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Office of the
Director-General

Department of
Transport and Main Roads

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Ms Yvette Goss
National Transport
Productivity Commission
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Dear Ms Goss

Thank you for your email of 17 May 2019 and the opportunity to provide comments on the reform processes recently undertaken into the regulation of heavy vehicles, rail and domestic commercial vessels.

These reforms provide an opportunity to deliver significant benefits to industry participants and the public. The Department of Transport and Main Roads (TMR) has and continues to play an active role in the sectors.

While industry participants will provide crucial input into your inquiry, there are some comments that I would like to furnish that may assist in your deliberations.

Heavy Vehicles

The goals of the Council of Australian Governments (COAG) heavy vehicle regulatory reform are reflected in the object of the Heavy Vehicle National Law (HVNL) which contains requirements to promote public safety and to promote industry productivity and efficiency. While the objectives of improving safety and productivity are not necessarily mutually exclusive, they can pose issues for the National Heavy Vehicle Regulator (NHVR) and road managers in prioritising the objectives and making appropriate judgements about heavy vehicle operations. In making access decisions the NHVR must be satisfied that the proposed access will not pose a significant risk to public safety, including accepting advice from road managers about long-term impacts for roads and infrastructure and applying conditions to mitigate adverse safety and infrastructure effects.

The NHVR plays an important role in encouraging heavy vehicle operators to adopt innovative vehicle safety technology, which will contribute to addressing the safety needs of all road users now and in the future. Through managing the Performance Based Standards (PBS) scheme, the NHVR encourages innovation in heavy vehicle design and technology to achieve increased productivity while meeting safety and infrastructure standards.

Since the implementation of the reform agreed by COAG in 2009, arising from the 'Seamless National Economy' program, significant commitments have been made to 'Vision Zero' safety objectives and Safe Systems (safe people, safe vehicle, safe roads and safe speeds) principles. These safety objectives now underpin agreed national road safety goals, objectives and actions outlined in national and jurisdictional road safety strategies such as the *National Road Safety Strategy 2011–2020* (national strategy) and action plan and the *Safer Roads, Safer Queensland: Queensland's Road Safety Strategy 2015–21* and action plan.

Based on the national change in focus to prioritise safety-based objectives, TMR recommends that the Productivity Commission take this into account when undertaking the assessment of the success of the reforms in terms of net benefits and weight safety benefits accordingly.

As you are aware, the HVNL is currently under review. TMR is contributing to the work of the National Transport Commission (NTC) in conducting the review. The first HVNL review issues paper 'A risk-based approach to regulating heavy vehicles', looks at the regulatory framework and consideration of risk-based approaches and regulatory models is a prime focus of this paper. TMR's submission is available on NTC's submissions website at www.ntc.gov.au/submissions/history/?rid=171684&pid=13641.

Rail

The Office of the National Rail Safety Regulator commenced operations in Queensland on 1 July 2017. The role of the regulator is to administer and regulate the safety of the Australian railway industry under a co-regulatory framework with safety as the priority.

Although I am cognisant of the need for a balance between safety and productivity, it is vitally important to create this balance where safety is understood and accepted as the key priority.

The majority of rail transport operators in Queensland have a mature safety management system which has created a safe rail network in Queensland. This is an environment I wish to maintain with continual improvement a key initiative.

I understand that the Australasian Railway Association and individual rail operators are making submissions to the commission, and I believe they are best placed to provide the submission within the scope of the enquiry.

Domestic commercial vessels

While the Australian Maritime Safety Authority (AMSA) has struggled with managing the risks and regulation of Domestic Commercial Vessels (DCVs), it is important to note that the various states had a very divergent approach and many of the issues being faced are historical in nature. Bearing that in mind, I offer the following comments around the transfer of responsibilities and the potential impact on industry participants and users of the services.

Service delivery

Grandfathering:

AMSA has increased the number of 'grandfathering' provisions since transition. There appears to be a reluctance to adopt stringent and consistent regulations in areas where individual states previously adopted different standards. While Queensland was initially supportive of adopting some grandfathering provisions (I note other jurisdictions were less supportive), it is now six years since the enactment of the National Law and we are seemingly no closer to a consistent national standard. Given the long service life of many DCVs (and the ability to almost completely refit a vessel to extend its life) 'grandfathering' outdated safety and environment standards may have a decades long legacy.

Inspection regime:

The risk profile (particularly safety and environmental) presented by Queensland's DCV fleet has arguably increased since transition. There is a significantly reduced scrutiny/inspection regime than previously adopted by Maritime Safety Queensland (MSQ) due to limited AMSA resources (e.g. marine safety inspectors). MSQ used around 40 marine officers undertaking the core DCV safety function based across 11 locations, ranging from the southern border to the Gulf of Carpentaria and Thursday Island. AMSA has adopted a more streamlined centralised approach often only engaging with DCVs after incidents have occurred. This has meant the previous regular targeted inspections by staff with local knowledge are no longer conducted.

Resourcing:

AMSA has realised the workload of its MSI fleet is currently unsustainable and has embarked on a recruitment drive. This drive, however, is not likely to restore anywhere near the previous levels of coverage and proactive inspection regime.

Cost recovery:

The Commonwealth through AMSA decreed that the administration of the system needed to be based on a full cost recovery model. Jurisdictions are providing around \$50 million over five years to support a gradual increase in fees for services leading to full recovery to ease the immediate burden on industry participants. The validity of a full cost recovery system and the impact on operators post the jurisdiction funding assistance, appears to be currently lacking a rigorous assessment with respect to the impact.

Enforcement:

Leading into transition AMSA has experienced difficulties in meeting the full regulatory expectations under the national system, particularly with respect to compliance and enforcement (prosecution) activities. A significant number of MSQ instigated breach reports were not actioned within the legislative time limits and therefore, were required to be discontinued with no action able to be taken. Many of these reports were incorrectly finalised as having 'insufficient evidence', or 'verbal caution issued at time of intercept' when further action was justified. It should be noted that TMR has no visibility over current enforcement activities, and therefore, it is not known if this is a growing concern.

Records management:

The process whereby older vessel records are sourced by AMSA from the states continues to be an issue for operators (particularly Queensland) that operated heavily on manually systems. AMSA was offered a conversion process but was reluctant to commit funding. Over time this may become a more significant issue for operators.

Extent of coverage

Duplicity:

While section 6.2 of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012 (Cth)* (National Law) prescribes that certain activities of vessels are to remain a state responsibility to regulate and thus fall outside of the Commonwealth's administration, it has led to some confusion and duplication around the roles of state agencies. For example, marine pollution prevention regulation and operations within port limits are two of the most regularly seen issues where duplicative and crossover in regulatory roles and functions have been experienced.

Definition of a DCV:

Aside from functional exemptions declared under s.6(2) of the National Law, there was a general understanding that all commercial vessels would be covered by the National Law. However, AMSA has made administrative decisions to excluded certain types of vessels (legislatively outside the definition of a vessel and certain operations or activities being deemed as not commercial in nature) meaning these vessels are now excluded from regulatory oversight.

Vessel lifecycle:

There appears a lack of direction from AMSA, the lifecycle management of vessels. This presents when a vessel ceases to be a commercial vessel, but remains in state waters. Historically, jurisdictions would have oversight of vessels in poor or deteriorating condition and take steps to lessen the risk of them becoming a derelict vessel. This has left the state with the liability of salvage. AMSA has taken the view that an unregistered DCV as being outside the national system and therefore, a state issue to manage.

Unintended consequences

Port State Control:

Observations suggest that since assuming full service delivery DCVs, the attention paid to Port State Control (PSC) inspections has changed, where AMSA surveyors have significantly reduced inspections of large foreign flagged (SOLAS) ships due the workload of increased DCV related works. Softening of what was once a strict PSC regime, risks an increase of substandard ships being sent to Australian shores. This risk may have consequences for state's pollution and safety responsibilities.

Marine Pollution:

The exclusion of marine pollution functional responsibilities from the national system means Queensland continues to prescribe marine pollution prevention vessel construction and carriage requirements for DCVs. This means DCV operators do not have a single national regulatory system as they must abide by state pollution prevention regulations as well as national requirements. Any review should consider the validity of this approach with respect to efficiency and effectiveness.

I trust this information is of assistance.

Yours sincerely

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