



SOUTH AUSTRALIAN FREIGHT COUNCIL



19 December 2019

National Transport Regulatory Reform
Productivity Commission
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Via electronic submission – www.pc.gov.au/transport

Dear Sir / Madam

RE: National Transport Regulatory Reform Issues Paper

On behalf of the South Australian Freight Council's (SAFC) Executive Committee and Membership I thank you for the opportunity to provide comment on the Productivity Commission's *National Transport Regulatory Reform Draft Report*.

As you may be aware, SAFC is the State's peak, multi-modal freight and logistics industry group that advises all levels of government on industry related issues. SAFC represents road, rail, sea and air freight modes and operations, freight services users and assists the industry on issues relating to freight logistics across all modes.

As with previous SAFC submissions on this topic, we have responded only to the changes regarding the establishment of the NHVR and ONRSR, through the HVNL and RSNL.

SAFC agrees with the Productivity Commission that while a positive step, the national transport regulatory reform program has, to date, failed to deliver the significant efficiency gains that were originally promised. As such, we mostly agree with the Findings and Recommendations that the paper has asserted and have added commentary below where deemed necessary.

Again, I thank you for the opportunity to provide a submission on this important topic. Should you wish to discuss any element of this submission further, please feel free to contact me

Yours Sincerely,

Evan Knapp

Executive Officer, SA Freight Council.

Do we have nationally consistent regulatory regimes?

As previously asserted by SAFC, derogations undermine a consistent HVNL and RSNL across the country. Derogations mean regulators have varied powers and obligations between the participating jurisdictions.

Draft Recommendation 4.1 suggests that TIC should request the NTC undertake a review of significant derogations to the HVNL and RSNL with the aim of reducing regulatory inconsistency which SAFC endorses.

The HVNL is currently under review as it has failed to garner the support of all jurisdictions and contains inconsistencies and derogations, with the NTC stating that over half of Australia (by area) is not covered by the HVNL.¹ Inconsistent application of the HVNL means rules change at state and territory borders, which compromises the goals of reform and regulatory harmonisation.

Service Level Agreements (SLAs) being phased out by national regulators is an approach SAFC supports in order to deliver a single regulatory culture to industry.

Draft Finding 4.2 is critical to the future success of regulatory reform especially considering South Australia borders every mainland state and the Northern Territory; as such, SA is most affected by this lack of regulatory harmonisation in road transport.

Has harmonisation of transport regulation improved safety?

Draft Finding 5.3 is accurate because the lack of effective mutual recognition of heavy vehicle accreditation between Western Australia and the jurisdictions that have adopted the HVNL is counter to the objectives of the harmonisation agenda and does not promote safety. Operators will continue to bear the costs of meeting the requirements of different jurisdictions until national harmonisation can be achieved.

SAFC's position is that national regulation is almost always preferable in the transport industry – as the development of the three national regulators clearly shows. Whilst nationalisation is preferable to mutual recognition, jurisdictions may disagree.

Technological advances offer significant potential future benefits in fatigue management so it is reasonable to propose that HVNL be amended to give the NHVR greater scope to provide concessions from prescribed aspects of fatigue management regulation as Draft Recommendation 5.2 puts forward. This will allow the NHVR to develop new methods of asserting compliance as technology develops over time, ensuring a static law is not a barrier to fatigue management improvement. Secondly it allows industry to propose new methods to the Regulator for approval, even options that may be specific to a single company, task or technology. This change will hopefully be made through the revised HVNL.

In regards to Information Request 5.3, SAFC does not see any issue concerning overlapping responsibility between national transport regulators and workplace health and safety regulators as it is clear in both the HVNL and RSNL that workplace health and safety law takes precedence.

¹ *A Risk based approach to regulating heavy vehicles* NTC March 2019 https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.ntc-hvliawreview.files/5715/5382/1099/Risk-based_approach_to_regulating_heavy_vehicles_Issues_Paper1.pdf

Have the COAG reforms raised productivity?

SAFC agrees that constraints around local government investment capacity and engineering expertise are limiting the effectiveness of the heavy vehicle reforms and more collaboration between all three tiers of government is required.

The complexity of the vehicle classifications has limited the progress of faster access approvals, through permits, pre-approvals and notices. In South Australia, DPTI have made a concerted effort to increase access for higher classifications of heavy vehicles across the national and state highway network, which has been highly beneficial for operators and freight owners (although this action is entirely separate from the national regulatory reforms).

Draft Recommendation 6.2 states that the Australian Government should seek simpler heavy vehicle classifications through the National Transport Commission's review of the Heavy Vehicle National Law for the purposes of access decisions, which SAFC agrees with wholeheartedly.

Having so many decision makers with disparate knowledge and skill levels, different regulatory cultures, different resources and with little direct financial incentive to grant access is a problem so the NHVR should provide more detailed and effective guidelines to road managers.

SAFC approves of Draft Recommendation 6.5 which would see the national regulators monitor compliance and administrative costs created by the national regimes and report on the level and change in these costs in periodic reporting.

Assessing the national regulators

As suggested by Draft Finding 7.1, a more outcomes-based approach to legislation and regulation would improve road safety, reduce the burden of compliance and administration, and increase the efficiency of road transport. The current HVNL review is the correct mechanism for establishing and introducing these improvements for the road transport industry. However, it should be noted that a portion of the heavy vehicle industry wants prescriptive based regulation as it allows the operator to merely follow pre-set rules and go. SAFC asserts that any regulatory framework for the heavy vehicle sector should include a prescriptive option.

There are larger more sophisticated operators in the industry that would benefit from a risk-based approach to achieve improved regulatory flexibility. Draft Recommendation 7.1 encourages State and Territory governments to remove prescriptive material from the legislation in favour of the NHVR taking a risk-based approach to its functions which would also benefit any smaller operator that chose to invest in systems and technology in line with this approach.

Industry consultation on the HVNL review has indicated strong support to retain a prescriptive option within the legislation; supplemented by other risk based option(s). Operators would be able to choose to operate under either the basic, prescriptive option, or to move to a risk based option that may offer enhanced flexibility to their operations.

The failure to bring all jurisdictions into the fold is one of the primary reasons the full benefits of the initial reforms have not been realised so it is vital that Draft Recommendation 7.2 is implemented with all regulatory functions still held by participating jurisdictions transferred to the NHVR.

A reform agenda for safer transport

The investigation of heavy vehicle incidents by the Australian Transport Safety Bureau (ATSB) could be beneficial for industry however SAFC does express reservation with respect to reporting timeframes. We understand that ATSB rail incident report timeframes are very slow to be completed and as a result provide limited value – by the time they are finalised industry has already completed its own investigations and undertaken remedial action to prevent reoccurrence. As stated, such reporting for heavy vehicles is valuable information but it would need to be delivered in a timely manner to have the most impact.

Recommendation 9.2 suggests that a defined, targeted trial of incident investigation for heavy vehicles should be undertaken to establish how to best report on incidents and assess what an appropriate timeframe for reporting should be. SAFC agrees with this recommendation, noting that reports that take longer than 6 months post incident to deliver have limited value.

SAFC endorses the decision to amend the *Transport Safety Investigation Act 2003* to confirm investigation of serious/fatal incidents involving heavy vehicles as a function of the ATSB subject to a successful outcome of the trial and extended to include any incident where autonomous technologies at or above SAE level 3 autonomy may have been involved.

Evaluation of this trial should include analysis of whether these investigations are adding value to, and/or over and above those conducted by other parties, such as work, health and safety agencies and coroners.

A reform agenda for transport productivity

Draft Finding 10.1 noted that some local governments struggle to deliver heavy vehicle access assessments in a timely fashion, making it clear they require more access to resources and support. Local governments have an important part to play as 'Road Managers' under the HVNL as these bodies have the final say on permit and route approvals on council owned roads within their area. As noted earlier, there are more than 500 local councils in Australia, and each is different in size, demographics, local industry, culture, resources, specialist staff and priorities. These differences can mean vastly different outcomes for the trucking industry when seeking permit and route approvals.

Draft Recommendation 10.1 states that the COAG should provide support to ensure local government could deliver in its role as asset manager for local roads. Given that it is unreasonable to remove councils from the process entirely (seeing as they are required to maintain these assets and have a role in ensuring road/community safety), there are several other options for attempting to standardise outcomes for access to council roads which COAG could provide support for such as:

- Providing standardised training to all council staff who undertake access evaluations through the NHVR.
- Providing a revenue stream from permit costs to councils for processing permits on time. Payments should only be made for permits processed within legislated timelines.
- Adding a delegations power to the HVNL to allow road managers to delegate this responsibility to specialists or create regional permit processing hubs.