

31 May 2019

National Transport Commission
Public submission – NTC Issues Paper – Risk-based approach to regulating heavy vehicles
Level 3/600 Bourke Street
MELBOURNE VIC 3000

Submitted via NTC online portal

NTC Issues Paper – Risk-based approach to regulating heavy vehicles

Introduction

Pacific National welcomes the opportunity to comment on the National Transport Commission (NTC) Issues Paper – Risk-based approach to regulating heavy vehicles. As Australia's largest private rail freight operator, Pacific National supports maximising freight productivity through risk based regulatory arrangements applied equally across rail and road.

Risk based regulation only works when it results in efficient outcomes. This is not happening in rail. Road freight operators can move freely on the road network both intra and interstate. Rail freight operators do not enjoy this flexibility due to disparate network rule requirements. For example, on the north-south rail corridor, operators may need to negotiate up to six access agreements with network owners¹.

As we explain below, the regulatory regime for rail is much more restrictive than road and we urge caution in undertaking reforms in road regulation in isolation from rail.

Risk based regulation as applied in rail is heavy-handed and inefficient

Pacific National notes the Heavy Vehicle National Law (HVNL) review is being undertaken to achieve a more performance-based and outcomes-focused approach to regulation. This is to address industry concerns it is not national in practice and overly prescriptive and complicated. We believe the ability and incentive of the National Heavy Vehicle Regulator (NHVR) and NTC to pursue these reforms is because one of the key objectives of the HVNL is that it 'promotes industry productivity and efficiency in the road transport of goods and passengers by heavy vehicles'. The Rail Safety National Law (RSNL) does not contain this provision and is poorer for it.

As the NTC is aware, under the RSNL, the National Rail Safety Regulator (NRSR) works in a co-regulatory regime focussed on safety only. It does not set the network rules it enforces as this responsibility lies with the rail infrastructure manager (RIM) – usually the network owner. RIMs are supposed to assess the risk associated with their network and then establish a safety management system to manage those risks.

¹ Department of Infrastructure, Regional Development and Cities, PWC Review of rail access regimes May 2018, p vi

Appropriately, rail freight operators also need to have safety systems to operate on the network. NRSR needs to be satisfied the network rules/system meets the objectives of the RSNL and rail freight operators are to comply with these rules (which vary across networks). This approach is deemed by the NTC to be a risk based regulatory approach.

The RSNL does not envisage a role for the NRSR to maximise productivity through efficiency reforms, as such it takes a hands-off approach to efficiency. As a result, we have different systems and rules which not only vary across different networks but on different sections of the same network despite having the one RIM. As we detail below, the NTC can help re-shape the RSNL and the role of the NRSR to focus on productivity and efficiency.

Unless it is expressively provided for in the economic regulatory access regime and associated access agreements (which sit outside the RSNL), there is limited opportunity for rail operators to affect changes on the networks, even though it materially impacts their operations. This is most apparent when freight rail operators traverse intrastate segments and interstate boundaries with the network rule differences discussed above. However, there is very little reason for differences in standards/rules when the rail freight task is essentially the same. In comparison, heavy vehicle operators are free to traverse across different road networks without regulatory prescription and complex network rules.

Other policy imbalances between rail and road exist

These disparate approaches are not confined to network rules. Pacific National has identified several policy imbalances between rail and road including inequitable pricing regimes (access is a significant cost for rail freight operators), disproportionate environmental requirements and training accreditation frameworks leading to significantly different barriers to entry and operation.

As an example, a NSW freight train driver with more than 25-years' experience can be subjected to up to 18-months of extra training to operate on a similarly configured rail corridor in another state or territory. In contrast, a NSW truck driver can move from operating a semi-trailer for a year to handling a B-Double or Road Train in less than two days at minimal cost with immediate access to thousands of kilometres of road across every jurisdiction in the country.

Pacific National also notes there are numerous examples of state-based derogations from the RSNL which impose prescriptive regulations in relation to fatigue, drug and alcohol management as well as state based asset bodies which impose additional overlay on network design and standards. For example, the NSW 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 or transparent outcomes 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, ASA often takes months to approve with little or no explanation for the delay.

The ASA adopts a highly prescriptive approach to rail regulation and has no other state or territory equivalent. It largely sits outside the RSNL and to our knowledge has no heavy vehicle equivalent. The ASA acts as a disincentive to the use of new technologies and methods of operation.

Risk based regulation in rail could work with the right institutional settings and support


Rail freight operators are not necessarily in the best position to influence prescriptive network rules. Rail networks are natural monopolies and there are often significant information asymmetries in negotiating with RIMs to affect network changes, much less coordinate standardisation across networks. Moreover, without a single economic regulator and the lack of an efficiency driven national rail safety regulator, it is unlikely industry would be able to present a set of national rules for the NRSR to approve.

NTC as the independent statutory body for national transport policy objectives has a key role in developing risk based regulatory and operational reform. This includes making recommendations to the COAG Transport and Infrastructure Council to expand the objectives of the RSNL to include productivity and efficiency. In addition, securing jurisdictional support at the State/Territory ministerial level to achieve legislative change in order to remove derogations and achieve government standardisation (in fatigue management and drug/alcohol testing) as well reviewing the need for duplicative, prescriptive and inefficient state authorities including the ASA.

Conclusion

In terms of the HVNL review, Pacific National submits it should focus on improving safety outcomes for all road users through regulation. At a time when government policies are increasingly focussed on rolling-out heavier and longer trucks, it is worth reflecting that Australians want safer roads, less traffic congestion and lower carbon emissions. Rail has inherent characteristics which already meet these outcomes – it just needs to be given the efficiency mandate to go further.

With rail modal share across some transport corridors as low as five percent compared to road, reform needs to happen now.



Robert Millar
Regulation and Policy Manager