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**Deregulation, reregulation or neoregulation? The
impact of regulatory reform on economic
governance regimes. A case study of the Australian
heavy vehicle sector.**

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Deregulation, reregulation or neoregulation? A case study of the Australian heavy vehicle sector.

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Abstract

This paper examines the impact of neo-liberalism on the progress and design of regulatory change in the Australian heavy vehicle sector. It examines in detail the introduction of the National Heavy Vehicle Accreditation Scheme (NHVAS) which was designed as a more responsive regulatory framework drawing on market based incentives to encourage trucking operators to maintain higher levels of compliance against key regulatory objectives. This new regulatory scheme makes greater use of self-regulation and relies on assessments by third party auditors to inform the regulator of the adequacy of a trucking firm's internal management control systems. Drawing on interviews with key participants in the heavy vehicle industry this paper examines the expected benefits, resource implications and some of the unintended outcomes that arise from an expanded regulatory and enforcement approach that draws more heavily on industry self-regulation. The evidence suggests regulation has been modelled to progress neo-liberal objectives of market liberalisation and yet at the same time, methods of regulation, costs for the state and road safety risks may have increased.

Key words

Governance

Heavy vehicle transport

New Public Management

Neo liberalism

Regulation

Introduction

Neo-liberalism has had a significant impact on public sector management and broader processes of governance in Australia over the past twenty years. One particular manifestation has been the introduction of new approaches to regulation. In response to growing demands from industry, government and communities a new regulatory scheme, the National Heavy Vehicle Accreditation Scheme (NHVAS) was introduced in 1999, which aimed to reduce prescriptive regulation and make greater use of industry self-regulation in the heavy vehicle sector. This scheme is based on market incentives, which are utilized to align a trucking operator's management control systems with the compliance objectives of the regulator. This paper examines the process of self-regulation under NHVAS, the impact of market incentives in shaping the behaviour of heavy vehicle operators and the use of private auditors to assess and report on the adequacy of internal control mechanisms. It argues that the new regulatory arrangements have had a differential impact on trucking businesses. Larger firms have positively responded to the regulatory change achieving significant productivity improvements, which have helped advance their position in the market. However, the process of accelerating efficiencies in the industry has placed greater competitive pressure on smaller operators, which may manifest in an increased preparedness to breach safety standards and regulatory limits. The unintended outcome is an increase in road safety risks and the need for greater surveillance by the state.

Changing approaches to regulation

Traditional concepts of regulation have concerned legislation and other enforceable legal instruments used by the state to influence behaviour in particular sectors. Enforcement systems and

personnel, often including a range or scale of penalties are established to encourage compliance. The legislative framework and regime of sanctions is generally associated with a specific public sector agency responsible for inspecting, monitoring and compliance. Thus, in the heavy vehicle sector road transport departments would manage the legislation and sanction regimes that aim to promote the safe and efficient operation of heavy vehicles on the road network. These government agencies would also employ a team of inspection officers to actively monitor and engage with industry to assess compliance and where appropriate enforce penalties and sanctions. Here regulation represents the exercise of sustained and focussed control by a public sector agency (Baldwin & Cave, 1999). This traditional definition tends to narrow our experience and understanding of regulation to how it is structured and carried out in particular sectors. Whilst not an inaccurate view of regulation it does exclude a broader range of policy tools and instruments that governments now draw on to influence sectors.

The new interpretation of regulation is focussed on methods that facilitate markets and legitimate action that promotes competition (Jordana & Levi-Faur, 2004). Regulatory reform is seen as a process that simplifies arrangements and works to increase the capacity of market forces to shape arrangements within specific policy sectors. This understanding of regulation sees government drawing on a broader set of policy tools, using its expenditure and contracting powers to create incentives and promote certain behaviors. Government is not only involved in reviewing and redefining the rules but also developing other innovative ways of achieving desired outcomes.

Regulation is an instrument of public policy that aims to influence and structure the nature of interactions between groups and

individuals in various policy sectors. Therefore, the contemporary view of regulation involves both government and non-government actors. This includes individuals, industry, their representative groups and associations, international bodies and community groups. Regulation is now considered a broader function beyond rule making and the imposition of sanctions and penalties and involves a blend of public and private resources (Grabosky, 1995:529). As well as the traditional legislative instruments, rules, codes of practice and guidelines, the regulatory environment now includes new methods that seek to create incentives, reward behaviour, educate and promote awareness of new rules and make available information on how best to comply (Baldwin & Cave 1999:336). This suggests that regulation is not in decline as proponents of deregulation might wish but in a process of being 'restructured' (Martinez & Mackenzie, 2004). Others suggest regulation is in fact on the increase. A model of regulatory capitalism has emerged where neo-liberal efforts to deregulate and privatize have given rise to new and more sophisticated forms of regulation, surveillance and control (Levi-Faur, 2005).

New Public Management

New Public Management (NPM) ideology has been a key factor shaping approaches to public sector management and regulation both internationally and within the Australian public sector (Pollitt & Bouckaert, 2004). During the late 1980s and 1990s governments developed a commitment to reform public sector administration by adopting ideas from private sector management practice. There was a commitment to enhance the role of markets making greater use of incentives and price signals to influence the behaviour of firms and individuals. This was to be achieved through strategies of deregulation and privatization. There was a focused effort on reducing the size of bureaucracy and the involvement of

government across numerous business and social sectors. During this period fiscal constraint dominated the government's agenda and this encouraged public sector agencies to promote light handed regulation and look for alternate forms of influence for achieving policy objectives. The role of the state shifted from ownership and provision to the regulation and shaping of markets. This was seen as a more effective way to structure services, provide choice and ensure higher levels of responsiveness to consumer preferences and needs. This shift in public sector thinking had a major impact on approaches to regulatory problems. Regulators began to consider how markets and other less intrusive mechanisms could be utilized to shape behaviour. The competitive pressures and organizing capacities of markets were considered better substitutes for direct regulatory intervention (Grabosky, 1995b). Public debate emphasized the need for deregulation, to cut red tape and reduce the cost that regulation imposed on the efficiency of the economy (Baldwin & Cave, 1999).

The neo-liberal philosophy inherent in NPM promoted self-regulation and indirect forms of intervention and control. When this combined with the general managerial interest in quality management techniques auditing emerged as a regulatory tool of increasing significance (Power, 1997). Power argues that this environment gave auditing "...a central role in operationalizing the administrative ideals that constitute NPM." (1997:44). The growing accountability demands associated with NPM required greater flows of information and this resulted in an increasing use of audits and other forms of inspection. Audits focus on the management of internal control systems and lend themselves to regulatory objectives. The ability of audits to reach into the internal workings of an organization means they are more readily relied upon by the regulator to help achieve public policy objectives (Power, 1997:33). By reporting on irregular practices to the regulator or identifying behaviour for

corrective action, the audit becomes linked to the regulatory function and objectives of the state. As the state has increasingly moved from direct service provision towards guidance and influence (steering) regulation has expanded. Audits have become a key tool in exercising this level of indirect control. Power notes that regulation is being redesigned "...around the need to understand the incentive structures of regulatees and for effective structures of voluntary self-regulation" (1997:53). A key objective of this paper is to document the influence of neo-liberal thinking in the shaping of heavy vehicle regulation and analyse the impact of audits in this process.

Methodology

This paper draws on the preliminary findings of PhD research. Data was collected from the analysis of existing policy documents (NRTC, 1997a, 1998), regulatory impact statements (NRTC, 1997b) and public discussion papers (NRTC, 1993, 1994). A total of 39 semi-structured interviews were conducted with participants in the heavy vehicle industry from each Australian state and the independent National Transport Commission (NTC) which is responsible for developing nationally consistent regulation. This included 17 representatives of road transport regulatory agencies, 11 representatives of transport industry associations, four auditors and 12 trucking operators. A number of those interviewed had dual roles, for example four representatives of industry associations also operated their own trucking businesses and one representative of a state based industry association also worked as an auditor.

Regulation and enforcement in the Australian heavy vehicle sector

The Australian heavy vehicle industry is a highly competitive and

dispersed industry. Around 80% of operators in the industry are small operators running single or two truck operations and less than 2% of fleets have 10 or more trucks (ABS, 2006; TransEco, 1996). In Australia there are around 360,000 heavy vehicle trucks representing around 2.5% of all vehicles. Whilst in numerical terms heavy vehicles represent a small proportion of the vehicle fleet, in terms of road safety, network efficiency and infrastructure wear and tear, their impact is significant. Whilst the industry predominantly consists of small operators (less than 10 vehicles) the fewer larger firms that exist run substantial transport businesses and dominate industry representation.

Heavy vehicles are regulated to operate within prescribed limits with the aim of limiting damage to road and bridge infrastructure, to assure minimum levels of vehicle handling, stability and control, and to ensure vehicle dimensions and operating characteristics are suitable for the roads on which they travel. Recent OECD (2005) research indicates that most countries rely on prescriptive regulatory standards that define the maximum envelope within which vehicles must comply, primarily vehicle weight, height, width, length and axle loads. As is the case across Australian jurisdictions there is considerable effort across European Union countries to achieve consistency for most of the regulatory standards in these core areas (OECD, 2005). Consistency helps ensure a level playing field and facilitates the smooth flow of freight within and across jurisdictions. Effective enforcement also contributes to an environment of competitive equity. Coupled with effective enforcement, the regulatory framework helps ensure that operators who breach the regulations do not achieve a competitive advantage over industry participants with higher levels of compliance. Maintaining a relatively stable regulatory environment helps ensure performance and safety standards are not undermined by excessive competitive pressures. The hyper competitive nature of the

industry is recognised internationally as a key factor that undermines a firm's willingness to comply and contributes to risk taking and unsafe business practices (Belzer, 2000).

Traditionally, governments have relied on highly prescriptive legislation and direct enforcement to achieve compliance objectives. This has resulted in all road transport operators being subject to a "one-size-fits-all" approach regardless of their operational characteristics, capabilities and demonstrated levels of compliance with the various regulations. The standard approach of interception and checking of vehicles at either fixed checking stations or through random mobile patrols has tended to exclusively target the driver and vehicle owner. This punitive approach has relied on a range of fixed financial penalties and/or the suspension of the driver's license and has contributed to an environment where heavy vehicle enforcement is traditionally characterized by high levels of conflict and antagonism between the industry and regulators (McIntyre & Moore, 2002).

Pressures for change

During the 1980s and 1990s a range of factors contributed to the progressive transformation of the regulation of the Australian road transport sector. Industry frustration with inconsistencies and variations between state based regimes created demands for regulatory uniformity across the country. Regulatory inconsistency was seen to impose unnecessary costs and inhibited the growth and efficiency of the industry. Unscrupulous operators exploited regulatory loopholes to avoid penalties, breach compliance requirements and gain an unfair competitive advantage. Major collisions between trucks and buses in 1989, resulting in 21 fatalities in the first incident and a further 35 deaths in the second, generated huge expectations from industry and the community that

governments would fundamentally reform enforcement practices and the regulation of the industry. During this same period leaders of state, territory and Commonwealth governments had committed to a range of national micro-economic reforms that aimed to achieve greater efficiency in key industrial and service sectors. An outcome of this reform process was the establishment of an independent national institution to facilitate the development of nationally consistent legislation to regulate the heavy vehicle industry (Painter, 1998).

The establishment of the National Road Transport Commission in 1992 fundamentally changed institutional arrangements for the regulation of the industry. This saw new relationships and consultative forums develop between industry and regulators and introduced new ideas and approaches to heavy vehicle regulation. The first truly national representative industry association, the Australian Transport Forum was formed at this time and became engaged with regulators in policy development. A key driver of regulatory change both in Australian and internationally has been the demands of industry and governments for deregulation (Rose, Seely, & Barrett, 2006). Proponents of deregulation saw these new institutional arrangements as opportunities to progress a reduction in the regulatory burden on the trucking industry. Regulatory agencies had readily adopted NPM ideals and sought to move away from the “one-size-fits-all” approach and examine the efficiency and necessity of regulations.

The regulatory environment of the Australian heavy vehicle sector has been comprehensively reformed since 1992. Road transport regulators have worked with industry to address the efficiency targets of industry as well as the compliance and safety goals of the regulator in manners that are less intrusive and costly than prescriptive regulation. Regulators now draw on a range of

regulatory instruments to promote safety and compliance outcomes. Current regulatory practice extends beyond prescriptive rule making including:

- promotion campaigns;
- education and training of enforcement officers and industry personnel;
- unique privilege based strategies for particular routes, vehicles and loads;
- incentive based accreditation schemes, and
- conventional roadside enforcement and targeted inspection campaigns.

Whilst the regulatory framework remains underpinned by prescriptive based legislation new Chain-of-Responsibility legislation introduced in 2006, has extended accountability and obligations on all parties in the transport chain. Now any off-road party who exercises control in road transport activity can be held accountable for failure to discharge their responsibilities (Leyden, McIntyre, & Moore, 2003). The new provisions mean the enforcement net has expanded beyond the driver and vehicle owner. For example, if a manufacturing firm knowingly requests an operator to transport a consignment of freight that exceeds the legal weight limits, then the manufacturer is eligible for prosecution rather than the truck owner or driver (Rufford & Bass, 2006).

This broader legislative approach reflects a move away from tightly prescribed enforcement, shifting greater responsibility onto management and management systems. It draws into the process internal control mechanisms and the use of audits and self-regulating mechanisms. Whilst expanding accountability across the transport sector, this new legal framework also formalizes a hierarchy of penalties and sanctions that escalate in severity

according to the magnitude of the offence. This has increased the deterrent effect of regulation. Conventional enforcement such as warnings, fines and penalties still remain the most common enforcement practice however, the threat of potentially severe and dramatic action such as removal from the industry, has empowered the enforcement capacity of the regulator. Whilst the most draconian powers (the 'benign big-gun') are rarely applied by the regulator, the existence of such powers enables it to speak of, and encourage compliance with greater force. Fear of harsher penalties lends lower level compliance and enforcement action greater authority and impact (Ayres & Braithwaite, 1992:45).

The important role that accreditation schemes play in the enforcement process increases as compliance accountability progressively moves away from roadside detection to more sophisticated approaches that rely on the office based documentation of the trucking firm and other parties in the transport chain. In the Australian context, accreditation schemes are used to match the demands of industry for more flexibility in regulation with government's responsibility for maintaining high standards of road safety and asset protection. With reference to this background of regulatory change this paper analyses the National Heavy Vehicle Accreditation Scheme (NHVAS) with a focus on how it has been shaped by neo-liberal ideas. The term road agency and road transport regulator are used throughout this paper and refer to the government department responsible for the regulation and enforcement of standards and compliance in the heavy vehicle sector.

The National Heavy Vehicle Accreditation Scheme (NHVAS)

As part of an ongoing effort to achieve regulatory uniformity Australian states and territories agreed to implement the National Heavy Vehicle Accreditation Scheme (NHVAS) in 1999. The development of the scheme was coordinated by the National Road Transport Commission (now known as the National Transport Commission) in consultation with state road agencies and the major industry associations. The concepts were originally piloted with leading firms from the industry and through this process agreement was reached with all parties on the key elements, standards and administrative provisions for the scheme. This was a major example of where regulatory development had moved from a bureaucratic state driven process to a model of corporatist engagement. Large firms and industry associations worked with regulators to develop a mutually agreeable framework for self-regulation and compliance.

As an alternative compliance regime NHVAS allows trucking operators to choose to either comply with prescriptive standards or to self-regulate by demonstrating they have adequate systems that ensure compliance with standards of the scheme. Under NHVAS operators may select from three compliance modules; maintenance, mass or fatigue. The maintenance and mass modules have been in operation since 1999 whilst the fatigue component commenced from 2008. NHVAS requires operators to demonstrate through a process of independent audit that they have in place operating procedures, checks and assessment processes that ensure their vehicle is maintained to acceptable standards; that they have processes in place that ensure their vehicle loads remain compliant with the legal load limits; or that their drivers drive under a regime that ensures their ability and alertness is no less than other drivers complying with prescriptive driving hour limits. A private auditor is

engaged to assess whether a firm's operating and documentary systems meet the standards of the scheme. Where compliance is confirmed the auditor's report is submitted to the regulator requesting access to the scheme and authorization to operate under the associated regulatory concessions.

In response to adopting alternative compliance regimes the transport regulator (state road agency) provides concessions against prescriptive compliance requirements. Under the NHVAS maintenance module operators are no longer required to have their vehicles taken out of service to undergo the mandatory 6 monthly or annual safety inspections. For weight compliance (NHVAS mass module) vehicles are granted access to a higher mass limit and are subject to less enforcement. Under the fatigue module an operator can schedule drivers to drive hours that may exceed the legal limit where it can be demonstrated that over a longer period (say five to 10 continuous working days) the driver has access to sufficient rest to ensure adequate levels of health and fitness and an ability to continue driving competently.

The purpose of alternative compliance is to enable efficiency improvements in road transport by allowing a lesser degree of on-road enforcement for operators who can demonstrate a high degree of compliance through other means. In this way, the efforts of responsible operators to comply with regulatory standards can be recognised and enforcement resources targeted on other sectors of the industry that represent higher risk (Yeo & Moore, 1998). NHVAS represents a responsive regulatory arrangement that recognises the uniqueness of operators across the industry and allows firms to integrate compliance arrangements within their own management control systems.

Regulatory concessions were included to help offset costs operators

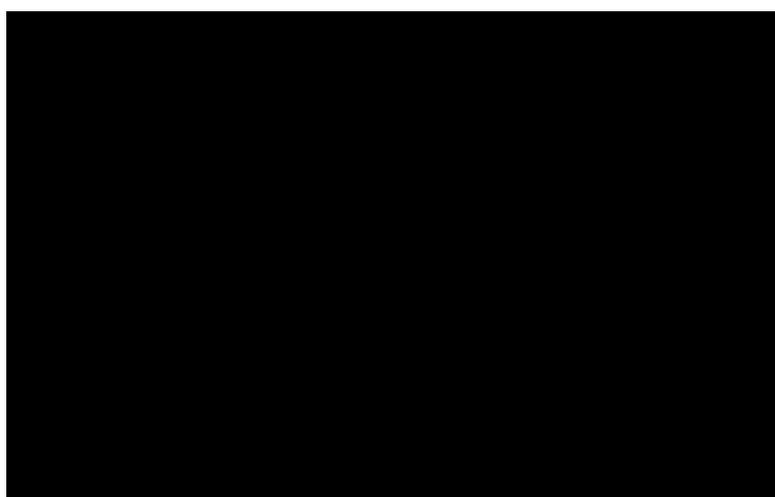
face in establishing internal monitoring systems and purchasing audits. Concessions were also seen to act as incentives to join the scheme and help operators remain competitive and compliant in a hyper competitive industry where the tendency to breach regulations is high and chances of detection generally low. The use of incentives is considered less coercive and intrusive and, unlike punishment, appeals to feelings of competence and self-determination (Grabosky, 1995a). Key objectives of NHVAS were to both recognise as well as build the compliance competence of the industry. Representatives from industry associations commented during interviews that sections of the trucking industry appreciate having the option to take on more responsibility for self-regulation and the self-management of their compliance responsibilities but also felt it was appropriate to be rewarded for their effort.

Coercion has its limits as a mechanism for social control. Incentives in regulation create an environment where the choice to do good is significantly driven by the opportunity to do well (Grabosky, 1995a:275). This is the case with NHVAS. The scheme hopes operators who choose to set up systems of compliance and 'do good' by the regulations will do economically well by being able to access specific regulatory concessions. In short, the scheme offered a reward for operators who were willing to align their business objectives with the compliance goals of the regulator. In an environment where harsh punitive regulatory responses had produced disrespect and an organised culture of resistance from trucking operators, incentives were seen as a way of restoring legitimacy and commitment to the compliance objectives of NHVAS (Grabosky, 1995a:262-3).

Enforced self-regulation

Ayres and Braithwaite (1992) articulate a model of responsive regulation that moves from independent self-regulation, to

gradations of directed self-regulation (enforced self-regulation) and finally to prescriptive command and control regulation. They argue that regulation policy is not simply restricted to a choice between free market mechanisms or prescriptive government regulation. Rather, they suggest that regulation can be structured to allow varying degrees of government intervention. Government's regulatory response would then vary depending on the conduct of industry. Compliant firms would experience the light hand of government regulation. As compliance diminished the level of government intervention would escalate. Responsive regulation is structured around an enforcement pyramid that draws on a hierarchy of increasingly intrusive interventions that are used less frequently. The base of the pyramid represents minimalist regulatory interventions that are as close as possible to self-regulation (Ayres & Braithwaite, 1992:35-38). Responsive regulatory frameworks and their capacity for escalatory forms of regulation and intervention should foster more innovative approaches to regulation allowing firms and regulators to work together to solve compliance problems. This should result in regulatory solutions more attuned to the needs, structure and interests of industry (Ayres & Braithwaite, 1992:4-6).



Regulatory pyramid, adapted from Ayres & Braithwaite (1992) *Responsive regulation: Transcending the deregulation debate*, New York, Oxford University

Press.

Recent changes introduced to the compliance framework of the Australian heavy vehicle industry reflect the model of responsive regulation. Under the Chain-of-Responsibility legislation fines and penalties are now structured in accordance with the severity of the offence and interventions in the firm's practice can be escalated to the point of removal from the industry. A minimum prescriptive base of rules remains in place for the majority of firms (generally small in size) who rely on regulatory direction. Within this escalatory framework of regulation firms may choose to access a more flexible compliance regime (NHVAS) that relies on higher levels of self-regulation. This reflects a middle path between self-regulation and command and control government regulation.

Ayres and Braithwaite (1992:101) argue that it is regulatory strategies that address the middle of the pyramid (like NHVAS) that present a challenge for regulators. NHVAS reflects a model of enforced self-regulation. Whilst entry is optional, once in the scheme the state enforces a model of regulation that is particularized to each firm. Under models of enforced self-regulation regulatory functions are sub-contracted to the firm by the state. Firms devise their own self-regulatory rules, monitor their own levels of compliance and correct episodes of non-compliance when detected (Ayres & Braithwaite, 1992:101-103).

Under the ideal model of enforced self-regulation, firms develop their own standards to avoid standards imposed by the state. These standards may then be subject to review or endorsement by the regulator and become enforceable. Being engaged in a process of negotiation around standards helps build sector wide support for a specific regulatory framework (Grabosky, 1995b). As indicated earlier, NHVAS standards were developed through a series of pilot schemes between industry and regulators. These standards reflect

agreement between industry and regulators on what is appropriate for firms to achieve in their business operations. Having industry agree to standards against which systems are measured and assessed helps ensure a higher level of trust and commitment from trucking operators (Power, 1997). This approach is also seen to be more efficient for both the state and industry. Ayres and Braithwaite note; “When the state negotiates the substantive regulatory goals with industry, leaving the industry discretion and responsibility of how to achieve this goal, then there is the best chance of an optimum strategy that trades off maximum goal attainment at least cost to productive efficiency” (1992:38). NHVAS requires firms to develop their own business practices and documentary systems that demonstrate how they meet these compliance standards. In this sense NHVAS reflects a model of enforced self-regulation where a collective industry response has shaped a set of uniform compliance standards and firms are free to individually tailor their approaches for meeting these standards in the most cost effective manner.

A key aspect of enforced self-regulation is that it can be embedded into schemes of escalatory interventions (Ayres & Braithwaite, 1992). This characteristic of responsive regulation is evident in NHVAS. When firms are demonstrating co-operative compliance with NHVAS standards, then access to the concessions of lesser enforcement, heavier loads and exemptions from annual safety inspections come into place. Once NHVAS firms are detected to be non compliant, a sanctions process is introduced suspending access to the regulatory concessions. The aim is to correct the non-compliance but also encourage the firm back into the NHVAS, thus promoting compliance and allowing renewed access to the concessions.

The role of markets

The extension of accountability in road transport law under Chain-of-Responsibility legislation has created system-wide pressures that motivate operators to become engaged in self-regulation. An increasing number of parties in the transport chain demand that trucking operators, with whom they establish transport contracts, have in place systems that demonstrate an ongoing commitment to comply with regulatory limits. NHVAS is seen as symbolic confirmation that such management control practices exist and hence should provide some level of legal protection in the event the sub-contractor is detected breaching regulations. Heavy vehicle operators face pressure from both the regulatory framework as well as the transport market to improve their documentation of management control systems and levels of compliance.

This pressure highlights the dual forces that now constitute the regulatory environment and contribute to the explosive growth in regulatory instruments (Levi-Faur, 2005:21). Regulation is both enforced and constituted by agents of the state and market participants. Regulators inspect, monitor and review evidence to determine levels of ongoing compliance. At the same time larger firms exercise their market power and effectively police the adoption of NHVAS by requiring membership as a condition of sub-contracts since this also ensures access to a higher productive framework of regulatory limits. The pressure of markets is drawn on to further extend the regulatory interests of the state across the sector and into a larger number of trucking firms.

However, major contracting firms appear less engaged in policing compliance to regulatory standards and more involved in assessing the existence of a sub-contractor's documentary systems. As one sub-contracting owner-driver reported, the pressure exerted by

contracting firms results in documentation that complies with the law rather than any concerted effort to change compliance practice. *"...companies we were working for, you've got to do this trip sheet. If you don't do this sheet they won't pay you. If you do the sheet incorrectly, in other words it's the truth of what you did but its not to regulation... they say go away and have a week off so you can't earn any money...and if you go through all the trip sheet recordings they're all correct. Because we have to make them correct."* The market shapes a process of regulatory compliance that polices the existence of systems, rather than actual compliance outcomes. This results in what Power suggests is a naïve feeling of comfort that audits assure a firm's adherence to regulatory limits (1997:123). Stipulating membership of NHVAS as a condition of contract may therefore become a ritualised process that produces comfort for the contracting firm without fundamentally challenging the organisational behaviour and compliance practice of the sub-contracting truck operator.

A number of operators and regulators expressed concern that the ritualism of documenting correct procedures has become an evident characteristic of NHVAS. Braithwaite (2007:93) noted a similar phenomena in the aged care sector where people spent more time documenting their defense "...rather than hands-on problem solving". The power of the contractual relationship between firms, and the competitive pressures that small truck operators face to remain financially viable mean that many are prepared to ritualistically engage in maintaining the correct paper work required under NHVAS rather than undertake fundamental change in their compliance practice.

Market pressures also appear to influence the outcomes of audits. Private auditors have to achieve a fine balance between delivering a fair assessment of a firm's practice against NHVAS standards and their desire to maintain a viable business. Their financial success

may be dependent on receiving ongoing work from the trucking industry. Grabosky (1995b:539) notes that where the professional gate keeper is dependent on ongoing relations with the client, their ability to make independent judgments may be influenced by the financial relationship. The financial gain a trucking firm may derive once accredited under NHVAS also creates pressure on the operator's side to seek a successful audit outcome. The adversarial potential of audits pressures the auditor to structure their assessment and resolve any compliance issues with the objective of meeting the NHVAS standards. This is a characteristic outcome of auditing that Power refers to as the '...collusive production of comfort" (2003:195).

Unintended outcomes - ritualism

A key concern expressed by regulators, auditors and industry participants was the extent of ritualism carried out under NHVAS. Regulators themselves were seen to engage in regulatory ritualism. This is where regulation is not fully enforced and regulatory requirements not followed through with the necessary checks and inspections (Braithwaite, Makkai, & Braithwaite, 2007). Braithwaite observes that these forms of ritualism are obstacles to continuous improvement and in the case of the heavy vehicle industry, hold back improvements in safety standards and levels of compliance (2007:11). This was a common complaint by industry associations and operators interviewed during this research. Many argued that the road transport regulator engaged in ritualistic behavior at the front end of the NHVAS scheme. This involved the documentation and recording of information, the conduct of audits and the reporting of systems in place that meet the required accreditation standards. However, following this ritualistic entry into the scheme there was little evidence or experience of follow-up, checks, enforcement and inspections. Operators interviewed for this project

had no experience of a random audit instigated by the regulator to validate the ongoing operation of their internal management control systems. A number of regulators interviewed for this study admitted that the failure to follow-up on detected breaches (particularly by interstate operators) and to establish a comprehensive system of random and triggered audits, impacted on the perceived strength of the enforcement component of the scheme.

This element of failure in implementation gave industry associations and operators the impression that the scheme lacked the appropriate level of external pressure on compliance requirements. The absence of a substantial threat of being checked for ongoing compliance was seen to reduce the motivation of some operators to remain compliant with the standards of NHVAS. A number of operators claimed that ritualistic participation in NHVAS was common and that many smaller operators used the scheme as a means to avoid enforcement and actively breach the regulated limits. Without the enforcement aspects of NHVAS being effectively carried out, the scheme did not drive continuous improvement and lift overall levels of industry compliance. In this environment the requirement of NHVAS membership by contracting firms in the transport chain further exacerbates ritualistic adoption.

The constraint on the budgets of regulatory agencies can be seen as one factor limiting their ability to actively engage in the enforcement aspects of NHVAS. In an era where there is a continuous focus on reducing government expenditure, any claim for more resources to actively implement the enforcement component of NHVAS seems inconsistent with the original neo-liberal objectives of the scheme. The scheme was promoted on the basis that it would reduce the growth of government outlays on enforcement since accredited sections of the industry would take up

increasing responsibility for self-regulation. This response from industry would then allow regulators to redirect scarce resources towards other sections of the industry that are known to be less compliant. It would be inconsistent with the claims of this NPM approach to regulation to seek more resources to institute processes of follow-up and random audit. To some extent there was an assumed expectation that road transport regulators could absorb the required enforcement aspects of NHVAS within existing budgets and programs. Discussion with regulators indicates that in an environment where NHVAS participation is expanding, effective and comprehensive enforcement is unlikely to be achieved without additional resources.

During interviews regulators confirmed that NHVAS does not reduce the cost of compliance and in fact, the effective structuring of the scheme including the exchange of information across jurisdictions and the conduct of audits, has imposed additional costs. Despite this, regulators interviewed across all jurisdictions argued there is value in having a new regulatory approach that is suited to a certain segment of the industry. Regulators believe NHVAS makes a positive contribution to their compliance objectives and represents a diversification of their approach. Industry associations and a number of operators concurred with this view when asked to comment on the effectiveness of NHVAS. The scheme is seen to represent value for money in an expanding compliance and enforcement framework.

Risk and differentiated regulation

The introduction of NHVAS has allowed heavy vehicle regulation to respond to the differentiated capacity of participants in the industry. Enforcement practices aim to recognize and treat such participants differently. Firms that have the capacity to cope with higher levels

of regulatory complexity are accommodated and rewarded. The remaining participants in the industry are managed within a one-size-fits-all regime. This differentiation in the regulatory and enforcement approach tends to correlate with the emerging sophistication of the top end of the heavy vehicle industry. Whilst few in number, transport conglomerates are increasingly dominating logistics and integrated transport systems. The professionalism of these firms means they are far more able to operate within complex regulatory environments and regulators have responded to this capacity with schemes such as NHVAS.

The corporatist model of interest group engagement in the policy process suggests that powerful organizations dominate and influence policy outcomes to reflect their own interests. This may result in regulatory arrangements that exclude or marginalize the interests of small players (Grabosky, 1995b:540.) At the extreme end this suggests those dominant players who initially participated in the pilots of NHVAS were able to persuade regulators to structure the scheme in a manner that reflected existing industry practice. Hence firms that already have in place sophisticated systems of quality control are given access to relaxed regulatory limits without having to undertake any revision of internal processes and management systems. A number of the larger firms interviewed indicated that joining NHVAS was not a major imposition since it was only a matter of documenting (in a format suitable for the regulator) practices and systems they already had in place. Yet for other firms (generally small in size), NHVAS represented the transfer of bureaucratic systems and paper work down from the regulator into their business. Meeting the standards of the scheme was no easy feat and required substantial adjustments to their business practices. Whilst beyond the scope of this paper, the influence of corporatist arrangements in shaping NHVAS is an area worthy of more detailed investigation.

This research suggests that differentiated regulatory regimes distinguished by economic incentives may result in greater risk taking and lower levels of compliance for some participants in the industry. At the command and control level of regulation a layer of firms operate under more restrictive limits. These firms either compete in areas not generally covered by NHVAS fleets, legally compete with NHVAS vehicles but at lower costs (though this strategy is likely to result in unsafe maintenance practices and eventually lead to bankruptcy), or compete with NHVAS vehicles by breaching the regulated limits. Owner drivers and small firms interviewed for this research indicated they felt compelled to participate in NHVAS to remain competitive with larger firms and gain sub-contracting work. Alternatively, they could remain outside NHVAS, pay less attention to maintenance and safety issues and breach the regulatory limits to remain competitive. The interview process revealed anecdotal evidence of this practice across the industry. The level of concern expressed by some operators regarding the willingness of some participants in the industry to breach regulations and disregard important safety and maintenance issues to remain competitive with NHVAS fleets warrants further investigation and research.

Neo-liberal influences in regulation

NHVAS incorporates a range of neo-liberal concerns. Its focus on self-regulation and the optional nature of the scheme appeals to notions of choice and individualism. The modular components of the scheme, where firms can elect to participate in one, two or three compliance streams further reinforces elements of choice and signals recognition of the varying circumstances and interests of firms. The regulatory concessions embedded in the scheme stand as an acknowledgment of the power of markets and incentives to

influence and shape behaviour. NHVAS aims to align the economic self-interest of the firm with the compliance goals of the regulator. At the same time regulatory change is developed within a framework that seeks to increase the competitiveness of firms and lift the overall efficiency of the sector. Firms participating in NHVAS see the regulatory concessions as elements of a rule framework that is responsive to the costs incurred for joining a more stringent compliance environment.

Fiscal constraints and a general preference for models of self-regulation have prevented regulators from expanding their roadside inspection staff. NHVAS was seen as a way of achieving a more comprehensive level of regulatory coverage without incurring huge costs by the state in a period where there is demand for greater accountability and higher standards of safety performance from the industry. In such a highly dispersed industry it could never be possible to check the compliance of all firms thus, promoting self-regulation was seen to be more effective than traditional forms of public regulation and enforcement (Ayres & Braithwaite, 1992:103; Baldwin & Cave, 1999:127). The enforced self-regulatory framework of NHVAS has helped shift some of the cost of regulation on to industry as they carry out the inspection, monitoring and corrective action required to demonstrate ongoing compliance (Baldwin & Cave, 1999:135).

Relying on self-regulation also assists NHVAS in achieving greater inspectoral depth. Firms use their own personnel with knowledge and understanding of the business and its operations to develop systems, examine practices and devise methods that address the compliance challenge (Baldwin & Cave, 1999:127). These systems are then assessed by third party auditors who are generally perceived as more independent than government inspectors. Contracting out the inspection function to private auditors is further

evidence of neo-liberalism shaping the framework of NHVAS. The use of private auditors reduces demand on the regulator's inspection staff and reflects a general desire to lessen the role of the state, building reliance on private parties in achieving policy objectives.

The perceived independence of the private auditor lends greater legitimacy to NHVAS as a regulatory model that is not dependent on the status of the state. Power notes that "...other sources of legitimacy, such as community and state, are declining in influence" (1997:147) and this particularly reflects what is happening in the Australian road transport context. Industry attitudes towards institutions of the state are very negative and using third party auditors in the process allows industry to comply with state sanctioned regulatory standards, without having to directly engage with representatives of the state. Again, this distancing of the state from the operational detail of businesses reflects neo-liberal preferences for light-handed regulation with the state further removed from direct engagement with organizations that form the market.

NHVAS has enabled the state to influence activity in the heavy vehicle sector through the use of incentives rather than direction and control. The scheme aims to deregulate the prescriptive process of how heavy vehicle operators meet key compliance outcomes. Yet in the process of achieving this it introduces new and more sophisticated technologies of regulation such as audit reports and the documentation of internal management control mechanisms (Power, 2003). Audits are used as the tool to ensure firms align their internal business practices and control systems with the achievement of the scheme's standards. The incorporation of audits into the regulatory framework has allowed self-inspection activities to connect the inner workings of organizations to

regulatory programs (Power, 1997, 2003). By adopting these new regulatory requirements, the firm gains access to more economically advantageous regulatory limits. These regulatory concessions are used to generate market-based incentives to further motivate compliance with the scheme's standards and rules. Neo-liberal objectives of liberalising the market by relaxing regulations are achieved in a broader regulatory framework that introduces new approaches in how firms can demonstrate regulatory compliance. The process both liberates and constrains simultaneously (Levi-Faur, 2005). This reflects what Power observes as not so much a failure of central state control, "...but rather its transformation from direct to liberal technologies of indirect influence such as market based instruments." (1997:53).

The state takes a leading role in structuring a framework where layered webs of regulatory influence emerge (Grabosky, 1995b). Audits exercise a gate keeping function formalizing the connection between different layers of regulation. A successful NHVAS audit links the firm to a regulatory layer that is controlled by the state and operates under more liberal limits. Large firms that enforce membership of NHVAS through sub-contracting arrangements, see it as a signal that the smaller (sub-contracting) operator has approved levels of self-inspection and documentation. However, market forces tend to also encourage perverse outcomes. Whilst driving growth in membership of NHVAS, markets also encourage ritualism as firms adopt the symbols of accreditation and go through the motions of audits that assess paper based systems rather than actual compliance practice. The neo-liberal rhetoric of self regulation and NPM practices by road transport agencies means that for many firms accreditation under NHVAS represents an opportunity to gain access to regulatory concessions, experience less road side enforcement and through the ritualism of audit and symbolic documentation, appear compliant without undertaking

fundamental change to business practices.

Conclusion

Neo-liberal ideals have shaped approaches towards regulation in the Australian heavy vehicle sector. New regulatory institutions have been established such as the National Road Transport Commission, to help achieve regulatory efficiency goals such as uniformity and consistency across Australian jurisdictions. Innovative regulatory technologies have developed to help further the operational efficiency of firms and the competitiveness of markets. NHVAS is an example of neo-liberal ideas shaping regulation and influencing its development beyond prescriptive and punitive approaches providing an enhanced role for markets. The scheme draws third party auditors into the compliance process and through the use of regulatory concessions aims to harness the self-interest of firms to align their operational behaviour with the compliance objectives of regulators. The state's objective of raising the level of industry compliance is symbolically achieved through the growing number of positive audit outcomes as an increasing number of operators enter NHVAS. This in turn aligns with industry goals of increased market efficiencies realised through access to more liberal regulatory limits. Both the state and market appear to achieve their objectives through a mutually reinforcing process.

The granting of regulatory concessions and greater reliance on systems of self-regulation suggest the achievement of neo-liberal goals of smaller government and light-handed regulation. Yet for road agencies, monitoring the effectiveness of these new 'lite' versions of regulation requires a new range of skill sets and activities that are different to their traditional compliance and enforcement functions. This has required the development of extensive audit programs, the establishment of new staff positions,

training programs, and the development and installation of new administrative processes and data management systems. This all costs money and in most jurisdictions is being introduced by road transport regulators as an expansion of existing compliance and enforcement functions. These new innovative models of regulation have helped extend the regulatory reach of road agencies but contrary to NPM rhetoric, have not replaced nor been installed to substitute for disbanded enforcement activities. Schemes like NHVAS represent another tool in the regulatory tool kit, rather than a replacement of old practices.

The evidence suggests models of self-regulation have expanded within the shadow of the regulatory state (Levi-Faur, 2005). The Australian heavy vehicle sector is now more privately and publicly regulated. Neo-liberalism has advanced a model of regulatory capitalism where an increasing mix of market based approaches and public regulation occur (Levi-Faur, 2005). The sector reflects Braithwaite's observations of regulatory capitalism where it is not just state regulation that has expanded but "...so has industry self-regulation, corporate compliance systems, regulation by large corporations of smaller suppliers and users of their products upstream and down stream..." (Braithwaite, Makkai, & Braithwaite, 2007:9).

The heavy vehicle compliance framework developed in Australia is internationally recognised as one of the more sophisticated and advanced models (Bergoffen, Short, Inderbitzen, & Daecher, 2007; Rufford & Bass, 2006). Industry supports NHVAS as a liberalising model of self-regulation within an otherwise highly prescriptive regulatory environment. However, the explosive growth in documentation and assessment through audits presents a different picture, one of re-regulation through new, less prescriptive means. This confirms Levi-Faur's argument that whilst "...at the ideological

level neo-liberalism promotes deregulation, at the practical level it promotes, or at least is accompanied by regulation” (2005:14). Many trucking firms have willingly taken on regulatory functions in self-monitoring, compliance documentation and instituted systems of internal control. For others, engagement in NHVAS has been a ritualistic process necessitated by competitive pressures. Symbolic documentation is purchased and in the absence of effective validation and review by the regulator there is little change in a firm’s ongoing compliance practice. Finally, for some operators NHVAS represents an intensification of competition and a driver for greater risk taking and noncompliant behaviour. The scheme has delivered benefits for the dominant players in the sector and at the same time increased the need for more detailed surveillance of the industry by the state.

Deregulation, reregulation or neoregulation? A case study of the Australian heavy vehicle sector.

References