SUBMISSION Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services - Road Freight Transport Regulation and Governance

4 February 2009

Minter Ellison Building, 25 National Circuit, Forrest ACT 2603
P 02 6253 6900 **F** 02 6253 6999 **E** ata@atatruck.net.au **W** www.atatruck.net.au

Contents

1 Summary / Recommendations

Road transport is a national industry. Its efficient regulation is in the nation's interest. It is time to provide for an efficient single national regulator applying a single body of law.

The Productivity Commission has every right to adopt a strong view on the need to achieve an efficient national regulatory system for road transport, because of the amount of commonwealth regulation applied to the road transport industry. Regulatory intervention in areas of effective market activity should be avoided. For example the road transport industry is a willing participant in the proposed market based carbon pollution reduction scheme, but we do this on the basis that there will not be additional regulatory interventions (particularly specific heavy vehicle interventions).

Road transport operators, employees and clients have the right to have clear concise laws where their duties and obligations are clearly presented and not blurred with other laws purporting to cover the same fields.

Other road users and community stakeholders should be comfortable that road transport is adequately regulated but not over regulated and that industry pays its fair share efficiently.

The Productivity Commission should endorse the Commonwealth Government seeking a surrender of state powers to achieve an efficient single national regulator applying a single body of law, consistent with the most efficient regulatory option (surrender of powers) within Option Four of the Consultation Regulatory Impact Statement into a National Framework for Regulation, Registration and Licensing of Heavy Vehicles process being conducted by the Commonwealth Department of Infrastructure, Transport, Regional Development and Local Government

2 Foreword

The road transport industry believes the Productivity Commission review should provide independent guidance to Government about the importance of intervention to reduce the regulatory burden for road transport operators if Australia is to remain internationally competitive and Australians are to continue to enjoy similar living standards to now. The road transport industry is currently burdened by a complex overlapping inconsistent multi-layered maze of regulations, and quasi-regulations. These problems were featured in the Prime Minister's 2020 summit. 17 years of attempts to achieve regulatory reform through a cooperative federalism model has demonstrably failed.

National cooperative processes at ministerial level continue to fail the industry. These ministers should be serving efficiently for the broader community good. The Commonwealth's ability to use its ability to attach conditions to its grants to the states and territories to advance sound national policy has been greatly diminished with current distribution mechanism for Goods and Service Tax revenues.

3 Introduction

This submission details the views of the members of the Australian Trucking Association (ATA) and the wider trucking industry on the regulatory burden facing road transport businesses. The regulatory burden on road transport operators includes numerous direct regulatory inventions and significant impacts from social regulations that are blurred, duplicative or inconsistent with the direct interventions. For example, some road transport operators are subjected to Commonwealth occupational health and safety laws (OH&S), the laws of six states (four of which have two

regulatory inventions, and one of which has three regulatory interventions on the subject matter), and one territory law that all address regulation of heavy vehicle driver fatigue. Fourteen laws and fourteen regulators for one issue after a seven year cooperative reform process aimed at one national set of rules for driver fatigue risk management, cannot be called a successful outcome.

Roads are public goods. The road transport industry pays road user charges, and registration charges that are set to ensure that the costs arising from heavy vehicle use of this public good are recovered in net to the Commonwealth, state and territory governments. However, the industry is severely constrained in how it can use the road network. Asset managers have adopted protectionist attitudes and rules that disadvantage this nation against others. The allowed gross mass limit for a six-axle semi-trailer in China is 55 tonnes, in Australia our general access mass limit for the same vehicle is 42.5 tonnes. This is a 12.5 tonne disadvantage for every Australian user of shipping containers. Further, the current and projected cost recovery mechanisms are inefficient, and an unacceptable escalation in complexity is projected by the current state based regulators. The industry is more than happy to pay its fair share, however, we are entitled to demand that the collection mechanism is simple, transparent and efficient. A "fuel-only-charging" methodology within the existing taxation framework is very attractive to the industry as it is simple, user pays based and difficult to avoid. Further, single point collection of the revenue allows for single point distribution of the proceeds, which can therefore be strategically directed.

4 Australian Trucking Association

The ATA was originally established in 1989 as the Road Transport Forum and is the peak national body uniting and representing the interests of the Australian trucking industry.

Membership of the ATA's General Council comprises state and sector based trucking associations, the Transport Workers' Union, some of the nation's largest transport enterprises and elected representatives of small fleet owners and owner drivers.

The ATA is a member of the Australian Industry Greenhouse Network (AIGN) and contributes to the collaborative development of industry positions on climate change policy.

5 What Regulations Concern Us

The scope of existing road transport related laws is broad and housed in multiple layers within multiple governments. There is much overlap and inconsistency. Some of these problems became the focus of the Prime-Minister's 2020 summit, and were documented in the outcomes. We simply refer you to these summit outcomes. For examples of the costs to productivity of the lack of regulatory uniformity, please see:

- Fischer Report to 2020 Summit: *Seven Deadly Trucking Border Anomalies*
- Australian Logistics Council: *The cost impact of regulation disparity in cross border regions*

It is important to note that the Commonwealth Government is actively regulating the operation and use of heavy goods vehicles and that the scope of the matters covered is significant. For example, the following provisions are primary regulations affecting our industry:

Interstate Road Transport Act 1985
Interstate Road Transport Regulations 1986
Motor Vehicle Standards Act 1989
Fuel Tax Act 2006

Additional Commonwealth interventions also occur in what might be argued are not primarily transport laws such as the Trade Practice law, Corporations and Business law, Environmental law, Tax law, etc.

There is sufficient Commonwealth regulation applied to the road transport industry that the Productivity Commission has every right to adopt a strong view on the need to achieve an efficient national regulatory system for road transport. Regulation intervention in areas of effective market activity should be avoided. For example, the road transport industry is a willing participant in the proposed market based carbon pollution reduction scheme, but we do this on the basis that there will not be additional regulatory interventions (particularly specific heavy vehicle interventions).

These other regulatory areas while perhaps less visible can still be problematic, if you are the operator caught up in the circumstances of the issue. Some state based industrial relations laws, OH&S, environment, and local government bylaws, can be at odds to mainstream road transport laws. For example, for years Victoria has had a unique vertical exhaust rule for heavy vehicles. There was also a similar NSW law with some exemption provisions. Other states and territories simply required compliance with the Australian Design Rules (Commonwealth Law), which allowed other options. However, heavy vehicles complying with their home state's laws visiting Victoria and not meeting the unique Victorian law are still breached by enthusiastic enforcement officers in Victoria. This is regardless of well intended visiting vehicle provisions in each state and territory.

A primary body of road transport laws could be prescribed by making reference to all matters that would be captured by the Charter of the National Transport Commission. This has been recently refined a little further by reference to the framework of laws that the Australian Transport Council (ATC), which consists of Transport Ministers of the Commonwealth and all States and Territories, has agreed would form the core laws of road transport. The ATC has committed to investigate a framework for a single national system of heavy vehicle registration, regulation and licensing. The framework that ministers agreed to investigate includes:

- a single regulation entity to administer a body of national heavy vehicle laws;
- a national heavy vehicle registration scheme, established under Commonwealth law;
- a consistent approach to minimum standards for heavy vehicle driver competency and testing and to heavy vehicle driver training school recognition;
- a single physical national heavy vehicle driver licence; and
- a body of national heavy vehicle laws encompassing existing model law.

We would however argue that this scope also needs to include providing clear regulatory delineation between road transport laws and OH&S laws, industrial award instruments, attendant determinations, and the environmental laws, that purport to cover matters within the scope the National Transport Commission Charter. We argue this because it is incongruous to require compliance with differing rules for the same matter. This requires a legislative delineation to be done so that stakeholders know and understand their duties. We all have a right to laws that can be reasonably be complied with.

NatRoad, a Member Organisation of the ATA, in its recent submission to Infrastructure Australia provided fine example of the regulatory problems. They have kindly allowed the ATA to quote that text:

> In fact, the businesses of NatRoad's members and their drivers have been frustrated and penalised routinely by inefficient and ineffective regulation of the road transport industry. In these tough times the burden of regulation is crippling these businesses and the industry.
>
> For instance, there are individual pieces of legislation in every state and territory governing numerous issues that affect the day to day operation of road freight transport businesses, ranging from fatigue (In some States this can be three different pieces of legislation), driving hours, vehicle axle and gross weights, dimensions, road rules, driver licensing, registration, vehicle access, driver behaviour, vehicle roadworthiness, load restraint, vehicle design, combination design, emissions and noise control, to name a few. Each of these matters is duplicated around the country, and none, not one is the same. There are more than fifty pieces of legislation around the country, and we have not even started to list the other general business operating laws, i.e. taxation, workers compensation, etc.
>
> In addition, at times NatRoad members must know about and carry more than 30 individual permits in some trucks, just to move freight for the benefit of the nation around the country. Each permit can range from 2 pages in length to some over 300 pages long, with every page required. These permits are regularly updated. To administer this process can be a nightmare, and if members miss a single page the fine can range from $180 to $1100 on each occasion.
>
> NatRoad therefore fully supports the policy adopted by the Australian Transport Council to propose a new framework for regulating heavy vehicles to the Council of Australian Governments (COAG), which we understand has been accepted by COAG.

We note the recent announcements by the Australian Transport Council on 7 November 2008 to bring forward the immediate development of electronic heavy vehicle speed and driver fatigue monitoring systems in Australia without requiring an operational pilot of this kind of technology. Such a decision hardly meets the cost benefit and regulatory justifications that the Productivity Commission and COAG aspire. We are therefore concern about this decision and its potential ramifications for all truck operators. We believe open transparent consultation with industry, assessment of benefit and costs and other impacts should be made, and trials of new technological solutions should be required, before regulatory interventions are made or committed to.

6 Meeting regulatory objective efficiently without distortion

Please consider this example of the current regulation setting mechanisms applying to road transport on a significant safety reform.

It is accepted that fatigue is a significant issue in road use related trauma. Depending upon which set of statistics you wish to refer to, a range of answers can be generated as to the percentages of involvement by a range of road user classification, for example, all drivers versus heavy vehicle drivers. What we also know for certain is that in a proportion of cases drivers of light vehicles are the at fault driver in incidents where a heavy vehicles is also involved. There is evidence that truck driver fatigue is not strongly correlated to hours of service. Similarly truck crash investigations by the truck insurance industry do not make strong links to hours of service, but do make links to fitness for duty.

A seven year long regulatory reform process led by the National Transport Commission engaged stakeholders, sleep and road safety experts (with Australia and overseas experience) to develop model regulatory provisions to apply to a subset of road users. This package was intended to

apply nationally to the drivers of trucks over 12 tonnes mass. It broadly applied two levels of controls; a general duty on drivers and operators to not drive or allow anyone else to drive while fatigued, and hours of service controls. It was supported by a regulatory impact statement. It is a complex body of law and all stakeholders acknowledged that many operators would have to make operational adjustments to ensure compliance under these new rules.

The ATA and broader industry (while not agreeing with some aspects of the package) agreed that if implemented uniformly as the single national body of law addressing fatigue related issues, a useful common base would be established. Further, the policies had scientific foundations although we all acknowledged that not all risks were addressed. We did believe those worthy of regulation were addressed. The intended outcome would have allowed drivers and operators to know what was required of them regardless of where they were, and the question of who was 'captured and not captured' by the regulations was simple to determine.

However, the desired implementation was not achieved. Instead, as stated earlier, some operators may currently be captured by 14 different fatigue related laws, wherein there are different hours of service rules and even different rules about which drivers are covered by these laws. There are also inconsistencies between the various laws, to the point where compliance with one could generate a non-compliance with another. This complexity is compounded by different messages from the multiple enforcement agencies, and the fact that there is not a governing body to which the industry can go for a determination so that the same outcomes in the same circumstances can brokered. Optional schemes within the framework have been difficult to access due to service delivery problems within the road agencies.

Transport companies who are members of the ATA or members of ATA member organisation of the ATA report significant challenges in achieving compliance in all aspects of the multiple fatigue laws. They also report very significant costs in seeking to achieve compliance and in some cases now operate at less efficiency to ensure that the most stringent provision is met when faced with apparently conflicting provisions. Drivers are finding the changes confusing and difficult. Some very experienced drivers find it easier to leave the industry, than to adjust to the change.

The net result is less efficient due to high compliance costs, and very likely less safe due to the confusion, and the departure of drivers who are experienced and fatigue savvy. This result from the current road transport regulation reform process on its own is justification for change. The sad part is we can provide multiple other examples of well-intended national road transport reforms failing to deliver the intended result due to multiple laws and multiple regulators. For example, Higher Mass Limits Reform was agreed in 1999 yet in 2009 it is still not delivering the promised benefits, Performance Based Standards, similarly has not delivered the productivity results promised to COAG by the road agencies. Access for B-double vehicles can be controlled by three different mechanisms in any individual state: a determination under the Federal Interstate Transport Act, a state based notice, or an individual access permit. Competing operators may not enjoy the same access for identical B-double vehicles.

These regulatory distortions must be rectified if Australia is to have an efficient safe road transport industry.

Road transport operators, employees and clients have rights to clear concise laws where their duties and obligations are presented and not blurred with other laws purporting to cover the same fields.

Other road users and community stakeholders should be comfortable that road transport is adequately regulated but not over regulated and that industry pays its fare share efficiently.

The desired alternative is one national body of law addressing the road transport reform issue that replaces all other laws that had purported to cover the matter. A single national regulator so that

consistency can be achieved with the ‘same outcome in same circumstances’. Any such regulation should be set using cost benefit assessment, a consultative evidence based process, and allow the industry a seat at the decision making table. It would include implementation guidance for stakeholders including the regulator’s agents such as police, and ‘how to’ guides for drivers and operators. It would provide external review for decisions including road classification and access decisions.

7 Recommended change options

Road transport is a national industry and its efficient regulation is in the nation’s interest. It is time to provide for an efficient single national regulator applying a single body of law.

Australia’s Constitution Part V lists the legislative power of the Australian Parliament. Road transport is not clearly drawn out in the list. However, some of the listed powers have been applied to regulate aspects of road transport such as determining if a vehicle can be supplied to the Australian market, to facilitate free trade between the states, regulate corporations, address international treaty obligations, address defence relate road transport matters, create the National Transport Commission, allow ACT to regulate transport, create a carbon trading scheme, etc.

Other matters can be referred to the Commonwealth by the states as allowed in Section 51 (xxxvii). There is a significant list of matters that have been referred to the Commonwealth Parliament under this provision. There is a sound case that the demonstrable failure to achieve sensible regulation for road transport under the current arrangements makes referral of powers for road transport a matter of national importance, and one worthy of consideration by the Productivity Commission.

This suggested direction enables the establishment of an efficient single national regulator applying a single body of law. It is also consistent with the most efficient regulatory option (surrender of powers) within Option Four of the Consultation Regulatory Impact Statement into a National Framework for Regulation, Registration and Licensing of Heavy Vehicles process being conducted by the Commonwealth Department of Infrastructure, Transport, Regional Development and Local Government

8 Conclusion

Trucking is a national industry that is an essential service for our community and provides the freight transport services supporting our economy. We are being disadvantaged by the current regulatory maze and foggy operational environment. It is time for change and we ask that the Productivity Commission endorse the Commonwealth Government’s quest for a surrender of state powers to achieve an efficient single national regulator applying a single body of law for the road transport industry.