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Dr Gillian Miles
Chief Executive
National Transport Commission
Level 15/628 Bourke Street
Melbourne VIC 3000
Via NTC portal

GAS ENERGY AUSTRALIA RESPONSE TO EFFECTIVE ENFORCEMENT ISSUES PAPER

Dear Dr Miles

Gas Energy Australia (GEA) appreciates the opportunity to respond to the National Transport Commission (NTC) Effective Enforcement Issues Paper released in September 2019.

GEA is concerned that the paper mixes enforcement (the role of the regulator) with compliance and auditing (the role of industry participants) in situations where they should be separate. Auditing can be described as an official examination of the quality or condition of something - usually by experts from outside the business. The Issues Paper blurs the line between auditing and enforcement where penalties prescribed under law can be applied. GEA is not convinced the regulatory agencies are independent enough to audit and would not support independent auditing experts having the ability to issue enforcement penalties.

GEA offers the following response to specific questions posed in the Issues Paper

Question 1: Which compliance obligations in the HVNL that do not link to safety and efficiency are most important for us to remedy as part of this review?

GEA observes that compliance with the law by itself does not result in "safety and efficiency" as outlined in figure 3 of the Issues Paper. These goals are reached though compliance with the law together with assurance schemes and enforcement. They all contribute to safety and efficiency and a broader approach is required than just regulatory reform of compliance obligations.

Question 2: How can the law better support a risk-based regulatory approach to enforcement? How can the law support consistency, predictability and proportionality in enforcement responses?

GEA suggest that good data is required to develop good evidence-based policy. Moreover, a risk-based approach to enforcement needs good data collected by agencies that is consistent, open and transparent.

Question 3: Are all enforcement tools being used effectively? If not, why not? Could a different set of enforcement tools give us better compliance outcomes?

A **national** approach that provides education, training and support to all levels of front-line staff is important. And with any tool set, a mechanism to seek clarification is recommended. A body such as the Dangerous Goods Competent Authorities Panel (CAP) is a body whose prime responsibility is to consider submissions requesting national exemptions, determinations and classifications that may operate at variance to the Australian Dangerous Goods Code. This could equally be applied to the HVNL.

Question 4: How can data and information be better used to support enforcement under the HVNL? Who should own the data, who should be able to access it, and how should privacy and security concerns be managed?

This question highlights GEA's concern that auditing, and enforcement are being confused and creating mixed messages in the Issues Paper. Currently data for enforcement is captured and managed in a manner that meets specific legal requirements - for example, the variety of legislative arrangements that support speed camera operation in Australia which in turn allows enforceable infringement notices to be issued. The fundamental question is for what purpose is the data being captured. Is it so that an industry participant can enhance their safety and operating performance and comply with legislative requirements? Or is it so that regulators can have overwatch of their network. GEA considers that it is imperative that there are clear and accurate descriptions of the roles and responsibilities of government agencies, police, service providers and heavy vehicle operators and importantly that law makers answer the question – what data will satisfy the legal requirements as evidence of compliance? If the requirement is evidentiary, then this will impose additional costs and GEA urges common sense in the drafting of legal data requirements.

Question 5: Have we covered the issues relating to supporting compliance through effective enforcement, technology and data accurately and comprehensively? If not, what do we need to know?

GEA again reiterates that the real issue is how does the law support compliance through effective technology and data accurately and comprehensively and how does enforcement contribute to compliance? GEA suggests incentivising compliance. For example, tankers carrying dangerous goods eg, gaseous fuels, cannot travel though certain prohibited areas such as tunnels. The prohibition assumes a particular volume of gas and infrastructure design. Gas tankers, because of the nature of the product delivery, are never gas free, and when returning "empty" are still treated as being full gas tankers and prohibited from using tunnels. Technology could allow onboard load assessment and potentially mean empty but not gas free tankers could traverse prohibited areas. Data that is traceable could be part of the compliance mechanisms that would allow industry incentives (in this case use of some prohibited areas under restriction) and load monitoring that could be easily validated through audit.

Question 6: What are some options for the future law to improve the current compliance and enforcement approach? How can the law best support enforcement strategies aligned to a risk-based approach to regulation?

GEA suggests that the more prescriptive a framework, the less it allows for innovation and adoption of new safe technologies in the future. GEA supports a performance-based approach.

Conclusion

GEA urges any change must provide clear and accurate descriptions of the roles and responsibilities of government agencies, police, service providers and heavy vehicle operators and importantly identify what data would satisfy the legal requirements as evidence of compliance. Further, GEA contends that a truly open national approach to enforcement would support safe and efficient transport.

Yours sincerely

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