



Policy Statement

National Transport Regulatory Reform

Friday, 19 July 2019

Request for Stakeholder Feedback

The Productivity Commission (The Commission) has requested stakeholder feedback to assess the economic impact of the reforms agreed to by COAG in 2008-09.

Industry views regarding future reforms to achieve greater regulatory harmonisation, particularly with regard to the implications of innovation, are also sought.

The Issues Paper, entitled *National Transport Regulatory Reform*, relates to the reform packages of three transport sectors: road, rail and maritime.

Administrative arrangements for the reforms, and the continued operation of these markets, are enacted through:

- *Heavy Vehicle National Law Act 2012 (Qld)*
- *Rail Safety National Law (South Australia) 2012,*
- *Maritime Safety (Domestic Commercial Vessel) National Law 2012 (Cwlth)*

As the peak body representing South Australia's automotive industry, including heavy vehicle dealerships, freight transport, heavy vehicle repairers, tow truck operators, bus and coach operators, and agricultural machinery dealers, our response is limited to the *Heavy Vehicle National Law Act 2012 (HVNL)*.

The HVNL also enables the creation of an independent national regulator for all vehicles over 4.5 tonnes gross vehicle mass, known as the *National Heavy Vehicle Regulator (NHVR)*.

The objective of the NHVR is to¹:

- Minimise the compliance burden
- Reduce duplication of and inconsistencies in heavy vehicle regulation across state and territory borders
- Provide leadership and driving sustainable improvement to safety, productivity and efficiency outcomes

¹ www.nhvr.gov.au/about-us/who-we-are/about-the-nhvr

The Regulator is the primary mechanism for the implementation of the HVNL's requirements.

MTA-SA Position

Current State: Success of reforms

MTA-SA considers that:

- The HVNL's objective, as stipulated by the NHVR, has not been met, in any of its three criteria, at this time.
- This is due to the design of the HVNL, rather than a failing of the regulator.
- The current legislative review of the HVNL being undertaken by the National Transport Commission is likely to respond to many of industry's concerns.

Future State: Further opportunities to improve safety and productivity

MTA-SA considers that:

- Automotive and road transport regulatory functions are best managed by a single national regulatory compliance agency, rather than State level management of national regulations.
- Future state vehicle regulation should be developed in concert with an automotive sector plan (the plan).
- The plan should include resolution of industry's principal outstanding regulatory concerns, particularly franchising agreements and access to repair and servicing information, as a prerequisite to the development of future regulation.
- Enhanced productivity can be achieved by fast tracking the integration of new automotive technology ventures with current automotive businesses through a value mapping exercise.

Current State: Success of reforms

The Commission seeks to quantify the economic impacts of the reforms undertaken since 2008.

The development of data at this level of sophistication is beyond the resources of most businesses and even many industry associations.

We note that the Productivity Commission's Issues Paper does not provide statistical data to measure reform outcomes during the designated period.

As a result, the Issues Paper describes processes for enforcing compliance without the opportunity to provide qualitative analysis drawn from empirical data.

In light of this, our response has sought to use reasonable assumptions and extrapolations of available data, as well as feedback from MTA Members of their experience with the HVNL, to inform the Commission's considerations.

Key Performance Indicators

The National Heavy Vehicle Regulator's (NHVR) 2017/18 Annual Report notes that the vision of the Regulator is to provide for a:

"...safe, efficient and productive heavy vehicle industry serving the needs of Australia"²

As noted above, empirical data directly relating to the objective of HVNL is not adequately reported in public documents. To the best of our knowledge, it is not reported by any other government agency either.

Consequently, any analysis must rely upon research conducted principally by industry associations, research institutions, or segments of data available from State Governments.

² National Heavy Vehicle Regulator, Annual Report for 1 July 2017 to 30 June 2018, p8

Typically, where such data is independently produced, key cost inputs accounting for the varying degrees of incapacity and impairment from injury, psychological health impacts and government support payments, are difficult to quantify and are therefore not included. In addition, a widely accepted value for fatality and injury per person costs is unavailable.

These restrictions inhibit the provision of any analysis or advice. Notwithstanding that, we have provided a summary of industry's view of the issues related to heavy vehicle regulation below.

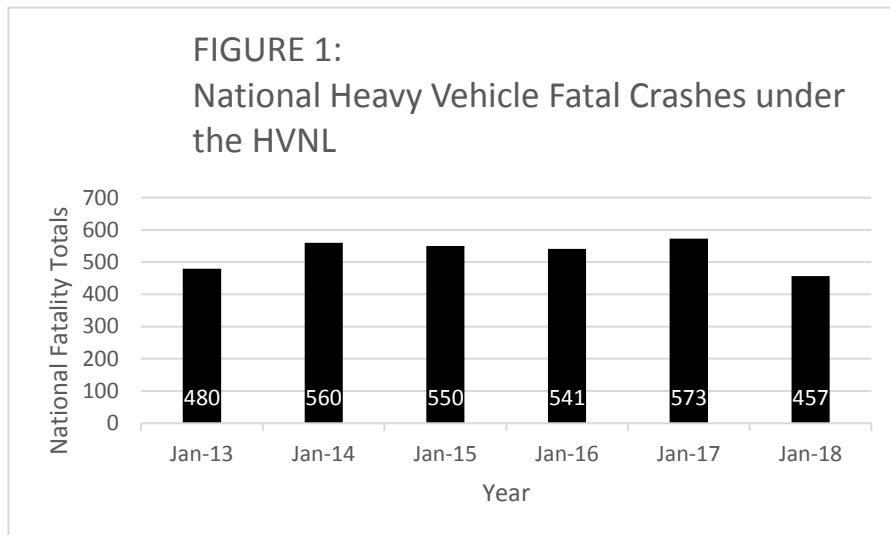
The MTA considers that the Commission should recommend that a representative dataset reflecting NHVR activity and outcomes, annual targets and a comparison against a baseline position be included in the NHVR's Annual Report.

Measuring Success

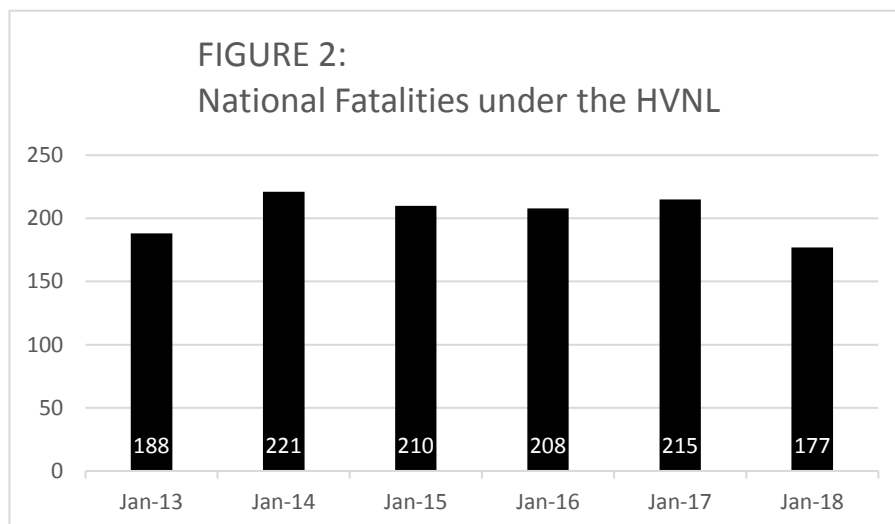
Given the HVNL's principal purpose is to ensure safety in the heavy vehicle sector, it is reasonable to consider two simple but vitally important datasets. These are the number of fatalities and the number of fatal crashes associated with heavy vehicles.

These two datasets are a reasonable indicative measure of the effectiveness of the prescribed safety measures in the HVNL.

Figure 1³ illustrates the number of road crashes nationally, involving heavy vehicles, resulting in a fatality since the inception of the NHVR in 2013:



Similarly, Figure 2⁴ illustrates the number of fatalities resulting from crashes involving heavy vehicle since 2013:



³ Fatal Heavy Vehicle Crashes Australia—Quarterly Bulletin, Department of Infrastructure, Cities and Regional Development, March 2019

⁴ Heavy Vehicle Fatalities Australia—Quarterly Bulletin, Department of Infrastructure, Cities and Regional Development, March 2019

Whilst these figures do not tell the whole story, they do indicate that heavy vehicle safety may have actually deteriorated under the HVNL. We note that some teething issues associated with the Regulator's inception could play some role in this, and may now be washing out of the reporting given the 2018 results.

We acknowledge that establishing the root cause behind results is a complex task, given the multiple factors that can contribute to a crash.

In establishing a measurement of the productivity impact of these results, we have used the Australian Automobile Association calculation of the economic cost of a road fatality,⁵ which is estimated to be \$4,339 per fatality.

We have also accepted 2013 as the baseline, and therefore the variation in the number of fatalities or crashes since this period represent the change in economic cost/benefit that can logically be attributed, to a significant degree, to the efficacy of the HVNL.

The indicative cost of heavy vehicle safety, within these definitions, is \$394,849.

This figure does not include the costs for the varying degrees of incapacity and impairment from injury, psychological health impacts and government support payments as noted above. Nor does it account for the compliance and administrative cost to industry and consumers of heavy vehicle compliance, which would represent a loss on investment and a further productivity cost. It is therefore reasonable to assume that the absolute productivity impact is significantly higher for that period.

The significance of this figure is not the quantum, but the direction.

Increasing costs provide strongly suggests that there has been a failure of regulation.

⁵ Cost of Road Trauma in Australia, Australian Automobile Association, Summary Report, September 2017

In our view, this failure has been principally caused by the design of the HVNL that has compromised the ability of the Regulator to improve heavy vehicle safety and productivity outcomes.

Operation of the Act

The MTA and the NHVR have worked co-operatively to facilitate direct communication between industry and the Regulator to improve productivity and safety outcomes.

MTA members regularly identify issues related to the application of the Act that hinder the productive and safe conduct of their business.

The NHVR has acknowledged that the basis for the design of the Act was the land movement of freight. Other heavy vehicle operations such as towing, people transport, and agricultural implements, are captured, but not fully recognised by the Act.

As a result, these sectors are poorly served by the high degree of legislative prescription regarding the safe and effective use of heavy vehicles in their respective sector. These issues can be summarised as:

- ***Legislative inflexibility***

The one size fits all approach in relation to the Act's inability to adjust to emerging technology and different industry sectors. This approach fails to recognise and take into account the variations between existing industry sectors such as tow trucks, buses, freight transport, and agricultural machinery for the purposes of regulation. It also does not easily allow for new technology to be recognised in the Act, potentially leading to regulatory gaps.

- ***Excessive complexity***

The HVNL is one of the largest and most complex legislative document in existence, with 739 pages of prescribed actions and responsibilities, as well as subordinate regulations. The sheer size of the document and number of prescriptions are

beyond the capacity of many heavy vehicle stakeholders, who wish to comply, to be aware of and understand to the extent required by the law, affecting their ability to comply.

- ***Inconsistent State adoption***

While most States have adopted the model legislation, specific aspects of the model law remain unimplemented by those States. In addition, not all States have adopted the law, and others do not recognise the Regulator, despite adopting the model legislation. This makes interjurisdictional compliance matters such as fatigue management an excessively costly exercise. For example, some South Australian transport companies operating to Perth choose to pay wages and accommodation for up to a week in that city as they are unable to operate a car or truck for that period having made the Adelaide to Perth journey. Alternatively, they choose to fly drivers to and from destinations across the country in order to manage their fatigue management compliance, as a direct result of operating under two very different regulatory regimes each with their own high level of prescription.

- ***Onerous prescription***

The Act is extensive and prescriptive, making non-compliance from inadvertent error more likely where each prescribed action is not fully met despite best efforts by industry.

- ***Disproportionate Penalties***

The Act does not recognise that its size and detail are contributing to a proportion of low level of non-compliance. As a result, inadvertent errors that could be rectified through education are punished with the same severity as deliberate and calculated breaches.

Similar projects around heavy vehicle regulation

The National Transport Commission (NTC) is currently undertaking a review of the HVNL. The consultation phase of the review is being conducted over an eight-month timeframe, reflective of the scope of the reforms being proposed. These appear to respond to many of the issues described above. We note that the same cohort of stakeholders is being tasked with contributing to both reviews.

Consequently, our members' contributions to both will provide a substantial and considered body of evidence that will inform the Commission's review.

Therefore we ask that MTA-SA's NTC Review responses, and indeed NTC's Final Report, be considered by the Commission as it develops its recommendations.

Future State: Further opportunities to improve safety and productivity

Regulatory harmonisation

The Motor Trade Association of Australia (MTAA), MTA-SA's federal counterpart, wrote to the Chief Executive of the South Australian Department of Transport, Planning, and Infrastructure on 22 June 2017.

This letter committed MTAA and its State affiliates, including MTA-SA, to supporting the South Australian Government's advocacy to harmonise the legislative and regulatory environments impacting automotive and road transport.

In addition, MTA-SA continues to advocate for a National Harmonisation Program to remove duplication, inefficiencies, and inconsistencies between the Commonwealth and States, a request reiterated during the 2019 Federal Election.

The program's objective would be to designate, and provide for the implementation, of the Commonwealth as the sole regulator and administrator of:

- Vehicle registration
- Driver licensing
- Automotive technician standards
- Vehicle roadworthiness compliance for safety, emissions, and integrity
- Fleet management policy
- Autonomous and future fuel vehicle policy
- Sustainability initiatives such as the End-Of-Vehicle Life program

MTA-SA restates its position that these regulatory functions are best managed by a single national agency, rather than State level management of national regulations. The latter has resulted in derivations and permutations from what was intended to be national standards, in some cases created conflicting obligations for affected parties.

An example of this is where the VSB 14 requirements for tyre sizes under the Commonwealth's *National Code of Practice for Light Vehicle Construction and Modification (VSB 14)* were irreconcilable with South Australia's *Dimensions of the Road Traffic (Vehicle Standards) Rules 1999*.

This conflict caused consumers to breach one standard in order to comply with another. This would be avoided if such requirements were the sole responsibility of the Commonwealth.

Future developments in transport and the role of government

The rate of change in the automotive and road transport space is one of the highest of any industry. There is also expected to be at

least \$300 billion⁶ of additional research and development undertaken by vehicle manufacturers over the next decade.

The issue facing the retail, servicing, and repair sectors in Australia is that consensus on a dominant powertrain technology has not been reached. It appears that each vehicle manufacturer is executing very different strategies for powertrain development. The emergence of a single dominant technology will have vast regulatory and investment implications dependent upon the technology chosen

This lack of consensus also means that research capacity is diluted across competing options, hampering the proper investigation, adoption and implementation of any one option.

This means that private investment in the supporting infrastructure, skills, training, and workshop equipment required for large scale uptake is being held back.

Similarly, government has largely adopted a wait and see approach to regulatory change, leaving industry unable to articulate how these ad hoc requirements may affect their business. However, we note that both State and Federal Governments are undertaking public discussion on future state requirements.

In addition, a large number of new automotive technology ventures have entered the market, or rather sought to supplant it, as it appears to view the current automotive industry as superfluous in terms of the demand for vehicle repairers given anticipated reductions in collisions and servicing requirements. The utility of the dealership model has also been dismissed, with the OEM direct to consumer sales channel viewed as the preferred model by new entrants.

⁶ Exclusive: VW, China spearhead \$300 billion global drive to electrify cars, <https://www.reuters.com/article/us-autoshow-detroit-electric-exclusive/exclusive-vw-china-spearhead-300-billion-global-drive-to-electrify-cars-idUSKCN1P40G6>, 10 January 2019

MTA-SA's consultations on these matters revealed that many of the regulatory assumptions underpinning new vehicle technology deployment are not consistent with the current state of regulatory reform in relation to:

- Australian Consumer Law
- Access to OEM vehicle repair and servicing data
- Franchise agreements
- Insurance contracts
- Powertrain regulation
- Telematics regulation

Therefore, opportunities to realise efficiencies by integrating new technology ventures and current automotive business are not being explored to the extent they could.

This is creating duplication of effort and impeding the growth of new business models.

MTA-SA considers that the Commission should recommend that the Commonwealth develop future state vehicle regulation as the second stage of an automotive industry sector plan.

The plan should include resolution of outstanding regulatory concerns, particularly franchise and access to repair and servicing information as a prerequisite to the development of a future regulatory framework.

The plan should also guide enhanced productivity by fast tracking the integration of new automotive technology ventures with the current automotive businesses through a value mapping exercise.

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