

Monday, 20 July 2009

Mr Gary Banks AO
Regulatory Burdens: Social and Economic
Infrastructure Services
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

Dear Mr Banks

Draft report: Annual Review of Regulatory Burdens on Business

Thank you for the opportunity to provide comment of the draft report *Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services* released on 27 June 2009.

The National Road Transport Commission (NRTC) was established in 1991 by the Commonwealth, and state and territory governments with the goal of harmonising road transport legislation. Since that time, the NRTC and its successor body, the National Transport Commission (NTC), has had considerable success in moving disparate road and rail legislation towards a harmonised and nationally consistent regulatory system.

As was acknowledged in the draft report, there remain significant inconsistencies in a number of areas of state based transport regulation. The NTC shares the frustrations of many, including industry, that parts of the regulatory system remain variable across state borders.

In discussing regulatory inconsistencies in transport law, it is important to note that initial results in an ongoing stocktake of NTC model legislation and the state based implementing acts and regulations revealed that largely the regulatory system has been consistently implemented by states and territories. The small numbers of items which are inconsistent often emerge because of pre-existing legislative and policy arrangements in those states and territories, such as incompatible criminal laws and justice policy. Those inconsistencies are generally in areas such as penalties, demerit points and defences, rather than at the heart of the policy.

Inconsistencies such as these are inevitable if a model law approach is used to regulate transport. However, a move to a template law approach is also unlikely to overcome these issues. The NTC strongly recommends that a single piece of regulation, a single national law, is the best way to deliver consistent seamless regulation for the transport industry.

The NTC recommends that in developing the regulation for the national regulators, the principle should be that there is only one piece of regulation that applies to the sector and will be administered by regulators. Establishing a single regulator is an important step, however the benefits gained through administrative consistency will be watered down if there continues to be disparate regulatory approaches across jurisdictions.

In the NTC's submission to the current NTC Review (available at www.ntc.gov.au) the NTC made a number of suggestions about possible pathways to deliver greater levels of consistency 'on the ground'. It was suggested that, while the NTC is only empowered with the 'power to persuade' in order to achieve regulatory consistency, the full benefits of reforms will not be delivered. The ability of the Australian Transport Council or the Commonwealth to tie improved productivity or safety outcomes through reform delivery to funding programs or national partnership payments may have significant benefits to the transport industry. The NTC recommends that this should be considered to support delivery of 'high value' transport reforms in order to garner a greater level of cross jurisdictional consistency.

It is also important to note that the success in harmonisation of transport laws to date has created the environment for the establishment of a single national heavy vehicle regulator and creation of a single body of national heavy vehicle law. Without the considerable work undertaken by the NTC, the Commonwealth and the states and territories over the past two decades, a move to a single heavy vehicle regulator would have been vastly more difficult.

The establishment of single national regulatory systems for heavy vehicle regulation, marine safety and rail safety regulation and investigation are important milestones for the transport industry. While the focus has been on harmonisation since the establishment of the NRTC in 1991, the creation of a seamless national Australian economy is more likely to be delivered by truly national regulation and regulators.

The NTC believes that in future, further expansion of the scope of the heavy vehicle and rail regulators should be considered by governments. In the Freight Rail Productivity Review the NTC recommended investigating the costs and benefits of a nationally consistent rail access and pricing framework for the interstate and intrastate lines. This would potentially improve the current access and pricing regulatory model for rail which is different for each state as well as for the interstate network. The NTC has also recommended developing an access model for key strategic terminals to improve network productivity. This would need to be carried out at a national level to reduce costs for industry and reduce the regulatory burden within the transport market and could potentially form the future scope of the rail regulator.

In developing the single body of heavy vehicle law to accompany the single regulator, there has already been acknowledgement by the Heavy Vehicle Steering Committee of the principle of reducing the regulatory burden on operators through this process.

The NTC notes the Productivity Commission's recommendation relating to variations being based on circumstances rather than jurisdiction. Inconsistent decisions by road authorities about road access for heavy vehicles has restricted local productivity benefits. NTC believes a nationally consistent risk-based approach is the best way to facilitate local productivity variations. Mapping a comprehensive national Performance Based Standards (PBS) network for heavy vehicles – as agreed by COAG – is the best way for governments to objectively and consistently determine road access. The Productivity Commission endorsed PBS in its report on Road & Rail Freight Infrastructure Pricing (2007).

In summary, as a reform body with 17 years experience with both model and template law approaches to developing regulation it is our experience that both model and template approaches face significant challenges to deliver nationally seamless outcomes. While in our experience a model law approach has been more successful than template, national laws administered by national regulators is the best approach to deliver a seamless national economy in the future.

Yours sincerely

Nick Dimopoulos
Chief Executive