

24 October 2011

COAG Reform Agenda Study
Productivity Commission (**Commission**)
GPO Box 1428
CANBERRA CITY ACT 2601

BY EMAIL: coagreporting@pc.gov.au

Dear Commission,

**TSV SUBMISSION TO PRODUCTIVITY COMMISSION RESEARCH REPORT:
IMPACTS OF COAG REFORMS- BUSINESS REGULATION**

Transport Safety Victoria (**TSV**) understands that the Commission is required to report 'every two to three years on the impacts and benefits of specified areas of the COAG reform agenda'. One of these agendas include rail safety (reform stream 19) as part of COAG's deregulation priorities under the *National Partnership Agreement to Deliver a Seamless National Economy*.¹

TSV is Victoria's independent transport safety regulator for rail, bus and maritime safety. Its statutory object is to 'independently seek the highest transport safety standards reasonably practicable' in the State. As one of Australia's 7 jurisdictional rail safety regulators, TSV has been, and will continue to be, impacted directly by the proposed rail safety reforms.

We therefore welcome the opportunity to provide input on the Commission's proposed discussion draft report due by December 2011. While TSV commends the progress made on the rail safety agenda to date, our general comment is that it is still too early to make any full assessment of the impacts of this agenda by the time the final report is due in March 2012. Despite this, and while we note that the Commission will focus on 'quantitative economic-wide impacts',² TSV provides the following high-level observations on some of the realised, prospective and potential changes expected from implementing this agenda:

1. **Importance of problem-scoping/ Regulatory Impact Statements:** While TSV is fully committed to assisting the implementation of the rail safety agenda, it may be relevant for other COAG agendas at the scoping phase that TSV did raise earlier concerns around the work done on problem definition and the scope of the National Transport Commission's (**NTC's**) two regulatory impact statements (**RISs**). A key to realising the intended benefits of any agenda is ensuring that the problem definition is as precise as possible, and that the recommended policy option of any COAG agenda is proportionate to the identified problem.

For example, TSV notes that interstate operators comprise a small proportion of the total rail safety regulatory task.³ One consultant, for example, estimated that the 'annual burden caused by inter-jurisdictional compliance costs to be around 25% of the total

¹ as listed in Appendix A of the Productivity Commission Circular no COAG 1 30 August 2011

² using the reporting framework set out in its Reporting Framework Research Report dated December 2010

³ For example, the first RIS sets out that 31 Australian rail operators, or 37%, are accredited to operate interstate ; NTC, July 2009, Single National Rail Safety Regulatory and Investigation Framework, Regulatory Impact Statement Volume 1, p5.

compliance costs. The total compliance cost is estimated at \$42 million per annum – virtually insignificant in the context of an \$8 billion annual turnover in the rail industry at the time'.⁴ Another issue in measuring all of the changes flowing from the agenda is the limited parameters of the RISs which considered changes from the national model bill 2006 to a single national regulation framework, rather than the real implications 'on the ground' for each jurisdiction,

2. **Internal costs to Government:** Obviously, one of the direct changes caused by the agenda is that TSV, like Australia's other jurisdictional regulators, will need to transition to implementing nationally consistent legislation under a national rail safety regulator by January 2013. This has drawn, and will continue to draw significant internal resources in terms of providing input on the finalisation of legislative/ policy issues, assisting in the multiple working groups setting up the new regulator, assisting our staff to implement new legislation, implementing governance/ organisational changes etc. This represents a significant cost incurred by government agencies which will not be met by additional funding, and which only formed a small qualitative part of the first RIS prepared for the agenda,
3. **No diminution in safety:** TSV consistently seeks to ensure that there is no potential impact that diminishes safety outcomes from the agenda, and notes that COAG's objectives refer to actually '*improving safety*'.⁵ As the jurisdiction with the longest experience⁶ in implementing the model bill on which the new national legislation is based, TSV has a particular interest in avoiding any discernible decrease in safety or any reduction or stagnation in the regulatory maturity gains made to date. Aside from providing input on legislative/ policy developments and the operational setup of the regulator, TSV also advocates an independent safety validation of the final proposed form of the agenda to confirm that the new regulatory system will not result in a negative social impact on safety standards,
4. **Realisation of benefits depends on the details:** Ensuring that real safety benefits are realised (through e.g. improved regulatory standards or better data analysis or sharing of regulatory resources etc.) require a commitment to the details of the design of new national scheme by all interested parties. Similarly, ensuring the intended efficiencies from reducing duplications or streamlining processes etc. occur depends on the details of how the regulator will be set up and operates going forward. For example, for TSV, this translates to details such as ensuring the new regulator's compliance and enforcement approach will be appropriate to administering modern legislation, or that metropolitan intra-state operators are not unnecessarily burdened by an additional layer of regulation from the 'head office'. In this respect, TSV notes that the highly ambitious timeframes of this agenda present a real challenge to ensuring this attention to detail is maintained throughout the progress of the agenda,
5. **Uncertain impacts on compliance burden:** As mentioned, one of the agenda's key stated objectives include '*streamlining and thus reducing compliance costs for business*'.⁷ However, for Australia's rail operators (37% of which operate in more than one jurisdiction)⁸, any benefits of streamlining needs to take account of countervailing factors

⁴ Synergies Economic Consulting 2008, *The costs of rail safety regulation*, quoted by the NTC, July 2009, Single National Rail Safety Regulatory and Investigation Framework, Regulatory Impact Statement Volume 1, p19-20.

⁵ COAG communiqué of 2 July 2009- 'through better assessment of risk and more efficient allocation of resources through a national scheme'

⁶ since 2006, the jurisdiction with the longest experience by far compared to some jurisdictions which passed the Model Law up to 2010

⁷ COAG communiqué of 2 July 2009

⁸ See footnote 3

such as the proposed move to full cost-recovery from industry after a transition period. This represents a significant increase in fees paid by Victoria's operators over time. In terms of its potential impacts, the national system may also represent:

- more rigorous regulation in some jurisdictions (particularly those which implemented the model bill recently),
- a potential increase in compliance burden for non-compliant operators as part of aligning to a national risk-based approach.

The scope of the two RISs produced meant that they did not take account of some of these broader potential impacts,

6. **Sufficient post-implementation monitoring:** While TSV acknowledges that one key parameter for success should be delivery of specified outputs by an agreed timeframe, we query whether there should be other success parameters for measuring medium to longer term achievements of the agenda against stated objectives, and
7. **Other reform potential:** Finally, while TSV considers that the current agenda goes some way to addressing the legislative/ compliance inconsistencies between jurisdictions, more fundamental sources of inconsistencies impeding a truly 'national seamless economy' remain to be addressed. This includes e.g. a national approach for improving interoperability (e.g. in terms of consistency in key infrastructure like rail gauge or communication systems) and a more concerted national effort to harmonising the rail industry standards and rules that supplement the national legislative framework.

While TSV considers that it is too early to reasonably assess the full impacts of the rail safety reform agenda, we hope that the elements outlined provide a broader framework to assess real, prospective and potential impacts to date. This highlights the need for a nuanced sophisticated approach to realising the potential benefits of the agenda over the long term, and mechanisms to ensure the new national system will not unnecessarily fetter regulatory decision-making.

TSV therefore looks forward to continuing to contribute to this important regulatory reform agenda. Please do not hesitate to contact us if you would like to discuss any issues raised in this letter.

Yours sincerely

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Transport Safety Victoria
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