

National Transport Commission
Submission – A risk-based approach to regulating heavy vehicles
Level 3, 600 Bourke Street
Melbourne VIC 3000

A Risk Based Approach to Regulating Heavy Vehicles

The Australasian Railway Association (ARA) thanks the National Transport Commission for the opportunity to provide a submission on its Issues Paper *A Risk Based Approach to Regulating Heavy Vehicles*.

ARA's interest in the review of the Heavy Vehicle National Law (HVNL) is driven by its desire to achieve a level playing field in regulation across all modes of transport, and in so doing, establish a competitive market for the provision of freight services in Australia.

Domestic rail freight markets should operate as far as possible on an even footing with other modal choices by creating an environment where there is an equitable and comparable regulatory environment and/or competitive neutrality between competing modes of transport. Significant increases in the land freight task elevate the need to ensure the land transport system operates as efficiently as possible. In order to achieve this, governments should not impose unnecessary regulatory restrictions or barriers across the Australian transport industry.

ARA notes the review of the HVNL is being undertaken to achieve a more performance-based and outcomes-focused approach to regulation, and to address industry concerns that the HVNL is not national in practice and is overly prescriptive and complicated.¹

As noted in the Issues Paper, a risk-based approach to regulation centres on the principle that regulation should target the more significant risks to safety to ensure regulations are both efficient and effective. In this regard, ARA acknowledges NTC's review of the HVNL is a fundamental prerequisite to improving safety outcomes as well as increased economic productivity and innovation.

ARA would contend, however, that if the outcome of this review were to make the regulations governing the movement of freight by road more efficient by improving flexibility and reducing prescription, it would further exacerbate the policy imbalances that are currently experienced between the two modes of transport.

Any future reforms to the HVNL to remove prescription must be accompanied by similar efforts to address outstanding prescriptive regulations and state-based differences affecting the freight rail industry, which inhibit rail's ability to compete effectively with other modes of transport, particularly heavy vehicles.

While the Issues Paper contends that the HVNL is more prescriptive than the Rail Safety National Law (RSNL) in terms of the ratio between prescription and performance-based requirements, there are numerous examples of state-based derogations from the RSNL which are highly prescriptive in nature. Nowhere is this more evident than in the area of fatigue.

¹ Heavy Vehicle National Law to Go Back to Basics, <https://www.ntc.gov.au/about-ntc/news/media-releases/heavy-vehicle-national-law-to-go-back-to-basics/>

The freight rail industry currently operates under an inconsistent approach to fatigue management legislated at the state and federal levels. Outer limits of service apply for train drivers in NSW and Queensland to manage fatigue, despite there being no evidence that safety outcomes are improved by imposing prescribed hours

As the NTC would be aware, a risk-based approach considers the nature of work being performed (i.e. task complexity, workplace environment, mental/physical workload, ability to take breaks or rotate to other tasks, time of day), the consequences of fatigue related impairment and potential consequences of error and mitigates these with targeted risk controls. The risk with prescribed hours is that the emphasis in managing fatigue is simplified to focus on the hours of work or rest only, and does not take into account other contextual factors. For example, a train driver having to drive a longer distance home on the road due to prescribed hours.

Under the current regulatory arrangements, a heavy vehicle driver operating under Advanced Fatigue Management can effectively propose their own work and rest hours based on their individual needs rather than using the hours stated by Standard Hours or Basic Fatigue Management. This appears to be a risk based regulatory approach.

In contrast, outer limits imposed on rail drivers in Queensland and NSW can lead to adverse safety outcomes through road use externalities and create costs and inefficiencies for rail operators due to the need to manage compliance with different regulations in different jurisdictions. This is despite the fact that rail largely operates in a controlled and isolated environment, compared to the relatively uncontrolled public road system.

Similarly, jurisdictional inconsistencies occur in the area of drug and alcohol management in the rail industry which imposes cost and compliance burdens, impacts on productivity, and effectively limits industry's flexibility to mitigate their drug and alcohol risks.

In NSW, the Asset Standards Authority (ASA) imposes different technical standards on rail operators compared to the rest of the country; these standards are not always based on risk management and can result in NSW rail operators experiencing operational delays. For example, Train Operator Conditions (TOC) waivers in other jurisdictions are approved within a week whereas ASA approval can take considerably longer. The ASA adopts a highly prescriptive approach to rail regulation and has no other state or territory equivalent. It largely sits outside the RNSL and has no heavy vehicle equivalent.

In the view of ARA, reforms to the HVNL to regulate heavy vehicles under a risk-based approach must be accompanied by similar efforts to address prescriptive legislative arrangements in the freight rail sector.

Despite ongoing efforts of ARA to achieve greater national consistency, proposed reforms developed by the Office of the National Rail Safety Regulator have failed to achieve sufficient jurisdictional support at the ministerial level to achieve legislative change.

This 'back to basics' review of the HVNL highlights a potential opportunity for the NTC – to work with industry and jurisdictional bodies to remove comparable inconsistencies in rail's regulatory framework with the aim of achieving a truly national approach to transport regulation.

For further information regarding this submission, please contact Duncan Sheppard, General Manager, Freight and Contractors, via dsheppard@ara.net.au or 02 6270 4531.

Yours sincerely,



Danny Broad
Chief Executive Officer
Australasian Railway Association

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