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SELF REGULATION - PANACEA, PLAGUE OR NEGOTIABLE TIGHTROPE

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ABSTRACT

The object of the paper is to canvass the various attitudes to Self Regulation [Alternative Compliance] and to reach a conclusion as to whether there should be a national move to this type of management of the transport industry. If such a move is actively supported then consideration will have to be given to the implications upon both the transport operator in having to initiate internal systems and the traffic policing function as a “safety net” outside the proposed audit system.

This paper will take a critical look at the policy implications of the moves to self-regulation and the effect of the stance of the various State bodies in relation to the adoption of a uniform and workable national system as opposed to the present ad hoc situation. Issues raised will be discussed to canvas the advantages and pitfalls of the positions adopted.

Areas of particular interest in this review are those of vehicle weight, hours of driving and roadworthiness which form the current proposition and whether or not the proposition can be expanded to take in other areas. In discussing the three areas the theme of the paper will be the likely effect upon the safety of both transport operators and other road users.

This overview of the situation will take into account the attitudes of the National Road Transport Commission in its recommendations and “interest papers”, the stance of the various Police enforcement bodies in respect to a partial or total withdrawal from a regulating role and whether such an approach will lessen the chances of a national system being effective. Transport Associations, those most directly affected by Self Regulation, will be considered along with the implications on the members of those Associations.

In conclusion the paper will summarise whether the proposition for self regulation is likely to be a panacea to current problems, a slow erosion of what is a currently less than stringent enforcement scene, or a workable tightrope act balancing between the two extremes.

INTRODUCTION

This paper is, in many ways, largely speculative and based upon the experience of the author as a member of the Victoria Police in many years of enforcing and directing traffic enforcement including that of the road transport industry and subsequently of five and a half years as an independent consultant investigating heavy vehicle collisions and, on occasions, conducting internal company investigations on the part of senior management of transport companies. For a number of reasons many of the police personnel who have spoken frankly with me cannot be identified, nor can individual incidents be discussed, as all are subject to police attention, civil litigation or commercial confidence.

Regulation of the use of the road system of Australia has been a matter within the control of the various States. Legislation in respect to driver behaviour, vehicle condition and loading was governed by the various State Acts of Parliament and the Regulations promulgated under those Acts.

Uniformity of those regulations has been, in many cases, more by coincidence rather than planning which has caused uncertainty amongst the casual interstate traveller and a great inconvenience for the transport industry. That there needed to be a move to consistency was recognized many years ago and has been sought by those who must operate large vehicles across, and within, State Borders.

The traditional enforcement of the majority of traffic regulations effecting the transport industry has slowly crystallized into the sphere of the Police and the State Road Authority within the particular jurisdiction. Once again there has been little uniformity in that enforcement with some notable exceptions illustrated by a number of cross border operations commencing in the late 1980's.

There has also been a move within the transport industry to improve its image and to reduce their operating costs and to operate in a manner providing greater safety. A number of companies invite other road users to report on the behaviour of the company drivers thus providing the average motorist with an avenue for complaint other than the traditional enforcement bodies.

Within this context it is not surprising that a move towards the self-regulation philosophy has come about .

PHILOSOPHY

Alternative Compliance is another name for Self Regulation and that is a term which, in some industries, has unfortunate connotations of a laissez faire approach by the body originally charged with control of the industry. A prime example of how things can go wrong is that of the reduction in the number of Health Inspectors attached to Local Government and the dramatic consequences of food poisoning associated with shoddy food handling. With the Transport Industry we, the community, are asking that the industry will conform to a prescribed standard and act in a responsible way demonstrating that it is to be trusted with the privilege of a large proportion of self control.

There is a positive side to the proposal which will be discussed later. In the meantime we need to look at the philosophy which should be applied to traffic law enforcement.

When the traditional objectives of a traffic policing organization [AXUP 1988] are looked at in conjunction with those of Alternative Compliance [NRTC 1997] it can be seen that there are obvious similarities in those objectives. Briefly they can be summarized in the following table.

Objectives

Enforcement	Alternative Compliance
The reduction in the number and severity of collisions	Improved road safety
The orderly flow of traffic	Improved efficiency of road transport, including asset preservation
The detection of offenders	Reductions in administrative costs for operators and agencies

When these objectives are examined it is difficult to see why the proposal should be subject to scepticism within the enforcement agencies for they mirror their own stated aims. This scepticism will be discussed later in the paper however it should be noted that there is an additional objective in the NRTC list and that is reduction in enforcement resources to achieve a given level of compliance. What is not stated is what that “given level” is. It is a little like the “acceptable road toll” - sometimes discussed without anybody being prepared to put a figure to it but mostly confined to the “too hard basket”. Maybe there will need to be an increase in enforcement resources to achieve this “given level of compliance” when someone is actually prepared to put a figure to that proposition.

Given that there is a move among Police Forces to shed what police administrators regard as “non-core tasks” then it may well be that the reduction in enforcement resources will occur anyway and that the philosophy of alternative-compliance will, by default, fill a hole about to be created. It is a situation which will require careful monitoring in the “after studies” which will no doubt be undertaken once the programs have run for some time.

There is a well established movement to change and so the implications require critical review from the believers, non-believers and those who are prepared to look at any proposal for improvement. When any existing, or proposed, traffic regulation is examined there are a number of questions which need to be answered in deciding whether or not the regulation will be of benefit. With modification these same six questions outlined in the following table can be asked of Alternative Compliance.

Justification for Change

Traffic Regulation		Self Regulation	
1.	Is there a need for the regulation?	1A.	Do we need to change from the current system?
2.	Is the regulation acceptable in principle and practical application to the majority of the user population?	2A.	Is the proposal acceptable in principle and practical application to the majority of the user population?
3.	Is it framed so as to be clear and unambiguous?	3A.	Are the proposals clear and capable of ready interpretation by the operators?
4.	Is it consistent with other regulations?	4A.	Will compliance in one State clash with a requirement in a different State or even within the same State?
5.	Is the user population aware of it?	5A.	Has the proposal been explained to those who may benefit from it?
6.	Is it enforceable?	6A.	Can an “Audit Team” readily confirm compliance and detect non-compliance?

While the right side of the table can be argued in respect to the semantics it is difficult to argue with the concept of measuring any proposal against a modification of a well proven yard stick already applied to the regulatory system.

The National Road Transport Commission states the case clearly as;

Alternative compliance is intended to increase transport efficiency through reducing the costs of compliance as it allows operators greater flexibility in determining how compliance is monitored. It is intended that this will create greater innovation and lower cost outcomes. Alternative compliance may also enable reductions in delays caused by on-road enforcement, leading to increased vehicle productivity.

In a nutshell the Alternative Compliance move is designed to enable road transport operators to become more professional in their operation and improve their reputation in the eyes of the rest of the population.

The final message in this section is that in our system of government the various authorities “police by consent” and that to be effective any regulatory system, self or State imposed, requires the consent of all participants.

POLICY IMPLICATIONS

There are policy implications in Alternative Compliance beyond those immediately applicable to the transport industry itself.

As the transport fleet is not confined to operations within a single State border there is the obvious need for a uniform National Policy which has more than just lip service by the various State Governments. The parochial attitude witnessed in the driving hours debate where one State would not agree to a uniform system needs to be addressed and, if necessary, the Federal fiscal big stick waved under the noses of any Government who will not co-operate in an agreed system.

Police Attitudes

The principal bodies charged with the enforcement of Traffic Regulations in Australia are the various State Police Forces with back up from small sections of the relevant State Road Authorities. These organizations have some major reservations about Alternative Compliance. Among the concerns expressed, mostly amongst themselves, and occasionally to outsiders a number need to be taken seriously. The author has spoken to experienced traffic police officers in each of the Australian States and the following points are a result of their open confidence in “one of their own”.

Amongst the most serious of those concerns is the small number of vehicles which will fall within the new scheme. They point to the number of vehicles expected to fall within the scheme [NRTC 1997] and the number which will remain outside the scheme [LOVELL and DE ALWIS 1995] and believe that those who will enter the various schemes are already subject to a de-facto system of reduced enforcement as a result of an already known performance record. There is already a concentration on those who are known to flout the current regulations or who are suspected of doing so. The following table is a compilation of figures from both the sources quoted but excludes the Fatigue Management Program which is subject to a separate comment.

Vehicle Distribution

Jurisdiction	Maintenance Management	Mass Management	Total*
		Vehicles	
NSW	5,200	2,600	122,900
ACT	115	60	2,900
Vic	430	2,145	101,400
Qld	3,090	1,545	67,800
SA	1,360	680	39,200
WA	960	380	101,400
Tas	250	250	22,100
NT	205	40	2,900
Total	11,610	7,700	460,600

* Rigid and articulated trucks excluding light commercial vehicles and non-freight carrying. The most serious concerns expressed are those in relation to the Fatigue Management Program where Police personnel see the proposals as making it difficult to ensure the proper compliance with the regulated hours of driving legislation - whatever those hours will eventually be. While the general feeling expressed is that there are transport operators who, at CEO level, will wish to ensure compliance with the program they point to incidents where drivers, from these companies, have been involved in single and multiple vehicle collisions who were clearly effected by fatigue despite Company policies on driving and working hours. It has also been the author's experience both as a Police Officer and a private consultant that the wishes of senior management do not always flow down with great effect to the operations managers.

Not far behind the concerns in respect to the Fatigue Management Program are those connected with the Audit process. There is a feeling that Audit Teams will be top heavy with personnel with too little knowledge of the industry and will lack investigative experience and "know how" to pick up the inconsistencies pointing to a lack of compliance with the program.

In this concern for the Audit process several officers point to the "Qualifications of Auditors" as laid out in the Alternative Compliance Policy proposal [NRTC 1997A];

- Recognized Quality Assurance Lead Auditor qualifications;
- Experience in auditing transport, construction or engineering management systems; and
- Successful completion of alternative compliance audit training course;

expressing the concern that you can audit the management systems all you like but unless the auditor has had some experience at or of the "dirty end" of the business then there is a likelihood that non-compliance will go undiscovered.

Speed limiters are also pointed out as an example of "self regulation" and the accompanying sign which appears on the rear of the truck which has just passed you at around 130 km/h re-enforces the belief in many enforcement personnel that if companies can not get that right then what are they going to do with systems that are not so easily detectable.

The positive side of the police attitude is that if Alternative Compliance can be made to work then its eventual spread through the industry will go a long way to achieving the first objective of traffic law enforcement - the reduction of the incidence and severity of vehicle collisions.

The police, like any other part of society, have to be convinced that a change in direction is beneficial in terms of their objectives. To do this will require a structured training and educational programme aimed at all levels of the respective police organization. Proponents should not expect overnight evangelical conversion as police officers have a healthy scepticism when dealing with changing the attitudes of drivers - don't forget it took a generation to change the attitude to drinking and driving and we still have a substantial population of offenders.

Industry Attitudes

Attitudes within the transport industry are as diverse as can be expected from such a variable population of participants. They can vary from the ready participation of some companies who have spent large amounts on the development of internal programs to those who just cannot be bothered.

The attitude showing the greatest naivety is that which suggests that a company within the alternative compliance program should be exempt from on-road enforcement.

It is important that the industry through its own internal systems and magazines promotes the careful consideration of alternative compliance by all participants. Without that consideration then it may well be that Governments will go down the path of increased enforcement.

Likewise it is interesting to note that the industry, through the Road Transport Federation and publications such as Australasian Transport News, have been promoting tougher sanctions on the "rogue" elements within the industry and doing so ahead of Governments and Government bodies. Such publications are a window onto the attitudes of the transport industry and should be required reading for those seeking to regulate that industry.

Enforcement Policy

There are two very distinct areas of enforcement policy;

Operational policy, and

Systems policy.

Operational policy is in the hands of the Police Officer charged with formulating general policy for State wide programs of the particular Force or the Officer putting together a specific operation. Providing the policy option stays within the Force Objectives and the law of the State then that effort is not generally subject to outside direction by Government in any jurisdiction which recognizes the "separation of powers".

Systems Policy on the other hand may well involve Government attention and direction. This is particularly so in the acquisition and use of electronic enforcement systems. If you stop and think about it we have, since the 1980's, introduced;

Red light cameras,

Speed cameras,

Safe-T-Cam, and

Weigh-in-motion devices.

New South Wales already uses electronic toll collection and Victoria is well on the way to introducing electronic toll collection by the identification of a particular vehicle passing a detector. This obviously places that vehicle at a particular time at a particular place. It is not a big step to the tracking of individual trucks by the mandatory fitting of satellite tracking devices, transponders and onboard vehicle monitoring devices accessible by enforcement personnel. Even the mobile telephone can be used as a tracking/monitoring device.

The industry has to make up its own mind whether this is a desirable path to follow and whether to support it or fight it. It may well be the way to control the “rogue operators” who bring the industry into disrepute as well as confirming the responsible attitudes of the operators who apply alternative compliance systems to their fleets.

It is a matter worthy of careful consideration as nothing excites a Government more than the possibility of increased revenue without having to work too hard for it. Good operational enforcement policy, such as that used in Victoria with the introduction of 68 speed cameras, can circumvent that Treasury urge but what guarantee have you that you will get such a policy?

The greatest safeguards to the imposition of draconian measures by Government are;

- A responsible industry publicising its desire to operate safely and efficiently,
- A demonstrated level of performance seeking to match the desired level, and

- Close co-operation between industry bodies and the enforcement organizations in the manner of the committee set up in Victoria

What can we say about current policies and enforcement levels? Current policies are far from uniform and hence engender uncertainty not only within the transport industry but also within police organizations where “tolerances” may not vary just from State to State but from Police District to Police District along a particular highway in the one State. In fact if the question was put to the individual enforcement officers what the group policy was in respect to the issues under discussion I would suggest the response would be one of ignorance and not through any fault of that officer.

Enforcement levels are subject to the same variations and, if critically looked at in terms of the overall police effort across the span of responsibility, are ridiculously low and inefficient.

There is a need for frequent conferences between enforcement personnel across the States to ensure that there is a consistent approach to enforcement and on-road operational procedures.

PLAGUE OR PANACEA?

Alternative Compliance is neither. The introduction of the system will not see a transport industry left to run riot by fooling a bunch of woolly headed naive auditors - nor will it solve the problems of rogue operators and a poor image on the part of the industry and insufficient enforcement resources.

What it does offer is the “negotiable tightrope” offering a number of benefits which can be summarised as;

- On a national basis an opportunity to have the Ministerial Council set standards to apply across the whole country;

- An opportunity to push reluctant Governments into accepting uniform operating conditions across the country and to abandon political grandstanding at the expense of a very lean industry;

Close to uniform enforcement efforts on the part of the enforcement bodies when dealing with operators who subscribe to the programme;

Greater compliance with current legislation by operators within the programme;

A benefit to those operators in terms of the interaction between their drivers and the enforcement bodies;

The ability of Police Commanders to pay greater attention to those who not only stay out of the scheme but who make no effort to subscribe to the same expected standard of behaviour;

The encouragement of operators not already within the programme to consider the benefits and accept the obligations of participation.

The concept is a positive move away from what has been an almost adversarial situation between the transport industry and regulatory bodies to one of co-operation and mutual recognition.

CONCLUSION

The tight rope of Alternative Compliance stretches before us. It is a workable proposition with gathering support from industry and government.

What it requires is a commitment from all involved to make it work by;

Government co-operation across State boundaries and abstinence from political grandstanding,

Uniform enforcement policies across Australia by negotiation within the various Police Agencies,

Performing to the standard expected by the system,

Demonstrating that performance standard to others, and

Ensuring that those who participate but only give lip service to the system are detected and seen to be dealt with swiftly and appropriately.

With reference to the last point and while it seems a little drastic in our context Chairman Mao summed it up neatly - "Shoot one, educate a thousand" [MAO TSE TUNG]. We could modify it to "successfully prosecute and punish one - educate the others".

In Australia we have demonstrated a willingness to tackle the hard question in dealing with many issues. With co-operation Alternative Compliance can be a model of how to run a financially sensitive industry efficiently and safely.



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