



SOUTH AUSTRALIAN FREIGHT COUNCIL



28 June 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 Issues Paper.

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.

Prior to the establishment of the three national regulators, regulatory harmonisation was SAFC's highest regulatory reform priority. While noting that there are still improvements to be made, the COAG National Regulatory Reforms that effectively began with the signing of the Inter-Governmental Agreements in 2011 have been a significant step in the right direction.

Our comments on the issues raised in the Issues paper can be found on the following pages. As primarily a heavy freight association, SAFC will not be commenting on AMSA's expanded role in Domestic Vessel Safety.

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 on (08) 8447 0664 or via email knapp.evan@safreightcouncil.com.au.

Yours Sincerely,

Evan Knapp

Executive Officer, SA Freight Council.

Introduction

The National Regulators have, in general, been a boon for the transport and logistics industry. Before the regulators were developed, SAFC's singular highest regulatory priority was cross border transport legislative harmonisation, and a great deal has been achieved since.

South Australia is in a unique position, in that it has borders with every mainland state and the Northern Territory. As such, we are affected by every failure of cross border regulatory harmonisation in transport – of which there are still many.

In examining the National Regulators it is important to distinguish the differences between the entities they regulate – what is appropriate for heavy vehicles with a high percentage of small operators will not always (perhaps rarely) be appropriate for large, sophisticated rail operators.

Regulatory Approaches

In general, the RSNL and ONRSR approach can be described as co-regulatory and risk management based, while the current HVNL and NHVR approach can be described as top down and prescriptive based (noting that the HVNL is under review).

SAFC believes that the RSNL approach is correct for the rail industry in Australia based on the size and sophistication of the regulated population – a (relatively) small number of generally medium to large sized companies. These companies have the ability to set safe operating rules specific to their own unique operations, which are likelier to deliver stronger safety outcomes than a 'one size fits all' or prescriptive approach.

The heavy road freight industry is far more diverse than the rail industry. As stated in The NTC paper *'A risk based approach to regulating heavy vehicles'* (2019, pp37-38):

'In 2018 there were an estimated 40,332 operators in the road freight industry, ranging from single-vehicle operators to large corporations. These operators range from seasonal farmers to international logistics chains. Approximately 70 per cent of all operators only have one truck in their fleet and about 24 per cent have two to four trucks.'

A significant portion of the heavy vehicle industry wants prescriptive based regulation (with all its inflexibilities and faults) as it allows an operator to simply follow the rules and go. These businesses, primarily the smaller operators, do not have the knowledge or resources to pour into the development of comprehensive risk based systems and associated technology purchases (telematics, fatigue monitoring systems etc). As such, any regulatory frameworks for the heavy vehicle sector should have a prescriptive option.

However, there are larger and more sophisticated operators within this sector– some of which who have already invested in such systems and technology without receiving any regulatory benefit for doing so. These companies would benefit from a risk management approach to safety, and an option to do so within the law would also be beneficial to any other industry member who wishes to make the time and dollar commitment to achieve improved regulatory flexibility.

Primary safety duties are a feature of WHS law, and were also a feature of the RSNL at inception. Similar duties were also brought into the HVNL in 2018. These are strongly supported by industry, and should remain in both national laws.

How the PC can add Value

Up to this point, there has been no holistic analysis of the impact of jurisdictions not participating in elements of the national reforms, joining the reforms late, derogating from the national laws, failing to hand over certain functions (in some cases due to regulators not being ready) and delivery of regulator functions via Service Level Agreement (SLA). These are all areas in which the Productivity Commission can add value.

Not all regulatory functions/areas relevant to each specific segment (road/rail/maritime) were included in the national transport regulatory reforms. The Freight on Rail Group (FORG) – which includes several SAFC members – has highlighted the issue of training and licencing in rail: *'a NSW freight train driver with more than 25-years' experience can be subjected to up to 18-months of extra training to operate on a similarly configured rail corridor in another state or territory'*¹. Driver training is directly relevant to safety, but the ONRSR does not have oversight of this element. Jurisdictional rules have primacy, and cross recognition of skills is poor.

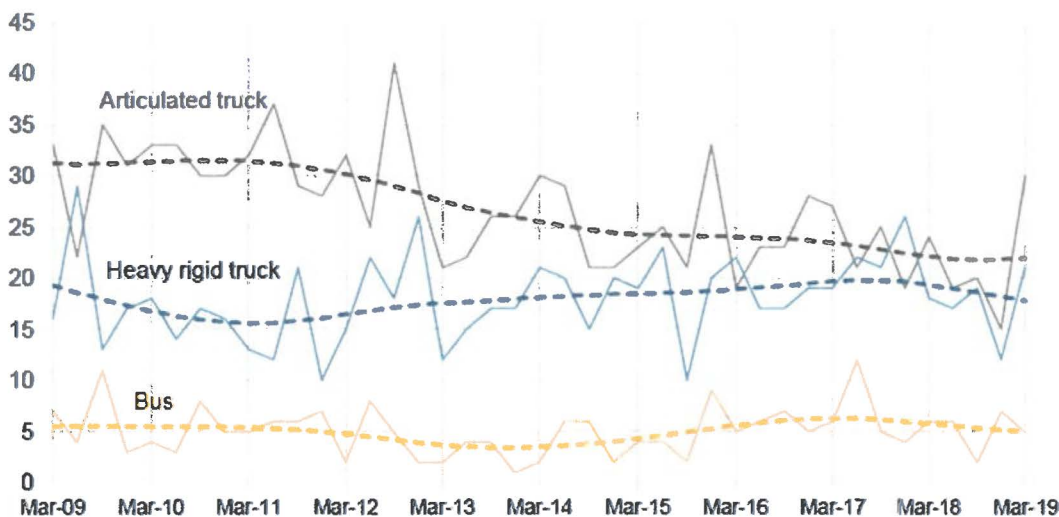
As such, the PC could also add value by determining what regulation has remained in the control of the jurisdictions that could/should be incorporated in a future expansion of the national reforms.

Success of the reforms

Road

In regards to road safety data sources, the Bureau of Infrastructure, Transport and Regional Economics (BITRE) provides a good suite of statistical data, including the 'Fatal Heavy Vehicle Crashes'² and 'Road Trauma involving Heavy Vehicles'³ suites.

Quarterly counts of fatal crashes involving heavy vehicles, Australia, with trends



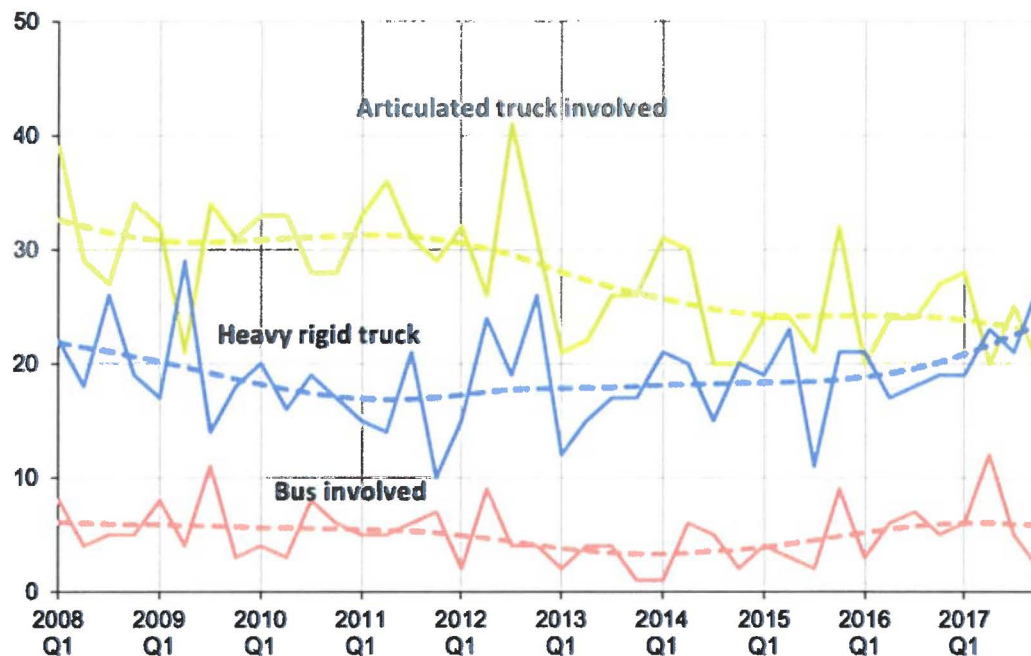
¹ 'Rail Freight Policies Languishing in the Age of Steam' Freight on Rail Group,

<http://www.forg.com.au/media-publications>

² https://www.bitre.gov.au/publications/ongoing/fatal_heavy_vehicle_crashes_quarterly.aspx

³ <https://www.bitre.gov.au/publications/ongoing/road-trauma-involving-heavy-vehicles.aspx>

Quarterly counts of fatal crashes, 2008 to 2017 — with trends



Since the introduction of the HVNL, both measures show considerable improvement for articulated vehicles (Semitrailers and larger) and flat or worse outcomes for heavy rigid trucks. There are a number of reasons at play here:

- Heavy rigid vehicles are not always captured by the HVNL, which only regulates vehicles over 4.5 tonnes and fatigue at over 12 tonnes.
- Anecdotally, a much lower percentage of heavy rigid vehicles operate in the 'hire and reward' transport sector – i.e. are owned and operated by companies (construction etc) that do not have a specific transport safety focus in the same manner as companies that have road transport as their core business.
- As driver licencing/training is a continuum, the better, more experienced and more highly trained drivers tend to be in the largest vehicles.
- Safety technology for articulated trucks has increased substantially over the period. Articulated vehicles are generally far newer (Average age 5.2 years Articulated, vs 9.9 years Heavy Rigid) and therefore have a better chance of having new safety related technologies incorporated into their design⁴.

The data clearly demonstrates that the heavy rigid sector has a safety problem, and it is not comprehensively captured by the HVNL.

Rail

In regards to rail data, primary sources include the BITRE's 'Trainline' publication⁵ and the ONRSR's Rail Safety Report⁶.

⁴ <https://www.nhvr.gov.au/files/201701-0459-factsheet-nrbs-report-2.pdf>

⁵ https://www.bitre.gov.au/publications/2018/train_006.aspx

⁶ https://www.onrsr.com.au/data/assets/pdf_file/0018/22626/17789-ONRSR-Safety-Report-Spreads.pdf

On a pure safety basis, the rail industry was very safe before the introduction of the RSNL, and has remained so afterwards. The vast majority of rail related deaths in Australia are suspected suicides (usually around 85% each year) followed by trespassing related deaths – neither are strictly in the control of rail entities. Recorded rates of fatalities and serious injuries (including for rail safety workers) that are not suicide attempts or related to flagrant safety breaches by a member of the public (i.e. trespass onto an active rail corridor) are rare.

It is worth noting that the ONRSR and RSNL are strictly limited to safety matters. They do not include matters like driver training (see the FORG example above) or productivity matters such as common communication standards. Nor does the ONRSR's brief include the ability to consider productivity related matters in coming to decisions. While the RSNL is clearly delivering excellent safety outcomes, there is a gap in relation to productivity that they could potentially assist in – this warrants further investigation.

Consistency of Regulation

The RSNL and ONRSR today delivers broad consistency with very few omissions/derogations from the standard (within its narrowly defined safety scope), although it did take some years to get all jurisdictions to pass enabling legislation. Delivery in some jurisdictions was initially by Service Level Agreement (SLA), although we understand that this is no longer the case.

Some jurisdictions place outer limits on train driving hours, or have additional requirements in regards to drug and alcohol testing – primarily NSW.

It is worth noting that Victoria's tram lines and certain heritage operations are excluded from the RSNL. Mine related underground railways are also excluded, and governed by each jurisdiction's local Mining Act. These omissions have little practical impact, although mine safety could potentially be improved if this area was absorbed.

In contrast, the HVNL and NHVR are still plagued with non-participant jurisdictions, inconsistencies and derogations. According to the NTC, over half of Australia (by area) is not covered by the HVNL.⁷

Figure 11. Half of Australia is not covered by the Heavy Vehicle National Law



⁷ A Risk based approach to regulating heavy vehicles' NTC March 2019 <https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.ntc-hvlawreview.files/5715/5382/1099/Risk-based approach to regulating heavy vehicles Issues Paper1.pdf>

South Australia is the only state with a border with both non-participant jurisdictions (WA & the NT), which causes significant difficulties in relation to fatigue management compliance for drivers that cross these borders. Current rules essentially require these drivers to be compliant with both sets of fatigue laws for up to a week after the travel is complete – doubling the amount of rest time calculations that must be undertaken, adding complexity, compliance burden and the risk of an inadvertent/unintentional breach.

There are also very significant derogations from the Law – no jurisdiction is perfect, but South Australia has the smallest number of derogations, for which we congratulate the Department of Transport, Planning and Infrastructure (DPTI). Page 32 of the NTC's *'Risk based reform'* paper contains a good breakdown of these derogations, which for brevity we will not repeat.

Access permits are handled by the NHVR in some jurisdictions, and not in others. There are massive differences in technical ability, staffing, culture and turnaround times for permit approvals by road managers – local councils, of which there are around 500 in Australia. These road managers do not receive revenue for processing permits – as such it is often a low priority.

There are also related issues with consistency of enforcement. NHVR compliance officers and all sworn police officers are considered 'authorised officers' for the purposes of the law. NHVR and specialist heavy vehicle branch police officers are trained to a high standard, and have the inbuilt experience benefit of operating with the law every day. General duties police officers do not – while they may have had some training, they are not specialists and road interceptions of heavy vehicles likely constitute only a small portion of their work duties. Reports from industry members indicate that these officers are more likely to charge for technical (non-safety related) breaches, and may interpret the law incorrectly.

SAFC does not support delivery of NHVR services/functions by SLA. There are two issues with this approach:

- The first is cultural – there should be one single compliance and enforcement culture in administering the HVNL. There should not be one jurisdiction (for example) penalising every minor non-safety related technical breach where others are using an education approach. There should not be one jurisdiction that only prosecutes drivers, where others take a full 'chain of responsibility' approach (or vice versa).
- The second and related issue is that persons operating under SLA have 'two masters', potentially with competing priorities. A spate of local truck related deaths (even if not caused by the truck) can have a local minister wanting to 'clamp down' on the industry, where a national approach could be more measured and take into account circumstances (i.e. the incidents were not truck caused, so public/motorist education might be more appropriate).

We note that the HVNL is currently under review by the NTC, importantly from a 'first principles' basis. It is hoped that the majority of industry identified issues with the HVNL will be addressed through this process – but the issue of full jurisdictional coverage will remain.

State level regulation

The land transport industry is national – there should be as little state level regulation as possible, and no state level compliance and enforcement beyond that provided by police. All derogations from that principle cause additional regulatory burden, increase costs and lower business productivity.

In relation to the HVNL, specific local conditions are dealt with via access permissions which involve road authority (state/territory) and road manager (council) consent.

The RSNL is risk management based and co-regulatory. This means that accredited entities need to take into account local issues within their Safety Management Systems. Local road managers participate in setting safety management plans through interface agreements.

While eliminating state level regulation also removes 'competitive federalism' as described in the issues paper (p16), the most recent regulatory trend seems to be learning from international jurisdictions, not other Australian states and territories. Also, there is limited 'competitive federalism' benefits where the regulation that came before the national laws was model law – minor variations on a theme, not wildly different regulatory approaches that might have had large practical differences in outcomes to learn from.

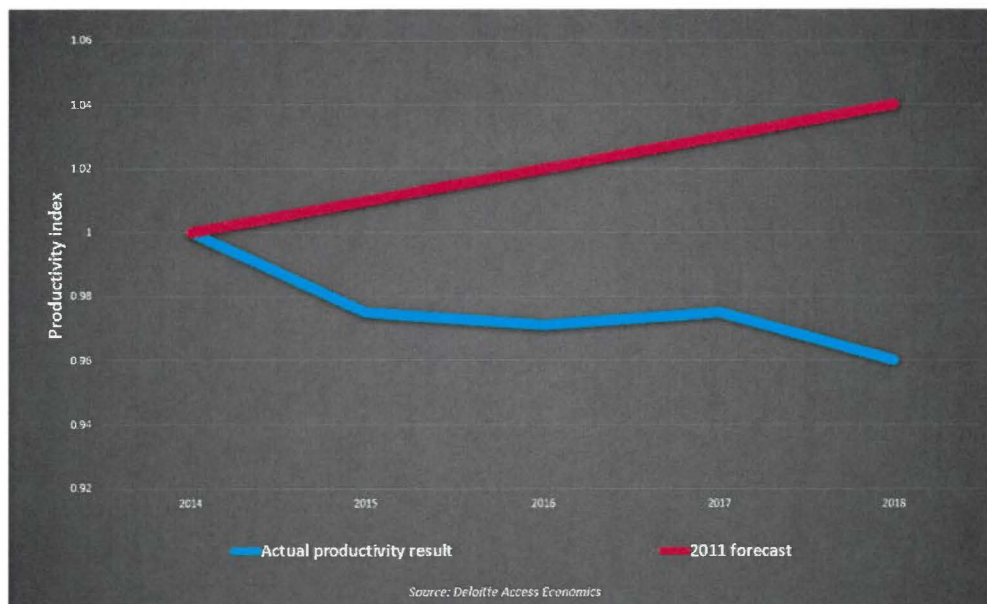
Regulatory burden

From discussion with members and industry, SAFC understands that the regulatory burden for the rail industry has fallen considerably. A single accreditation with a single audit for multi-jurisdiction operations is a major reduction in regulatory burden and cost.

With regards to road transport, the reforms as they currently stand are still a far cry from the RIS anticipated levels of benefit/burden reduction. However this element is also more academic as the process of rewriting/redefining the law is currently underway by the NTC.

Productivity & Efficiency – Road Transport

Some recent Industry commissioned studies have indicated that the productivity improvements expected in the Regulatory Impact Statement (RIS) for the HVNL have not been achieved, and in fact productivity has declined⁸:



⁸ 'Economic benefits of improved regulation in the trucking industry' Deloitte Access Economics for the ATA, March 2019
<http://www.truck.net.au/sites/default/files/submissions/DAE%20Economic%20benefits%20of%20improved%20regulation%20in%20the%20Australian%20trucking%20industry%20March%202019%20Final.pdf>

However, as noted by the Commission, this is not a simple question to answer as there have been both HVNL and non-HVNL actions that relate to road freight productivity and efficiency.

For example, over the past 5 years DPTI in South Australia 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 in this state. This action is entirely separate from the national regulatory reforms. A simple measure of productivity over time – annual average cost per tonne kilometre for example – would not be capable of separating out these benefits.

Implementation of the regulators

SAFC does not support delivery of regulator functions by SLA. This allows cultural differences to alter practical outcomes for regulated parties, and leaves departments delivering functions under SLA with ‘two masters’ – the regulator and the local Minister, who may have competing priorities.

Related Parties – Local Government

Local governments have an important part to play as ‘Road Managers’ under the NHVL. These bodies have the final say on permit and route approvals on council owned roads within their area.

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 mean vastly different outcomes for the trucking industry when seeking permit and route approvals.

Given that it is probably unreasonable to remove councils from the process entirely given 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:

- Providing standardised training to all council staff who undertake access evaluations through the NHVR.
- Potentially 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.

Related Parties – Other bodies

The ATSB could have an expanded role that included some heavy vehicle related incidents, providing it was not mandatory and that these investigations were complimentary to other investigations, such as those conducted by Coroners. These could provide valuable transport expertise to the investigation of incidents such as the spate of trucks that lost breaking power descending the South Eastern Freeway into Adelaide in 2014.

SAFC has consulted with intermodal and port members, who have suggested that the current system of multiple specialist regulators works well in most instances. SAFC believes there are enough differences in the modes that mode specific regulators are needed.

The one area that there could be closer legislative coordination is in the area of Chain of Responsibility, particularly mass, which crosses modal boundaries.

Both the HVNL and RSNL contain clauses that make Police services 'Authorised Officers', able to exercise most roadside/trackside powers under the laws. Police Services have specialist heavy vehicle branches with highly skilled and experienced officers. General duties officers have the same powers under the acts, but do not have the same training or knowledge levels as NHVR Officers or specialist HV branch officers. This often leads to incorrect interpretations of the law (which are costly and time consuming to fix) or fines for technical, non-safety related matters that would normally be dealt with via education and warnings by the Regulator.

Industry would prefer there was a greater parallel between training levels and Authorised Officer powers for police under the HVNL and RSNL. Specialist officers should continue to wield their current levels of authority, but consideration should be given to restricting some powers to those officers who have undertaken the appropriate training. We acknowledge that there is a delicate balance to be achieved in this policy space between police having the powers they need for roadside enforcement and industry's wishes for higher training levels for those officers that wield powers under these Acts.