AMSA appoints Marine Safety Inspectors (MSIs) to exercise various powers in relation to monitoring and enforcing compliance. MSIs are officers or employees of the Commonwealth, or of a state or the Northern Territory, with suitable qualifications or experience. AMSA currently has 220 external MSIs,

responsible for supporting compliance across the entire domestic commercial vessel fleet, including for hire and drive vessels. The Department also considers further investigation and consultation is required on any potential changes to the regulation (such as the development and maintenance of standards) of hire and drive vessels, such as kayaks (**draft recommendation 7.4**). Legally, the proposal to return hire and drive vessels to the states and the Northern Territory would require unanimous agreement from the jurisdictions.

Heavy vehicle design and safety standards

The draft report discusses interactions between the Australian Design Rules (ADRs) and the adoption of safety technologies for heavy vehicles (**draft recommendation 8.1**).

Harmonisation with international standards

The ADRs are national standards for vehicle safety, anti-theft and emissions. ADRs are generally performance based and cover issues such as occupant protection, structures, lighting, noise, engine exhaust emissions, braking and a range of miscellaneous items. UN Regulations set performance requirements for vehicle components, if manufacturers choose to (or are obliged to) fit those components to new vehicles destined to markets around the globe. The Australian road environment is unique and ADRs have evolved alongside Australian road safety concerns, road network capability, and fleet and market characteristics. These factors vary starkly between countries.

The Motor Vehicle Standards Act 1989 requires all road vehicles, whether they are newly manufactured in Australia or are imported as new or second hand vehicles, to comply with the relevant ADRs at the time of manufacture and supply to the Australian market. ADRs are not designed to limit new technologies or exclude advancements with proven productivity or safety benefits. The Australian Government's policy is to harmonise the national vehicle safety standards with international regulations where possible and consideration is given to the adoption of the international regulations of the United Nations Economic Commission for Europe (UNECE). Australia is a signatory to the UNECE 1958 Agreement and the 1998 Agreement. Harmonisation is also important to fulfil World Trade Organisation and Asia Pacific Economic Cooperation commitments.

The ADRs are substantially aligned with UN regulations – aligned ADRs cover a range of structural, passive and active safety, environmental and anti-theft aspects as well as some new transport technologies. Most ADRs also include an 'alternative standards' clause, where a new vehicle or vehicle component is taken to comply with an ADR if it demonstrates compliance with the relevant UN regulation in force from time to time.

Vehicle size and mass restrictions

The Department has received advice from industry stakeholders that mass and width limits may result in some manufacturers not fitting some safety technologies to imported vehicles. Under the National Road Safety Action Plan 2018-2020 (NRSAP), the Department is investigating the introduction of safer, cleaner heavy freight vehicles by minimising regulatory barriers. Regulatory restrictions exist in Commonwealth and state and territory regulations, and include both vehicle size and mass. These were originally introduced to protect infrastructure such as roads and bridges, and to prevent head-on crashes and reduce conflict with other road users on narrower roads. The COAG Transport and Infrastructure Council agreed this action in endorsing the NRSAP in May 2018, including for all parties (Commonwealth, state and territory governments) to examine current regulatory requirements, as well as network capacity for vehicles of different size and mass, where the roadway can safely accommodate such vehicles and minimise crashes. The recent Austroads review of heavy freight vehicle dimensions (Austroads Project No. NEF6116) forms a part of this process.

Performance Based Standards

The NHVR's Performance Based Standards (PBS) scheme provides a performance-based assessment of heavy vehicles to allow greater access to Australia's road networks while meeting established safety standards. All PBS approved vehicles are assessed against stringent safety standards, in consultation with the Commonwealth and jurisdictions, and may be exempted from certain (i.e. limited and prescribed) ADR requirements in relation to length, rear overhang, height, width, retractable axles, tow coupling overhang, and tow coupling location. These are approved as non-standard road vehicles under the Motor Vehicle Standards Act 1989, and will generally require an access permit and/or be subject to additional operating conditions by road managers.

Cost effectiveness

Actions taken to further reform and harmonise transport regulation will need to be cost effective for both regulators and regulated entities.

Service Level Agreements (SLAs) have been used across all three modes as an essential element of the transition process to national regulation. While the final SLA for rail was removed in December 2019, giving full national coverage to ONRSR, SLAs have a continuing role in other modes and may not be cost effective or practical to remove. Domestic commercial vessel operations are geographically dispersed, and SLAs with jurisdictions allow coverage that would be expensive and impracticable for AMSA to provide, particularly for remote areas.

The NHVR and HVNL-participating jurisdictions are working closely through the NHVR Services Transition Assurance Review to progress the transition of service delivery from jurisdictions to the NHVR. At present, services have been transitioned in South Australia, Tasmania, the ACT and Victoria, with the transition of services in Queensland and NSW still progressing. The transition model takes account of cost considerations for all participating jurisdictions.

No-blame safety investigation

As the Commission has noted in its draft report, no-blame safety investigation can provide valuable information to industry and governments, and contribute to improved safety outcomes in the longer term through identifying systemic safety issues, enhancing the quality of data and supporting an improved culture of incident reporting. The Australian Transport Safety Bureau (ATSB) currently fulfils this role in relation to civil aircraft, rail vehicles, and civilian interstate and overseas shipping, and there could be advantages to extending this type of investigation, research and analysis to other parts of the transport sector. However, the Department considers that priority should be given to activities that are likely to achieve the greatest safety benefit from resources committed. This would require a carefully considered, targeted and phased approach, based on a thorough assessment of the safety risks and costs involved.

The Department notes that the ATSB requires funding certainty to effectively fulfil its existing remit as an independent, no-blame safety investigator, and to plan its future workforce, particularly as training transport safety investigators is a resource and time intensive process. In the rail sector, this certainty is not currently in place. The Department considers that any expansion of the ATSB's remit, such as to include heavy vehicles, domestic commercial vessels or incidents involving autonomous technology would similarly require funding certainty to enable the ATSB to fulfil its expected role. This would require a decision by governments.