

Response to the
Productivity Commission
Issues Paper - Enquiry
into the National
Transport Regulatory
Reforms

28 June 2019

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1 Introduction

Arc Infrastructure Pty Ltd (**Arc**) welcomes the opportunity to respond to the *National Transport Regulatory Reform Productivity Commission Issues Paper* as published by the Productivity Commission (**Commission**) in May 2019 (**Issues Paper**).

The terms of reference for the inquiry required the Commission to:-

- Investigate the long-run benefits of COAG's transport regulatory reform agenda;
- Examine the implementation and development of the national regulator and the extent to which the objectives of the agenda have been achieved; and
- Identify opportunities to further integrate and harmonise the national freight market and the current focus and remit of the three national regulators.

Further areas of complementary reform are also to be taken into account, including the harmonisation and interoperability of rail standards, improved network access for higher productivity vehicles, and the development of the National Freight and Supply Chain Strategy.

The following submission is structured to align with the Issues Paper and particularly focuses on developments in the regulatory framework supporting rail safety in Western Australia and key issues relevant to the Arc Network. Arc does not propose to provide comment on the Heavy Vehicle Intergovernmental Agreement or Commercial Vessel Intergovernmental Agreement or regulatory reforms in those areas.

2 Executive Summary

ONRSR's focus should remain on delivering effective safety outcomes in connection with its core responsibilities. Efficiently delivering improved safety outcomes will, in Arc's view, lead to increased productivity outcomes. Arc is of the opinion that requiring ONRSR to focus on productivity in conjunction with rail safety may lead to compromised safety outcomes, as there are likely to be situations in which improving safety outcomes may come at the cost of productivity, i.e., it may not be possible to avoid conflict between productivity and safety outcomes.

Arc supports the co regulatory model currently in place and is of the view that co regulation remains the best way to maximise safety outcomes. Arc acknowledges that despite some difficulties during the transitional phase, ONRSR is maturing into a competent and efficient regulator, and ONRSR's focus on responsiveness and continuous improvement should be commended.

3 Background

The Arc Network consists of 5,500km of standard, dual and narrow gauge track and rail infrastructure located within Western Australia. The Arc Network connects to:-

- ports at Kwinana, Fremantle, Bunbury, Geraldton, Albany and Esperance;
- interstate freight terminals including the Forrestfield/Kewdale freight terminal, Kalgoorlie, Picton and Avon Yard; and
- the ARTC interstate network, providing a rail connection to the eastern states.

Image 1: The Arc Network



The Arc Network provides rail services for the haulage of iron ore, alumina, caustic, bauxite, nickel and related inputs, woodchips, interstate and intrastate freight, grain, lime, coal and fuel. Passenger services such as the TransWA Prospector, Australian and Avon Link, and the Indian Pacific also traverse the Arc Network.

4 Safety Outcomes

4.1 Have safety outcomes improved?

Arc's view is that whilst rail safety outcomes have improved since the implementation of the national regime in Western Australia, those improvements are not necessarily attributable to nationalisation.

Arc recognises that the move to a national regulatory scheme has facilitated nationwide learning. Improvements developed in other jurisdictions can be implemented by other states which encourages a process of continuous improvement in rail safety. The flexibility afforded by a co regulatory scheme:-

- Allows stakeholders to more easily uptake and implement technological advances, delivering improvements to rail safety outcomes;
- Work with the regulator to identify areas of opportunity, where rail safety outcomes can be improved; and
- Share information and learning from other states.

4.2 Opportunities for improvement

Arc has identified the following areas in which Arc believes further improvements could be made.

Drug and Alcohol and Fatigue Management Policies

Whilst Arc supports a nationally consistent drug and alcohol policy, Arc does not support adoption of the variations required by New South Wales. Arc is of the view that states adopting modified policies goes against the spirit of national regulation and limits the benefits that can be achieved by having a national regulator. Arc is concerned that as a result of individual states exerting influence on ONRSR, variations to proposed drug and alcohol policies (and other policies in the future), will result in the adoption of compromised policies with lower standards than would otherwise have been implemented.

Arc further recognises that rail industry stakeholders typically have robust drug and alcohol, and fatigue management policies. Railway owners (such as Arc) and above rail operators bear the risks associated with these behaviours and are intrinsically encouraged to maintain and enforce stringent drug and alcohol and fatigue management policies in order to manage and reduce risk.

Arc recommends that rail transport operators be given the freedom to manage drug and alcohol and fatigue management risks in accordance with their own risk based management plan without prescribed set processes or hours of work.

4.3 How does rail safety regulation interact with other regulatory schemes?

Table 1: Responsibilities of ONRSR, RISSB and the ATSB

Role	ONRSR	RISSB	ATSB
Regulation	Safety Regulation.	Provide advisory services on regulations to the industry.	N/A
Standards / Codes of practice and guidance notes	Development of guidance notes on ONRSR compliance and regulatory activities.	Engage with the rail industry to develop rail industry standards, codes of practice, and guidance notes.	N/A
Investigation	Investigation for compliance & prosecution.	Develops standards for investigation and provides training in investigation.	Conduct no blame investigation.
Training	Provide training in Rail Safety legislation & compliance.	Provide rail safety training related to all railway activities that the rail industry requires.	Provide training in Rail Safety investigations.

RISSB, the ATSB, and ONRSR each have an important role to perform within the industry. It is Arc's view that establishing clear roles and responsibilities for each body, and limiting cross over and interference is vital to ensure independence. Currently, there is a lack of clarity and independence between RISSB and ONRSR. Expanding ONRSR's remit to incorporate responsibilities (such as information collection unrelated to regulation and compliance) traditionally within RISSB's role, blurs the lines of responsibility and creates confusion for rail industry stakeholders. In Arc's view, ONRSR's role should solely relate to regulation, and closely associated activities (such as education regarding regulation).

Arc maintains the view that creating independence and clarifying the roles of ONRSR and RISSB will assist in delivering improved safety outcomes and increasing productivity.

5 Have Regulatory Burden and Costs Fallen?

5.1 How has the move to the national regulatory system affected Arc's regulatory burden and compliance costs?

Arc's regulatory and compliance costs have increased since the introduction of ONRSR. As shown in the table below, regulatory costs increased by approximately 21% in the 2017/2018 financial year as compared to the 2015/2016 financial year. Costs were substantially higher again in the 2016/2017 financial year, however it is likely that some of these costs can be attributed to the initial implementation of the national scheme, and are not likely to reflect costs going forward.

Table 2: Arc's Regulatory and Compliance Costs

Financial Year	Regulatory Cost	% Increase on Base Year
1 July 2015 – 30 June 2016	\$423,931	Base year
1 July 2016 – 30 June 2017	\$551,914	30.2%
1 July 2017 – 30 June 2018	\$511,377	20.6%

Arc believes that compliance activities have increased commensurately to cost, i.e., that the level of activity occurring in the regulatory and compliance space has been a factor that has increased costs. Arc is supportive of increased safety compliance activity however, Arc believes that ONRSR's resources can be better targeted at compliance activities likely to deliver improvements to rail safety outcomes. Some compliance activities don't appear to have a substantial positive affect on safety outcomes and Arc believes that these types of activities are taking a greater share of ONRSR's resources than is reasonable in the circumstances.

5.2 How might any unnecessary regulatory burden and compliance or administrative costs be reduced?

ONRSR should provide greater transparency and accountability in the way in which its costs are incurred. Arc is also of the view that the current costing model should be reviewed on a regular basis as is the case in other regulated cost recovery models. Cost recovery models implemented by the Economic Regulation Authority of Western Australia undergo a review every 5 years review, at which time submissions are sought from the public and industry stakeholders. This ensures that the regime is reviewed regularly and that the industry has the opportunity to raise concerns and discuss opportunities for improvement with regard to cost recovery.

Local experts

Under the state based scheme, Western Australia had dedicated rail safety officers based locally who had substantial expertise and knowledge of the particular circumstances affecting Western Australian railways. Arc believes that, in the change to the national regime, some of that specialised expertise and knowledge has been lost. This in turn has resulted in an increase to regulatory compliance costs, in part as a result of :-

- rail safety experts within ONRSR needing to develop specialised knowledge specific to Western Australian railways; and

- rail safety experts being flown from the eastern states to Western Australia, rather than locally based representatives being used whenever possible.

Relationship Manager

Arc is aware that other railway owners have developed a relationship with, or been assigned a dedicated 'account manager', i.e. a single point of contact at ONRSR. Arc has not had the same experience and believes that the lack of a dedicated 'account manager' is also likely to have contributed to the increase in costs.

Funding Arrangements

Arc believes that it is appropriate that all WA railways (including historical and tourism railways) contribute to funding ONRSR. Arc notes that safety risks exist in respect of operational historical and tourism railways and would seek that these railway owners contribute to ONRSR's costs. Arc believes it would be appropriate for the West Australian State Government to provide a subsidy to historical and tourism railways that assist in funding ONRSR. Arc notes that other state governments assist in funding ONRSR, but that this is not currently the case in Western Australia.

6 Have Productivity and Efficiency Improved?

6.1 **Should the remit of ONRSR be expanded to include productivity objectives, or should this be the responsibility of other institutions and agents?**

ONRSR's resources are best expended focussing on regulation and compliance. ONRSR should offer education and training directly related to regulatory compliance to increase awareness of stakeholder responsibilities under the rail safety national law. ONRSR could assist in providing education to:-

- local governments in relation to interface agreement compliance;
- industry stakeholders in relation to regulatory compliance;
- the industry at large in relation to safety law updates and ONRSR initiatives.

Productivity outcomes that are not directly associated with safety regulation should not be included as part of ONRSR's remit.

6.2 **Has the creation of a national system made it easier to change regulation?**

Arc has noted a substantial improvement in the timing of approval for variations to accreditation as a result of the move to the national regulatory regime. Arc also notes that it is significantly more efficient for rail transport operators operating across state borders to be accredited under a single national system. This decreases duplication of work and is likely to reduce costs incurred by the industry. The national regime also provides for a consistent nationwide accreditation system which, in Arc's view, is of benefit to the industry.

7.1 **Is ONRSR effective and adequately resourced? Does ONRSR have the appropriate power to achieve its objectives**

Arc believes that ONRSR is sufficiently resourced and that its effectiveness is improving. Arc has found that in some circumstances ONRSR's interpretation of legislation is incorrect, and ONRSR has sought to exceed the powers granted to it. Arc believes that these situations are caused by misunderstanding on ONSR's part of their rights granted pursuant to legislation. Arc is of the view that as the regulatory system matures these issues are likely to be resolved.

ONRSR's effectiveness has been limited to an extent by the following factors:-

- lack of ONRSR officials based in Western Australia with specialised rail knowledge has resulted in the loss of local expertise in favour of generalised expertise;
- high staff turnover at ONRSR and lack of an account manager or relationship manager has meant that improvements made to regulatory compliance processes were not necessarily consolidated and retained by ONRSR. Arc acknowledges that there has been improvement in this area recently;
- lack of specialised knowledge of Arc's business has meant that some interactions with ONRSR have not contributed to improving safety outcomes; and
- confusion around roles and responsibilities and lack of independence between RISSB and ONRSR has decreased efficiency as ONRSR resources have been expended on tasks that are better dealt with by RISSB.

8.1 Are the national transport regulators working effectively with local governments?

Arc is of the view that local governments would benefit from further education and training provided by ONRSR in relation to rail safety regulatory compliance. Local governments are generally disadvantaged due to a lack of rail industry specific information and funding, and targeted resources provided by ONRSR are likely to be beneficial. Arc is of the view that some local governments have not been provided with sufficient resources to enable them to identify, and comply with their obligations under the Rail Safety National Law.

8.2 Is the process of completing interface agreements working effectively?

In Arc’s experience many local governments are unaware of their responsibilities under the Rail Safety National Law. Arc has engaged in educational processes with local governments, but a lack of resources and high staff turnover within local government mean that information is often not retained by some local governments. This creates challenges in meeting safety interface agreement obligations and increases costs for both local government and Arc.

Lack of resources and understanding around rail safety obligations also leads to long turnaround times in respect of interface agreements.

Table 2: Local Government Interface Agreement completion times

	Within 6 months	Within 1 year	Within 2 years	Within 5 Years
Percentage of interface agreements completed	29%	44%	50%	97%

Arc notes that the interface agreements outstanding long term relate to road/rail interfaces on non-operational lines. Local governments recognise that non-operational lines have limited safety risks and often the local government does not appreciate that the obligation to enter into an interface agreement still exists in respect of non-operational lines. Arc recognises that local governments have limited resources and justifying the expenditure of those resources in respect of non-operational lines that do not pose substantial safety risks is a challenge.

Arc believes that ONRSR could take on a greater role in supporting local government to enable local governments to identify and comply with their rail safety obligations. Targeted educational resources would enable Arc and local governments to work together more effectively, which in turn is likely to improve safety outcomes and ultimately lead to a reduction in ongoing costs.

9.1 How is the effectiveness of ONRSR effected by various other government bodies?

Influence by state governments particularly in relation to the development of policies (such as drug and alcohol policies) creates a challenging position for ONRSR. Competing state preferences make ONRSR's task difficult as ONRSR tries to modify policies to make them attractive to all states. This results in compromised policies, which each state may accept but may not necessarily be the best policy to adopt, or alternatively, that some states may refuse to adopt entirely. This in turn reduces the benefits that should be achieved by having a single national regime as variations in rail safety regulation across Australia continue to exist.

Arc believes that ONRSR's work in developing and setting policies has a heavy bias to NSW policies. Policies are often developed based on standards and policies developed by NSW, and those policies are then adopted by ONRSR with little consultation from other states. ONRSR should provide more opportunity for national input to policy development.

9.2 Does the involvement of other agencies in setting standards complement or undermine the role of national regulators in meeting safety and productivity objectives?

Arc notes that within the rail industry, RISSB is responsible for setting industry standards, codes of practice and guidance notes. RISSB is perceived to have a close relationship with ONRSR and there is some confusion as to the roles and responsibilities of each body. Whilst Arc does not believe that RISSB undermines the role of ONRSR, Arc is of the view that the responsibilities of each body should be clearly delineated.

RISSB should be independent of ONRSR, clarifying the roles and responsibilities of each body would facilitate independence. ONRSR's prime responsibility are:-

- to develop and enforce rail safety regulations;
- provide education and training regarding regulation compliance;
- information sharing for learned safety outcomes; and
- other incidental matters closely regulated to safety regulation.

RISSB's primary role is:-

- to consult with industry stakeholders;
- develop industry standards; and
- provide specialised industry training.

Creating independence and clarity between the roles of ONRSR and RISSB will assist in improving national safety outcomes and increasing productivity.

9.3 How well is no-fault accident investigation working in Rail?

Arc is highly supportive of retaining the ATSB with its current mandate to perform no fault accident investigations as required. That said, Arc acknowledges that there is room for substantial improvement on the part of ATSB, particularly with regard to the timeliness of findings.

The role performed by the ATSB is vitally important from a system wide perspective. The ATSB has the power to conduct no fault investigations of entire systems, with the goal of identifying flaws and combination of factors that contributed to a negative safety outcome. The ATSB is more likely to be able to identify systemic flaws than ONRSR. Arc also notes that the ATSB, as part of its mandate, may investigate the role of the regulator in an accident. This provides an important cross check and ensures that there is a body with the power to investigate all factors contributing to an accident in a truly independent manner.

If the ATSB were to perform its role more effectively, Arc believes that national safety outcomes could be further improved. The ATSB should be more active in the WA rail sector, and should seek to streamline its internal processes to ensure that findings from investigations are delivered in a timely fashion.

9.4 What role should ONRSR play in the management, collection, sharing and usage of logistical data?

Arc notes that the Commonwealth Government has committed to funding arrangements for the design of a freight data hub. Arc supports the collection of data for future use by industry, government and regulators and believes that a centralised data collection point will provide benefits to the industry and government, particularly with regard to future infrastructure planning.

Arc submits that the framework supporting the implementation of the freight data hub should provide for data to be collected, held, and disseminated by a trusted third party rather than the safety regulator. In Arc's view, it is not within ONRSR's remit to act as a data collection institution, and ONRSR's responsibilities should not be expanded to include this.