

CM-075-C-00166.01

3 October 2007

Mr. Gary Banks
Chairman
Productivity Commission
PO Box 80
Belconnen ACT 2616

Dear Mr. Banks

Re: Regulatory Burdens – Primary Sector

The NTC was invited to make comment on the Draft Research Report titled *Annual Review of Regulatory Burdens on Business: Primary Sector*. Specially, it was requested that the NTC consider section 3.8 'Transport issues in agriculture'. The NTC's consideration of the report has been limited to that section and the following comments are offered only in relation to that section.

Under heading of 'jurisdictional inconsistency' (page 61):

Submissions referred to, while identifying some inconsistencies between jurisdictions, fail to recognise that some of the inconsistencies between what is permitted to operate (and what by implication is not permitted to operate) are justified relative to the risk environment in which the vehicle is proposing to operate. For example, volumetric loading is permitted in Victoria and Queensland only as a gazetted scheme. In other words, it is not a legislated right for operators to apply volumetric loading in these jurisdictions. Volumetric loading occurs in these jurisdictions because the regulatory authority has made an assessment that this does not pose an unacceptable risk to safety or infrastructure and has permitted the operations to take place using the bureaucratic discretion afforded to the regulatory authority under the governing legislation. The importance of this distinction is that the assessment of the NSW regulatory authority may be that it is not able to grant the privilege of volumetric loading on the basis that to do so would pose an unacceptable risk to safety or infrastructure. The NTC is not seeking to defend the NSW decision to not grant the privilege/concession to the livestock industry in the same way that Victoria and Queensland (and others) have but simply tries to make the point that the use of the bureaucratic discretion by regulatory authorities is a risk management exercise, and the risks do change between jurisdictions, parts of the road networks, etc (e.g. due to stock of weaker bridges, traffic conditions, pavement types, etc) meaning that the vehicle access outcomes between jurisdictions will be justifiably different.

The NTC believes that in practice there is mix of 'justified' and 'unjustified' differences between jurisdictions in respect to what they allow using their bureaucratic discretion. Such differences that are clearly unjustified are typically most apparent at the borders between states – the risks are same either side of the border (at least within the local vicinity) but the

rules are different. It is for this reason that NTC is promoting a refinement of risk management practices applied by jurisdictions through various elements of the PBS reforms. Harmonisation of: (a) the process by which decisions are made; and (b) the criteria that are applied by the regulatory authority, offers the best hope of eliminating/minimising unjustified differences in access outcomes that arise from application of bureaucratic discretion by different State and Territory regulators. Indeed, it is true that the harmonisation and standardisation of regulatory practices offers the best hope of eliminating/minimising unjustified differences in access outcomes that occur within jurisdictions due to decentralised decision making in respect to the granting of permits. The jurisdictions are more than aware of this.

To summarise the situation more completely, the NTC would make the observation that there are four distinct sources of inconsistency that arise between jurisdictions:

1. Those that arise between jurisdictions due to the isolated/uncoordinated development of legislation, regulations, rules and procedures. i.e. those transport laws and regulatory practices that have not been harmonised as part of the national reform processes by the NTC or its predecessor, the NRTC;
2. Those that arise due to non-implementation or selective implementation by jurisdictions of transport reforms agreed by the Australian Transport Council as an outcome of NTC/NRTC reform projects; and
3. Those that arise between jurisdictions to reflect differences in the risk environment ('justified differences'); and
4. Those that arise between jurisdictions due to differing judgments about what can and should be permitted (in situations where the risk environment is the same) using bureaucratic discretion afforded to regulatory authorities.

The NTC seeks to address sources 1,2 and 4 but accepts that when proposed operations are beyond those permitted in nationally agreed and consistent prescriptive limits, differences in the risk environment will result in different level of access being provided by virtue of use of bureaucratic discretion. In this area, NTC aims are focused on objectifying the standardizing the risk management approach applied by jurisdictions through various elements of the PBS reforms.

As an aside, it is interesting to note that submissions referred to in the PC report did not articulate concerns about the difficulties associated with moving agricultural equipment between states. Is the PC in a position to confirm that this issue was not raised?

Under the heading of 'assessment'

Consistent with the observations made above it is worthwhile acknowledging that the decision to not permit volumetric loading in some jurisdictions may be justified (at least in respect of some parts of the network) due to unacceptable risks to safety and infrastructure. It is also worthwhile noting that due to differences in the risk environment the concessions afforded to the agricultural sector in respect of weight limits may need to differ between jurisdictions and between different parts of the road network.

It is worthwhile noting that there has been recent agreed national reform pertaining to the regulation of road fatigue and that the NTC is current developing national reform in relation to heavy vehicle accreditation.

Under the heading of 'draft response'

It is noted above that a key source of inconsistency between jurisdictions is the non-implementation or selective implementation of nationally agreed reforms by States and Territories.

Lack of timely implementation of agreed reforms remains a significant issue on the national reform agenda. There are presently few financial or other incentives for jurisdictions to expedite agreed national reforms. The PC could consider making a statement about the importance of identifying incentives for implementing 'agreed reforms' to ensure that the desired outcomes are achieved and to ensure that the resources spent in developing national reforms do not go to waste.

Yours sincerely

[signed]

Nick Dimopoulos
Chief Executive