

28 June 2019

National Transport
Productivity Commission
LB2 Collins Street East
Melbourne VIC 8003

Attention: Productivity Commission Review into the National Transport Regulatory Reform

ALC Position

Industry members are broadly satisfied with the two relevant regulators: the National Heavy Vehicle Regulator (**NHVR**) and the Office of the National Rail Safety Regulator (**ONRSR**). The current system of nationally consistent regulation should remain in place, as it has been relatively successful within the jurisdictions that have adopted it.

Rail

In regard to rail, ALC believes that the laws relating to the movement of freight by rail require further harmonisation. ALC believes that the Commission should take the opportunity to recommend that either the National Freight and Supply Chain Strategy or National Rail Plan includes a well-defined process to develop and implement the national harmonisation of rail laws.

Road

ALC is participating in the review of the Heavy Vehicle National Law being conducted by the Transport and Infrastructure Council (**TIC**) of COAG, recommending several reforms that will improve productivity outcomes.

Heavy Vehicle Safety

ALC believes there is the ability to rely on workplace health and safety law to regulate safety, leaving the primary duties of the Heavy Vehicle National Law focused on heavy vehicle specific matters, such as ensuring maintenance of a heavy vehicle or preventing the risk of damage to road infrastructure.

This would allow for government enforcement priorities and practices to be predictable and consistent, as only one agency would have the responsibility for administering the relevant law. In addition, there would be a reduction of compliance and administrative costs to business.

Regulation

ALC believes the national regulators are now sufficiently mature to take full responsibility for developing policy and proposing regulatory proposals to TIC. This process must continue to include close consultation with industry. At a minimum this should include a draft of any proposed regulation and a regulatory impact statement before a regulation is made for the purpose of the HVNL or the RSNL.

Productivity

From the ALC perspective, the three greatest impediments to productivity outcomes are:

- Access to timely data that will assist freight chain participants make decisions that maximise productivity outcomes;
- The operation of jurisdictionally based planning instruments that permit the encroachment of residential premises and other developments that inhibit the efficient operation of transport infrastructure on a 24/7 basis; and
- The presence of jurisdictional legislative deviation from agreed national laws. Inconsistencies between jurisdictions caused by these deviations diminish the productivity benefits that consistent national laws seek to achieve.

ALC notes that the Commonwealth is currently developing several initiatives to facilitate the collection and use of freight data, including the creation of the National Freight Data Hub (the Hub). ALC supports these initiatives. We do so in the hope that this will ultimately lead to the development of a common data set held by a trusted third party that can be used by industry participants and regulators for regulatory and planning purposes.

To facilitate true interoperability and enhanced supply chain productivity outcomes, ALC believes that there is scope for a requirement that global data standards for the identification, capture and sharing of freight data to be incorporated in industry codes of practice, in a manner similar to codes for safety. Furthermore, compliance with data standards and codes of practice should be incorporated in the remit of regulatory bodies. Whilst ALC recognises that this is an evolutionary process, it still believes that there must be urgency in its undertaking.

With respect to planning, ALC believes all jurisdictions should incorporate 'freight and logistics lands' as a distinct category in their planning instruments, with the Commonwealth Government requiring the inclusion of such a category in planning instruments as a precondition for investing in transport infrastructure projects.

Given that all the responsibilities for these matters have yet to be fully transferred to these jurisdictions, it would be preferable to allow that transfer to conclude and for the HVNR and ONRSR to continue bedding down their expertise in their current domains, with the manner of administering broader whole of supply chain issues identified and established through the National Freight and Supply Chain Strategy process.

Introduction

ALC welcomes the publication of the Issues Paper published for the purposes of the Commission's reference to review national transport regulatory reform (**the Issues Paper**).

ALC is the peak national body representing the freight and logistics industry with a focus on national supply chain efficiency and safety. This submission will be focused predominately on issues relating to the regulation of road and rail.

ALC has long supported the development of consistent national regulation allowing for one rule book for one nation with respect to each of the respective transport modes. ALC members operate in all Australian jurisdictions and have a commitment to the efficient operation of Australia's end to end supply chains. They also move freight across state borders and so treat Australia as a single national market.

It follows that ALC cannot accept the possibility raised on page 17 of the Issues Paper of a system of 'competitive federalism' in which jurisdictions may impose their own regulations. The compliance costs associated with having to deal with different regulatory regimes in different jurisdictions would likely be so high as to negate any net productivity benefit to either freight chain participants or their customers.

There is no enthusiasm amongst industry participants for the return of jurisdictional regulators or jurisdiction-based regulation.

This is a sufficient proxy to draw the conclusion that industry participants wish to see the current national regulators continue to discharge, at the very least, their current remit.

More generally, industry members are broadly satisfied with the two relevant regulators: the National Heavy Vehicle Regulator (**NHVR**) and the Office of National Rail Safety Regulator (**ONRSR**).

ALC trusts that in the long run each agency has a clearly defined revenue stream so that the agencies can plan operations without requiring capital injections from jurisdictions. In that way, the agencies will be able to operate in a genuinely independent manner.

Rail

The 2015 Draft Freight Rail Policy Objectives Discussion Paper published by the Federal Infrastructure Department¹ outlined that there remains ongoing concerns with the differences in railway gauge, interoperability and regulatory fragmentation.

It was estimated that the cost of complying with environmental regimes that differed between jurisdictions was in the region of \$29 million per annum – a third of which was the result of unnecessary regulation. To address these concerns, Ernst and Young suggested;

- Harmonisation of all aspects of rail safety laws between states and providing additional support to the ONRSR to drive the implementation of the Rail Safety National Law in Queensland.
- Where economic benefits exist, moving towards a single set of laws across jurisdictions governing environmental regulation, workplace health and safety, workers 'compensation, and drug and alcohol testing.²

The 2018 *Review of Rail Access Regimes*, recently published by the Department subsequently outlined that stakeholders noted there were roughly 150 different environmental regulations that operators must comply with when operating rolling-stock between Perth and Brisbane. For example, each rail operator must comply with Environmental Management Plans (EMPs) and other licencing requirements. Each state however has its own regulatory body that monitors compliance with these plans, making it difficult for operators to maintain compliance across different states, as well as imposing additional administrative and regulator costs.³

A national rail vision and work program has been developed with an ultimate view of developing a National Rail Plan. ALC is disappointed that progress in this project to date has been slow.

For the reasons set out above, ALC believes the Commission should recommend that either the National Freight and Supply Chain Strategy or National Rail Plan puts in place a well-defined process to develop and implement the national harmonisation of rail laws.

¹ For the purposes of this paper 'Infrastructure Department' means the federal department responsible for Infrastructure, as renamed from time to time.

² Extract contained in the ALC submission *Draft Discussion Paper – Australian Government's Freight Rail Policy Objectives*: <http://www.austlogistics.com.au/wp-content/uploads/2015/12/ALC-Submission-Draft-Discussion-Paper-on-Australian-Government-Rail-Policy-Objectives-December-2015.pdf> :13

³ <https://infrastructure.gov.au/rail/publications/files/Review-of-Rail-Access-Regimes.pdf> :22

Road

The Issues Paper notes the Heavy Vehicle National Law (**HVNL**) is currently being reviewed by the Transport and Infrastructure Council (**TIC**) of COAG.

ALC believes that the NHVR is generally operating satisfactorily.

As previously mentioned, the National Transport Commission (**NTC**) is publishing a series of issue papers relating to the structure of the HVNL as part of a TIC process reviewing that law. ALC is actively participating in this review.

ALC has indicated in its response to the first paper published in that process: *A Risk Based Approach to Regulating Heavy Vehicles*⁴ that work needs to be done to:

- Remove remaining jurisdictional derogations from the HVNL;
- Finalise the transfer of enforcement officers from jurisdictional regulators to the NHVR;
- Improve on the current limited capture and use of data collected by heavy vehicles;
- Improve route access;
- Create operator standards;
- Improve the capacity of local government to appropriately discharge the responsibilities invested in them by the Law;
- Review the more technical provisions of the Law, which do not provide either safety or productivity outcomes; and
- Encourage Western Australia and the Northern Territory to become participating HVNL jurisdictions.

⁴ <http://www.austlogistics.com.au/wp-content/uploads/2019/06/ALC-Submission-NTC-Review-into-the-HVNL.pdf>

Other Issues

The Issues Paper notes that there are several inquiries and projects that are being conducted concurrently within this Commissions reference and that, in particular, Heavy Vehicle Road Reform (**HVRR**) is out of the scope of this reference.

ALC is of the view the development phase of HVRR must be finalised and implementation commenced by the end of the 46th Parliament. Road pricing reform has been promised for decades. Continued delay in confronting the issue will only make its ultimate resolution more difficult, with productivity suffering as a result.⁵

With respect to the National Freight and Supply Chain Strategy ALC notes that in May 2018 the Commonwealth Government released *the Report of the Inquiry into National Freight and Supply Chain Priorities (the Inquiry Report)*.⁶ The Inquiry was undertaken by a panel of industry experts, and their report provides 54 short, medium and long term priorities.

Following the release of the Inquiry Report, TIC agreed in May 2018 to a framework to develop a 20-year National Strategy, with jurisdictions developing action plans to show how a National Freight and Supply Chain Strategy would be implemented.

ALC intends to ensure that any agreed strategy will be implemented.

⁵ ALC *Freight: Delivering Opportunity for Australia: Priorities for the Next Australian Government* (2019): 13 <http://www.austlogistics.com.au/wp-content/uploads/2019/04/Election-Priorities-Documents-Final-compressed.pdf>

⁶ <https://www.infrastructure.gov.au/transport/freight/freight-supply-chain-priorities/index.aspx>

Safety and Workplace Health and Safety

The shared responsibility and accountability principles contained in the Rail Safety National Law (**RSNL**) are appropriate in the specific operating environment of the rail industry in which a very small number of above rail accredited operators follow safety management systems approved by the ONSR.

However, that approach is not appropriate for the road environment, given the atomised nature of the industry as well as the fact that heavy vehicles share the road with light and passenger vehicles.

Section 18 of the HVNL sufficiently creates the nexus between the HVNL and workplace health and safety legislation.

However, the industry believes that risk is now being treated in a holistic manner, with relevant systems designed to meet ISO 45001 *Occupational Health and Safety Management Systems – Requirements*, which will shortly be the standard in force in Australia.

Most duty holders identified in the HVNL would be a ‘person conducting a business or undertaking’ (**PCBU**) for the purposes of WHS law. Both laws impose a duty to ensure all reasonably practicable steps are taken to ensure safety.⁷

ALC believes there is scope to rely on WHS law to regulate safety and leave within the scope of the primary duty contained in the HVNL heavy vehicle specific matters, such as the ensuring maintenance of a heavy vehicle or preventing the risk of damage to road infrastructure.

Subsequently;

- Rights and obligations are contained in one legislative suite, which should add to overall coherence in approach;
- Government enforcement priorities and practices would be predictable and consistent, as only one agency would have the responsibility for administering the relevant law, thereby reducing compliance and administrative costs to business; and
- Companies can develop genuinely coherent WHS strategies that cover all facets of business, thus delivering cost and efficiency benefits. The HVNL would then focus exclusively on access and roadworthiness issues.

These matters are discussed in more detail in *A Risk Based Approach to Regulating Heavy Vehicles*⁸ and a 2015 submission to the NTC called *Primary Duties for Chain of Responsibility Parties and Executive Officer Liability*.⁹

⁷ See section 26C of the HVNL and section 19 of the Model Workplace Health and Safety Act

⁸ Pages 8 and 9

⁹ <http://www.austlogistics.com.au/wp-content/uploads/2015/01/ALC-Submission-Primary-Duties-for-Chain-of-Responsibility-Parties-and-Executive-Officer-liability.pdf> : 9-10

Ability to Change Legislation

The NTC outlines on its website in relation to RSNL maintenance that it conducts annual reviews, and until recently had ownership of all maintenance amendments. However, this function has been gradually transferred to the ONRSR who now carry out the bulk of RSNL maintenance, whilst the NTC still continues to undertake 'substantial maintenance' of the RSNL.¹⁰

This bifurcation for the responsibility of regulations is the same for heavy vehicles, leading to unsatisfactory outcomes.

ALC believes the national regulators are now sufficiently mature to have full responsibility for developing policy and proposing regulatory proposals to TIC.

However, there is still a need for industry to be able to politically challenge poorly designed regulations that, if implemented, would lead to industry incurring costs without any perceivable productivity or safety benefits.

ALC believes that before a regulation is made for the purpose of the HVNL or the RSNL, there must be close consultation with industry. At minimum, this should include a draft of any proposed regulation and a discussion regulatory impact statement. This matter is discussed at length on pages 9-13 in our *A Risk Based Approach to Regulating Heavy Vehicles* submission.

EXAMPLE

A recent inspection of containers by enforcement officers found that some containers had a small protrusion of their hinges beyond 2.5m.

ALC members were aware that on different builds the extremity of the hinges can exceed 2.5m by 10-15mm on either side. However, the assumption was that the exemptions given to tautliner vehicles were extended to side door containers because of the similarity of function.

Whilst more solid than webbing assembly-type devices and curtain-side devices, hinges are more stable, are not given to movement and have no chance of coming loose.

Section 7 of the *Heavy Vehicle (Mass, Dimension and Loading) National Regulation* provides that a heavy vehicle must not be wider than 2.5m.

Section 8 of the *Heavy Vehicle (Vehicle Standards) National Regulation* sets out how to measure the width of a heavy vehicle, and requires enforcement officers to disregard (amongst other things) permanently fixed webbing assembly-type devices, if the maximum distance across the body of the heavy vehicle, including any part of the device, is not more than 2.55m, with an example of a permanently fixed webbing assembly-type device being a curtain-side device.

It was agreed these regulations were contradictory. If the 'section 7' law was to be taken as the law the 'wide load' requirements set out in Schedule 8 of the Mass Dimension and Loading National Regulation (which will require escorts to accompany the heavy vehicle) would apply to the movement of all 2 pallet wide side door containers in use in Australia and will impact all major freight operators.

¹⁰ <https://www.ntc.gov.au/current-projects/rail-safety-national-law-maintenance>

ALC members estimate that there would be in excess of 5,000 of these units across the industry in use on a regular basis, thus constituting a sizeable fleet. The section 7 approach would lead to significant costs to industry, for no apparent safety gain.

Time was lost as to whether the amendment was a minor or substantial amendment to the law. After a discussion, the matter was rolled into an Austroads research project for further consideration.

The matter remains unresolved after two years. The contradiction in the law remains.

Productivity and the Use of Data

The Commission's approach of assessing productivity as being the value of transporting freight a given distance relative to all of the costs associated with that transportation¹¹ is the correct approach.

However, ALC believes data will shape the future of the freight transport industry.

A common concern expressed by many freight logistics industry leaders is the lack of meaningful data about the performance of Australia's supply chains. This concern was echoed by the National Freight and Supply Chain Strategy Inquiry Report, which found there was limited national data to measure and benchmark performance.

The lack of data is concerning as it makes it difficult for governments to prioritise investments and accurately measure the impact of new policies or infrastructure investments.

ALC therefore supports the Commonwealth's intention to design a National Freight Data Hub which will include arrangements for data collection, protection, dissemination and hosting, and the establishment of a freight data exchange pilot to allow real-time access to freight data.

As discussed earlier in this submission, to obtain true interoperability and supply chain productivity outcomes, ALC believes that there should be a requirement, across all transport modes, that global data standards for the identification, capturing and sharing of freight data be incorporated in industry codes of practice. To complement this, ALC believes that compliance to data standards should fall under the extended remit of the regulatory bodies.

ALC is also continuing to support another Commonwealth project called the Road Freight Telematics Data Project, and is encouraging the Australian Bureau of Statistics to continue to develop and publish the Australian Transport Economic Account as a regular feature in the Australian National Accounts.

ALC finally notes the Commonwealth has commissioned the iMOVE Cooperative Research Centre to review the freight data needs for industry and government, and how better data could improve operational and planning decision-making in the freight sector.

¹¹ Issues Paper: 18

ALC has fully engaged in the development of this process so far, and hopes it will ultimately lead to development of a common data set held by a trusted third party that can be used by industry participants and regulators for regulatory and planning purposes.

Whilst national regulators currently collect data for their own purposes, ALC believes that due to the intermodal nature of freight and the dynamism of the end to end supply chain, policies related to the collection and use of freight data should be managed by institutions created under the National Freight and Supply Chain Strategy in the intermediate to long term.

Intermodals and Greater Harmonisation of Transport Legislation and Regulators

The discussion paper emphasises the intermodal nature of transport, and notes that no one regulatory body spans all forms of transport.

From the ALC perspective, the three greatest impediments to productivity outcomes are:

- Access to timely data that will assist freight chain participants make decisions that maximise productivity outcomes;
- The operation of jurisdictionally based planning instruments that permit the encroachment of residential premises and other developments that inhibit the efficient operation of transport infrastructure on a 24/7 basis; and
- The presence of jurisdictional legislative deviation from the national law. The presence of such inconsistencies between jurisdictions caused by such deviations results in a loss of the productivity benefits that the national law seeks to achieve.

ALC indicated in its 2019 election document *Freight: Delivering Opportunity for Australia* that it believes all jurisdictions should incorporate 'freight and logistics lands' as a distinct category in their planning instruments so as to facilitate the 24/7 operation of infrastructure assets, with the Australian Government requiring the inclusion of such a category in planning instruments as a precondition for investing in transport infrastructure projects.¹²

The HVNL and RSNL deal predominantly with safety issues.¹³

Given that all the responsibilities for these matters have yet to be fully transferred to these jurisdictions, it would be better to allow the transfer to conclude and for the HVNR and ONSR to continue bedding down their expertise in their current domains.

In *Freight: Delivering Opportunity for Australia*, ALC suggested the Freight and Supply Chain Unit, currently working on the National Strategy and situated within the Infrastructure Department be expanded to include freight and planning experts.¹⁴

¹² Pages 8-10

¹³ And in the case of the HVNL, issues relating to access and the approval of performance based standard vehicles

¹⁴ *Freight: Delivering Opportunity for Australia: loc cit*

If such a recommendation is acted on as part of the implementation of the National Freight and Supply Chain Strategy, ALC trusts such a unit will take the lead in ensuring that the end to end supply chain serving a national economy is supported by the development of policies and administrative mechanisms that facilitate the more efficient movement of freight.

Again, ALC is pleased to be given the opportunity to provide a submission to the Productivity Commission Review into the National Transport Regulatory Reform.

Should you wish to discuss this submission further, I can be contacted

Yours sincerely,

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Chief Executive Officer