



Minister for Transport; Planning

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National Transport Regulatory Reform
Productivity Commission
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To Whom It May Concern

NATIONAL TRANSPORT REGULATORY REFORM – PRODUCTIVITY COMMISSION ISSUES PAPER

Thank you for the opportunity to provide input into the Productivity Commission's Review into the National Transport Regulatory Reform.

The Western Australia Transport Portfolio comprising the Department of Transport, Main Roads Western Australia and the Public Transport Authority has prepared a response to the Issues Paper, in consultation with WorkSafe WA.

I look forward to seeing the results of the inquiry, and the Commission's views on how rail, commercial vessel and heavy vehicle safety regulation can be improved.

Yours sincerely

HON RITA SAFFIOTI MLA
MINISTER FOR TRANSPORT

25 JUL 2019

Att: Transport Portfolio Response to the Productivity Commission Issues Paper



PRODUCTIVITY COMMISSION INQUIRY INTO THE NATIONAL TRANSPORT REGULATORY REFORM

Purpose

In 2009, the Council of Australian Governments agreed to create national regulatory regimes for maritime safety, rail safety, and heavy vehicle safety and productivity.

In 2019, the Productivity Commission has been tasked with undertaking an inquiry into the performance of these national regulatory arrangements. Participants have been invited to make a submission to the Productivity Commission and comment on issues that they consider relevant to the inquiry's terms of reference.

This paper, prepared by the Department of Transport (DoT), summarises the views of relevant Western Australian (WA) Government agencies, namely:

- Main Roads WA;
- Public Transport Authority;
- Department of Transport; and
- WorkSafe WA.

The following agencies have reviewed the submission and provided additional feedback:

- The Road Safety Commission;
- Department of Treasury; and
- Department of Premier and Cabinet.

The comments in this paper are arranged by transport mode, partly for ease of reading and partly because of the significant differences in the approach to regulation across the modes.

WA has not provided detailed data on the safety or productivity of WA transport in this response. Suitable data sources on these matters sit within national data sets, and DoT suggests consulting with the Australian Bureau of Statistics, the National Transport Commission (NTC), the Bureau of Regional Transport Economics, the Australian Safety Bureau and the national transport regulators for more detailed statistics.

Introduction

The WA Government has chosen to join the national regulation of rail safety and domestic commercial vessel safety, but has consciously chosen not to adopt the Heavy Vehicle National Law (HVNL) and be subject to the National Heavy Vehicle Regulator (NHVR).

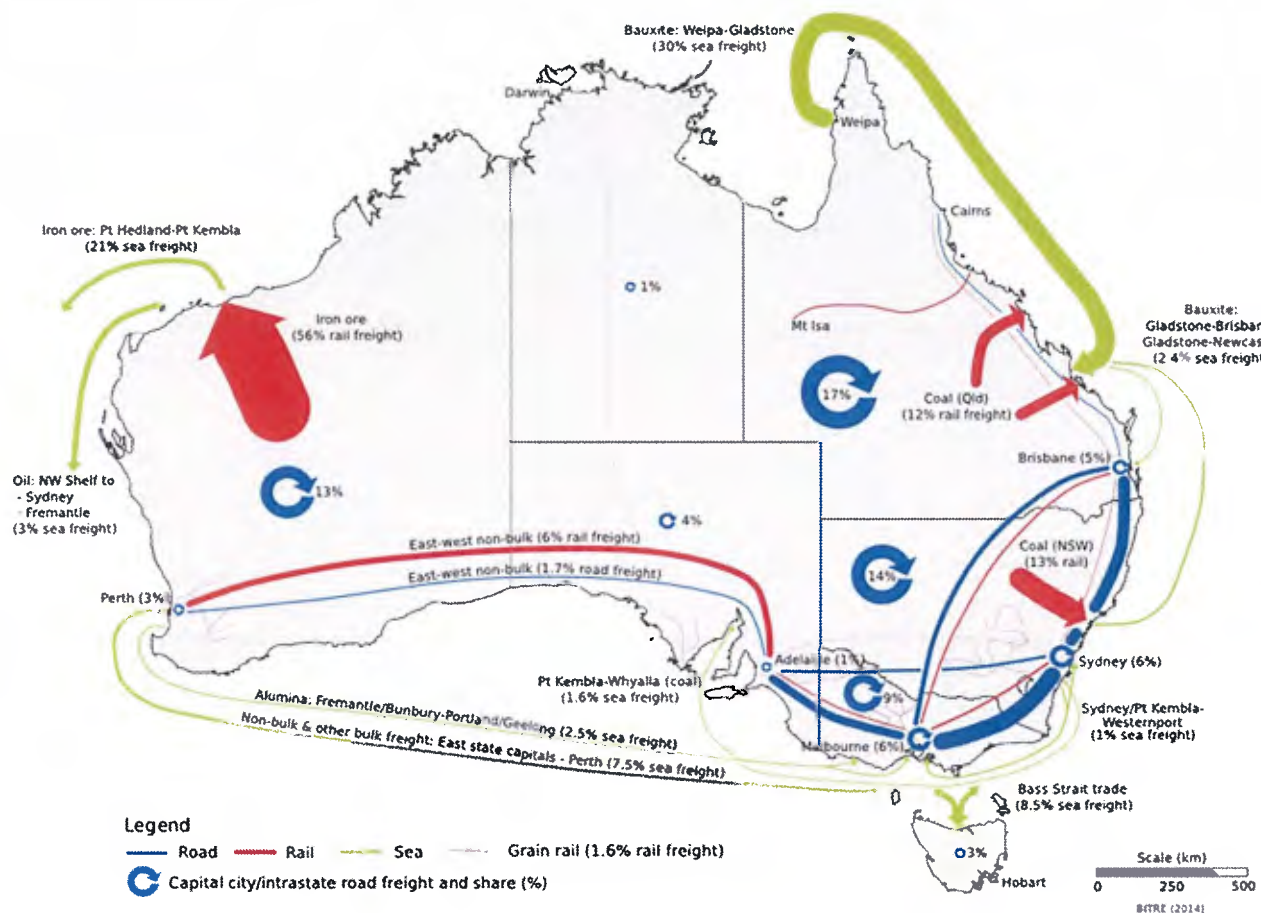
This submission outlines WA's experience in the national reform process, rationale for not adopting the national heavy vehicle law and regulatory model, and approach to heavy vehicle regulation (including why these arrangements are considered preferable to those implemented by the National Heavy Vehicle Regulator).

National Transport Reforms: The WA context

WA's location, industry and trade relationships have influenced how the State goes about regulating the transport industry and the extent to which it has participated in national transport reforms.

WA's industry and population are separated from the eastern coast economic centres by vast distances, and as a result, certain transport modes have a natural competitive advantage. The bulk of goods transported into WA arrive by rail or by ship, as demonstrated in 2014 by BITRE:

Figure 1. Major freight flow in Australia, 2011-12¹



¹ BITRE, Freightline 01, May 2014

Interstate road transport volumes are very low. According to the NTC's estimates, in 2015 only 5 per cent of road freight movements in WA were involved in interstate movements, when considered on a vehicle-tonne kilometre basis.² The ABS 2014 road freight movement survey suggests that, when looking at total tonnes hauled, interstate road freight movements account for only 0.4 per cent of WA's road freight task.³

Heavy Vehicles

In 2011, when the Intergovernmental Agreement on Heavy Vehicle Regulatory Reform was signed, WA chose not to participate. Due to the low volume of interstate road freight, any improvements in safety or productivity for transport operators conducting business interstate will be offset in WA if there is any reduction in the safety or productivity of intrastate freight movements.

WA was concerned that adopting the national law would negatively impact the competitiveness and productivity of the heavy vehicle industry, without delivering a commensurate improvement in safety. This position was supported by road transport industry stakeholders. WA's separate regulatory arrangements for heavy vehicles continue to meet the needs of the State.

Access

Main Roads WA's Heavy Vehicle Services is responsible for managing access permits for heavy vehicles in Western Australia. Heavy Vehicle Service benefits from being incorporated into Main Roads WA's business, and having direct relationships with the road asset managers responsible for arterial roads. Heavy Vehicle Services also has longstanding relationships with Local Governments across the State. These relationships facilitate a greater amount of collaboration and understanding of the issues when assessing access requests. The direct relationship with industry enables Main Roads WA to respond quickly to emerging issues and have an awareness of issues impacting transport operators.

The HVNL (regulation 124) requires each State and Local Government to provide access consent for roads under its jurisdiction before an access permit is approved by the NHVR. The legislation allows Local Governments up to 28 days to provide access consent. These timeframes do not meet the requirements of the heavy vehicle industry, or the needs of their customers. The NHVR also includes a route determination in its permit process, while an equivalent determination is not made in WA.

In WA, the Commissioner of Main Roads has the power to issue permits and does not require Local Government approval to do so. This provision allows WA to ordinarily issue permits within a 48 hour period. Main Roads WA has collaborated with Local Governments to develop a series of networks and pre-approved routes (known as Restricted Access Vehicle (RAV) networks), which are matched to heavy vehicle types, rather than seeking individual approvals from Local Governments who do not have the resources to process route determination permit requests.

Main Roads WA is responsible for the asset management of all bridges within WA, both on highways and main roads and Local Government roads. This enables a timely, and consistent response by technically competent persons to requests for structural assessments for different RAV combinations.

² BITRE, Australian road freight estimates: 2016 update, 2016

³ ABS 9223.0 – Road Freight Movements, 2014

WA has also been able to facilitate significant improvements in access provisions by working with industry to ensure new and innovative vehicles are safe, and road asset considerations are addressed. As in other States, WA provides access to high productivity vehicles that meet performance based standards requirements. WA has also been able to facilitate trials and deployment of very high productivity vehicles, including 60 metres road trains, in WA's Pilbara, Mid-West and Goldfields-Esperance regions.

In 2013, Main Roads took over the delivery of traffic escort services from WA Police, and integrated the booking and payment for traffic escorts into the road access permit process. This change has simplified requirements for industry and has provided certainty of traffic escort availability.

WA is convinced that its arrangements for heavy vehicles to access the State's road network are more appropriate than the arrangements in other states and territories overseen by the NHVR. The WA arrangements are much easier for industry to negotiate and have a significant cost and productivity benefit that meet the needs of the transport industry and their customers, which facilitates economic development within the State. Changes to the NHVR to align with WA's regime are likely to yield benefits for regulators and industry.

Fatigue

Driver fatigue in WA is regulated under the *Occupational Safety and Health Act 1984*, with fatigue management requirements set out in the *Occupational Safety and Health Regulations 1996* and the Code of Practice for Fatigue Management for Commercial Vehicle Drivers.

The fatigue management regulations and code of practice were developed in consultation with industry and tailored to suit the unique operating environment within WA. Commercial vehicle driver fatigue was recognised as an Occupational Safety and Health matter that was to be managed at every point in the supply chain and not limited to the driver of the heavy vehicle. Commercial vehicle driver requirements apply to both heavy vehicle and passenger hire and reward (omnibus) drivers, provided certain work time requirements are met.

The key advantages and disadvantages of the WA driver fatigue system are set out below:

Advantages

a. Fatigue Management Training Requirements

It is a mandatory requirement in WA that all heavy vehicle drivers complete fatigue-management training. The rationale is to control for fatigue risk that may lead to vehicle crashes. Under the HVNL system, drivers that operate under standard hours are not required to complete any fatigue management training. Research supports mandatory driver fatigue training, with regular updates for all drivers.

b. Unique geography and rural driving

One of the reasons WA did not adopt the HVNL in 2011 was that the national proposal did not suit the unique needs of the State, especially in relation to rural and remote area driving. The HVNL does not account for special hours of work and scheduling for work environment risk factors that are relevant to a geographically large State like WA. These factors include large working radius, long driving distances, high external temperatures, flood conditions, poor road conditions, and long gaps between rest stops and convenience facilities.

c. Supply chain operational factors

A single national transport policy is not appropriate given the distinct operation of WA's supply chain. For example, WA's road access regime allows larger vehicles (high-wide loads) than other jurisdictions in Australia, as well as concessional loading that allows operators to carry more freight than their counterparts in the eastern states. These arrangements support the trucking industry's inbound and outbound bulk movements, which are crucial for economic productivity.

d. Regulatory approach – education and enforcement

The difference in WA's approach to driver fatigue management, when compared to the NHVR, is that WA places emphasis on educating the employers and employees (the drivers) on WA fatigue requirements, rather than enforcement actions. WA Heavy Vehicle Accreditation includes a mandatory fatigue management module. The requirements under the fatigue module largely mirror requirements under OSH law, so an operator who meets the requirements of the fatigue module should largely be meeting their obligations under OSH law.

NTC's issues paper 1 on fatigue management acknowledges the national HVNL has "limited enforcement options and imposes punitive sanctions".

e. Flexibility

WA's fatigue regulations allow for some flexibility in its application, as they need to be met 'so far as practicable'. While commercial vehicle drivers in WA are required to meet prescribed work and rest hour requirements, the fatigue regulations allow variations to these requirements under reasonable circumstances, so long as driver fatigue is minimised. For example, while current records must be kept of the driver's work time, non-work time and breaks, WA's legislation does not stipulate the format for record-keeping.

In its 'A Risk Based Approach to Regulating Heavy Vehicle – Issues Paper', the NTC recognises that the prescriptive nature of the HVNL and some impractical requirements that result in inconsistencies in its application.

f. Compliance and enforcement - Chain of Responsibility (CoR)

CoR is a legal regulatory approach that holds all parties within the supply chain responsible for road transport safety, not just the driver. In WA, the CoR approach to mass, dimension and loading requirements includes light vehicles, ensuring accountability for all parties in the transport chain. The HVNL system recently (1 October 2018) introduced comprehensive CoR requirements, although it had limited application of the CoR requirements since its inception in 2014.

Disadvantages:

a. Inconsistencies for interstate drivers

Commercial vehicle drivers who drive outside WA must comply with the fatigue management regime that is applicable in the driver's location. This requirement to comply with different fatigue management regimes may be a regulatory burden on the freight and logistics industry, however WA recognises compliance with HVNL fatigue regulations as evidence of compliance with local requirements.

Accordingly, commercial vehicle drivers operating out of WA are required to keep a complete trip record documenting the hours worked outside the State to determine compliance with WA's fatigue regulations when cross-border trips occur. The driver should keep a complete trip record covering the time spent at work in another state or territory. It is necessary to document the hours worked outside of WA's borders to determine whether compliance with the WA legislation has occurred. WA recommends the driver records the time zone of the place of departure to eliminate any confusion from changes in time-zone between jurisdictions.

b. Limited regulator resources

Working hours: WorkSafe inspectors are public servants with core working hours between 7am to 6pm, while the commercial vehicle transport industry is a 24x7 operation. Trucking industry data has consistently shown that the highest rate of crashes on a per (heavy) vehicle basis are outside of the inspectors' business hours. National data indicates that a disproportionate number of fatigue incidents in the trucking industry happen between midnight and 6am, with over 40 per cent of all fatigue losses occurring during this time period in 2017.

Road block operations: WorkSafe inspectors do not have the powers to stop the trucks and therefore work in collaboration with WA Police and Main Roads WA to organise road blocks to stop and inspect commercial vehicles. It is not unusual for WorkSafe inspectors to visit employer yards the day after undertaking fatigue inspections during a road block. Planning road block operations includes consideration of locations with sufficient parking for heavy vehicles and rest areas for drivers. Opportunities for WorkSafe inspectors to participate in road block operations with WA Police and Main Roads WA have diminished over the last few years as a result of resourcing constraints.

Limited inspector manpower: The Department of Mines, Industry Regulation and Safety has 12 inspectors on the WorkSafe industrial team, which also has responsibility for manufacturing, wholesale, and the transport logistics chain in WA (including ports, railway (off-rail side), airports, and commercial vehicles). Commercial vehicle driver fatigue management forms a small part of the operational industry responsibilities of the industrial team. Organisations like Main Roads WA and the Commonwealth NHVR are able to focus on commercial vehicles with greater access to resources and enforcement tools, such as infringements (to which WorkSafe does not have access). Main Roads is seeking to extend its power under the proposed new OSH laws to cover fatigue, which will address some of the resource shortcomings.

Adopting a risk-based approach (accreditation)

Heavy vehicle regulation in WA takes into considerations the principle that the level of regulation should be appropriate to the level of risk. For heavy vehicles, the highest risk vehicles are those that exceed normal mass or dimension allowances, otherwise known as RAVS.

WA Heavy Vehicle Accreditation introduced in 2003, is mandatory for individuals and organisations that require a permit or order to perform any transport task as part of a commercial business or for profit within Western Australia, including interstate operators. WA Heavy Vehicle Accreditation involves three mandatory modules 'Fatigue', 'Maintenance' and 'Dimension and Loading', which transport operators are required to incorporate into their daily work practices. There is one optional module, 'Mass Management', which is only required to be undertaken if an operator wishes to operate within the Accredited Mass Management Scheme.

In contrast, the National Heavy Vehicle Accreditation Scheme is voluntary and enables operators to be eligible to operate under concessional limits.

Enforcement

Main Roads WA's approach to heavy vehicle compliance is focussed on education and enforcement. Mandatory accreditation for RAVs is integral to the way Main Roads WA carries out enforcement. Accreditation focusses on the high-risk vehicles (ie RAVs) and requires transport operators to demonstrate that they have systems and processes in place to manage the operation of RAVs safely and in compliance with the law.

On-road compliance enforcement teams seek to provide coverage of the State's network and utilise data intelligence to target high risk operators or areas. This provides valuable performance feedback on transport operators that is fed back into the accreditation process using "show cause" notifications. This approach allows the Main Roads WA compliance team to focus limited resources as efficiently as possible and continues to reinforce a transport operator's responsibilities.

Over time, it is expected that this approach will make positive changes to the culture of the transport industry and it is consistent with the approach taken in other industries, such as construction, where contractors are required to have integrated management systems.

State-based and cross-border intelligence regarding on-road compliance activities are led by Main Roads WA working in conjunction with other agencies including, WA Police, Department of Transport, Department of Mines, Industry Regulation and Safety, the NHVR, South Australian Department of Planning, Transport and Infrastructure, and the Northern Territory Department of Infrastructure, Planning and Logistics.

Vehicle Standards

WA supports national vehicle standards and collaborates with the NHVR on changes to heavy vehicle standards. Due to competing legislative priorities, WA has not fully harmonised national policy settings into WA law, which creates some risk and uncertainty regarding the ability of vehicles to operate interstate.

Buses and Public Transport

The Public Transport Authority (PTA) considers the national arrangements are overly prescriptive and restrictive in nature compared to the arrangements in WA.

If the national arrangements were applied in WA, it is likely that the NHVR would impose additional compliance obligations on the bus industry that the PTA considers are unnecessary and are more relevant to the trucking industry. Were this to happen, it would place additional restrictions on already negotiated and agreed bus driver working arrangements, making the bus industry less efficient and costlier to operate.

Rail Safety Regulation

The rail operators that are regulated by the National Rail Safety Regulator fall into three categories: commercial freight rail operators; the public transport rail operator; and tourism and heritage rail operators.

There are massive differences in the size and scale of rail operations in the State, and likewise in capability and risk. In the Pilbara, private iron ore companies operate large, sophisticated rail networks over long distances, with powerful locomotives pulling many heavy wagons. The Government-owned narrow gauge freight rail network is operated on a commercial basis by the private sector under a long-term lease arrangement, and the PTA operates the modern passenger network.

There are around 10 tourist/heritage rail operators in WA, whose operations are unsophisticated, small scale, low speed, low risk, and often operated by volunteers.

Department of Transport's view on national rail safety regulation

DoT supports the co-regulatory approach taken in rail safety, which has the potential to be more effective and increase industry ownership and buy-in, when compared to a more compliance- and enforcement-based regimes. In contrast, there is potential, or at least the perception, of an adversarial relationship between operators and regulators in non-co-regulatory regimes.

DoT is of the view that it is appropriate to limit the remit of rail regulation to safety, noting that safety and productivity can create conflicting objectives.

The Office of the National Rail Safety Regulator (ONRSR) has been responsible for the regulatory oversight of rail safety in WA since 2015, and has performed this function effectively. DoT consults with ONRSR in matters associated with the maintenance of the Rail Safety National Law (RSNL). Overall, DoT is satisfied that ONRSR is an effective regulator, that it demonstrates a willingness to collaborate with stakeholders, and that it maintains accountability and transparency in all work related to maintenance of the RSNL.

Since its establishment, the ONRSR has led reviews related to Drug & Alcohol, Fatigue Management, and Cost Recovery provisions of the RSNL. DoT is satisfied that the consultation process surrounding these reviews has provided sufficient opportunity for the WA Government to provide input. It is apparent from the reports produced following consultation that Government input has been considered and factored into the decision-making process.

DoT works with ONRSR as part of the ongoing RSNL maintenance process. The process is led by co-chairs the NTC and ONRSR, and is a collaboration between these bodies and members of the RSNL Maintenance Advisory Group (RSNLMAG). The RSNLMAG includes representatives from jurisdictional and Commonwealth government transport departments, the rail industry, and rail industry associations. The role of the RSNLMAG is to advise the NTC and ONRSR on maintenance priorities, policy development and proposed legislative amendments.

DoT is satisfied that ONRSR, in its role as co-chair of the RSNLMAG, leads a process of policy development and development of proposed legislative amendments that is transparent and inclusive. The views of all members are considered, and members are provided sufficient opportunity to provide input into proposed legislative changes prior to submission to the Transport and Infrastructure Senior Officials' Committee and the Transport and Infrastructure Council. To date, WA has been supportive of the final agreed changes made to the RSNL.

WA's decision to implement the RSNL using mirror legislation has resulted in variations between the national RSNL and the RSNL (WA). The RSNL (WA) commenced in WA in 2015 and the legislative amendment packages developed by the RSNLMAG since then are yet to be included in the RSNL (WA), due to competing legislative priorities. WA acknowledges that the delays in updating the RSNL (WA) have resulted in inconsistencies between the national law and WA law. The WA Government is considering how best to address this issue.

DoT encourages the Productivity Commission to take an interest in the impacts of the national regulatory system on tourist and heritage rail operators. The State contributes to the cost of regulation for these operators; however, regulatory costs are still cross-subsidised by other operators. At the same time, operators in this segment need to comply with legislative requirements that impose a significant regulatory burden for small-scale, low risk operators.

A relevant question for the Productivity Commission is whether the *Rail Safety National Law (South Australia) 2012* has been framed in a way that is appropriate for isolated, low risk operations. Alternatively, whether the legislation is written in flexible enough terms to allow the ONRSR's operations managers sufficient discretion to manage the proportionate risk associated with tourist and heritage operators.

The Public Transport Authority's perspective

The PTA has provided views as a regulated entity under the RSNL. PTA's suggestions for improving the national rail regulation model are as follows:

- Reduce the cross-over or replication between the RSNL and OSH laws. This includes duplication of Safeworking Australia codes of practices and guidance material. For example, ONRSR was developing Code of Practice for fatigue; however, Safe Work Australia has a Guide for Managing the Risk of Fatigue at Work (2013), and Worksafe WA has a Code of Practice: Fatigue management for commercial vehicle drivers (2004).
- Review definitions within the RSNL, such as the definition of 'Rail Safety Work', which are difficult to interpret and therefore costly for industry to implement.
- Limit regulation to rail-specific activities. PTA welcomes the current the National Transport Commission's review of the definition of rail safety work.
- Allow operators with robust drug and alcohol testing procedures to continue to use them. The introduction of ONRSR's Drug and Alcohol testing regime and its limited coverage, which is additional to the operator's DAMP, could add increase regulatory burden.
- Be more proactive in the education of regulated entities by providing additional and timely educational products, liaising with regulated entities to improve understanding and capacity
- Improve the mix of skills in branches of ONRSR by placing more emphasis on hiring people who are rail subject matter experts, to complement the majority of staff who have only general knowledge and skills.
- Develop greater rail expertise in the Australian Transport Safety Bureau to deal with rail incidents.
- Enhance the capacity of the Australian Transport Safety Bureau to respond quickly to incidents occurring within jurisdictions where there are no locally based investigators.

Domestic Commercial Vessels

Regulation of domestic commercial vessels is now undertaken by the Commonwealth.

The *Maritime Safety (Domestic Commercial Vessel) National Law 2012* (Cwlth) covers the safety duties of parties, powers and obligations of safety inspectors, identification and certification of vessels and seafarers, and general incident reporting.

The Australian Maritime Safety Authority's (AMSA) remit, which previously covered only international commercial vessels, was expanded to include domestic vessels. AMSA is headquartered in Canberra.

Department of Transport's comments on maritime regulatory arrangements

WA is no longer involved in the regulation of domestic commercial vessel safety. DoT, which regulated domestic commercial vessel safety in WA prior to the transfer of responsibility to the Commonwealth, does not undertake any tasks on behalf of AMSA.

Prior to the transfer of responsibility, DoT allocated 28 full time equivalent staff to commercial vessel safety, undertaking such tasks as survey of vessels, certification of vessels and seafarers, checking vessels for compliance and undertaking investigations into marine incidents. These staff positions and associated resources have been abolished. About 2,400 commercial vessels were operating in WA waters, with very few of these operating or moving between WA and other Australian states and territories. When DoT regulated domestic commercial vessels, it aimed to check about 10 per cent of the fleet each year.

DoT no longer maintains formal contact with the commercial vessel industry or receives reports from AMSA, so is not in a position to comment accurately on the success or otherwise of the current national arrangements and the extent to which the arrangements have met the stated objectives, intended outcomes and the intended outputs of the reform. It is therefore best if the Productivity Commission makes its own enquiries in that regard, drawing on the experience of industry and other jurisdictions that provide services on behalf of AMSA.

WA is interested in learning of the Productivity Commission's findings on regulation of domestic commercial vessel safety with regard to:

- The effectiveness of national regulation at:
 - reducing costs to industry;
 - increasing productivity; and
 - improving safety.
- The impacts of grandfathering provisions, and other similar policy decisions, on safety.
- The quantity and effectiveness of enforcement actions and prosecutions undertaken by AMSA, compared to those undertaken by jurisdictions prior to the reforms.
- The resourcing and capability that AMSA has available to perform regulatory tasks in each jurisdiction.
- The actual achieved productivity benefits of a national system, compared to mutual recognition or other pre-existing schemes to harmonise requirements between jurisdictions.

Public Transport Authority's comments on maritime regulatory arrangements

PTA operates a public transport ferry service between the CBD and South Perth. Two vessels are deployed on the route, which is characterised by shallow depth and protected waters. A new vessel is on order to replace an existing ferry that is coming to the end of its operating life.

Vessels deployed on this ferry route are staffed by a single person; a practice that has been in place for decades. The approval to operate these vessels on the route with a one-person crew was originally provided by DoT, based on a safety case with clear justifications on a risk basis.

These vessels are now regulated by AMSA under the Commonwealth law.

PTA's ferry service has had an unblemished safety record over many years. PTA is now required to adopt a range of practices of questionable value that have not helped productivity, in order to maintain the single-crew exemption for its ferries.

Under AMSA's requirements, new ferries will not be eligible for the single-crew exemption. At present the existing ferries are protected by sub clause 8 (a) but any new ferries will not be.

Under the new *Marine Order 504 (Certificates of operation and operation requirements – national law) 2018*, PTA would be required to have a minimum of a Ferry Master plus two crew once the new ferry on order commences service. By any risk-based assessment and review of past practice, such a requirement is unnecessary. Moreover, this requirement would add significantly to the cost of operation, having the potential to make the ferry service unviable. The solution is to amend Marine Order 504 to allow previous crewing arrangements to flow through to new vessels of the same type and operation.

Harmonisation of safety regulation across modes

WA agencies recognise that there are significant differences in both the regulatory frameworks and the nature of transport operations that make harmonisation across modes challenging. Those issues notwithstanding, there may be benefits in improving relationships and consistency across modes. A first step could be to consider adopting a consistent set of regulatory principles, particularly in relation to the use of risk-based regulation.

The integration of modes of transport will become increasingly important as freight demand increases (growing economy, increased population and online shopping), and consumer expectations evolve (same day/next day delivery plus free returns). Freight should be seamlessly transferred from one mode of transport to another.

Conclusion

The WA agencies have and will continue to participate in national transport reforms, where there is a benefit to the State in doing so and look forward to the findings of the Productivity Commissions inquiry.