



Ms Megan Bourke-O'Neil
Deputy Secretary, Policy and Innovation
Department of Transport
1 Spring Street
MELBOURNE VIC 3000

26 June 2020

Dear Ms Bourke-O'Neil

REGULATORY IMPACT STATEMENT FOR BUS SAFETY REGULATIONS 2020

I would like to thank your staff at the Department of Transport (the Department) for working with the team at Better Regulation Victoria on the preparation of the Regulatory Impact Statement (RIS) for the proposed Bus Safety Regulations 2020 (the proposed Regulations) to replace the Bus Safety Regulations 2010 (the existing Regulations), which sunset on 12 October 2020.

As you know, the Commissioner for Better Regulation provides independent advice on the adequacy of analysis provided in all RISs in Victoria. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about any assumptions made, and is proportionate to the proposal's expected effects. The RIS also needs to be written clearly so that it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received by us on 25 June 2020 meets the adequacy requirements set out in the Subordinate Legislation Act.

Background

The proposed Regulations are made under the Bus Safety Act 2009 (the Act), which empowers the Safety Director and establishes a system of bus safety regulation. Under the Act, operators of bus services are either accredited operators if they operate any buses that seat 13 or more passengers, or registered operators if they only operate vehicles with between 10 and 12 seats. Accredited operators are subject to greater regulatory control than registered operators, due to the greater risk associated with these bus services.

Bus safety is also affected by some aspects of the *Road Safety Act 1986*, the Commonwealth Australian Design Rules (ADRs) and Heavy Vehicle National Law.

Transport Safety Victoria (TSV) is the regulator responsible for administering and enforcing these regulations, led by the Safety Director.

The proposed regulations:

- prescribe the conditions and form of applications for bus operator accreditation and registration;
- establish duties for operators and bus drivers;
- require operators to keep records;
- prescribe requirements for inspections, reporting and investigation of incidents; set standards for buses and management systems; and
- set out rules for obtaining exemptions from requirements.

Sunsetting is an opportunity to assess the Regulations and make sure that they are still effective in delivering the Government's objectives.

Analysis

In the RIS, the Department assesses options for addressing each problem against its objectives of promoting and improving the safety of bus services while minimising regulatory and compliance costs for industry and enabling effective and efficient compliance monitoring and enforcement of bus safety laws.

The Department uses a proportional approach to analysis, with different methodologies used for different scales of regulatory intervention and data availability. In the RIS, the Department generally compares qualitative discussions of the proposed regulations' benefits with more detailed quantitative estimates of their likely cost.

Vehicle Safety

The Department's preferred option is to substantially remake:

- existing bus standards, which address gaps in in the ADRs;
- existing requirements to establish and maintain a maintenance management system (MMS), which sets out accountabilities, maintenance activities, systems and processes for inspections and reporting requirements; and
- existing requirements for an annual roadworthy inspection.

In addition, the Department proposes to make a new power for the Safety Director to require an operator to conduct additional roadworthy inspections.

The Department conducted an indicative break-even analysis of its preferred option, noting that it was unable to separate the costs of compliance with the Act from the Regulations, or establish to what extent operators would undertake these activities in the absence of regulatory controls. Therefore, the break-even analysis is an indicative estimate of benefits required to offset the costs of the system overall. The total estimated annual cost of these systems is between \$10.5m and \$42m implying a break-even point of between two and six lives saved, or between 30 and 115 serious injuries avoided based on parameter values for a statistical life and the avoidance of serious injuries contained in the Australian Transport Assessment and Planning guidelines.

Safety of Bus Operations

The Department's preferred option is to substantially remake:

- existing requirements to establish and maintain a management information system (MIS), which sets out governance arrangements, communication processes, risk management processes an emergency management plan and related matters;
- existing requirements to install a sign advising the maximum carrying capacity of buses as well as warning lights and signs for school buses; and
- existing requirements for bus drivers to have zero blood alcohol immediately before and while driving a bus;

The Department notes that it was unable to fully separate the costs of compliance with the Act from the additional requirements in regulations. Nonetheless, the Department estimates the total annual cost of these regulations to be approximately \$0.6m per year, which it considers reasonable given the proposal's contribution to safety.

Notifiable Incidents and Bus Incident Investigations

The Department's preferred option is to substantially remake:

- existing requirements for operators to notify the Safety Director of bus incidents that results in actual or potential death, injury, damage to property and other safety relevant incidents; and
- existing powers for the Safety Director to direct operators to conduct incident investigations, including a description of the incident, its causes and recommended actions to prevent future incidents.

The Department proposes to introduce a three-tiered categorisation of bus safety incidents, with the minimum timeframe to notify the Safety Director longer for less

severe incidents. This proposed change would reduce the burden on operators for lower risk incidents.

The Department notes that the annual average number of notifications and investigations respectively are 406 and 27. The expected annual cost of notifications is between \$8,000 and \$20,000 per year. The Department notes that the costs of notifications and investigations are only incurred in response to incidents to address potential safety issues.

Identification and Records

The Department's preferred option is to substantially remake:

- existing requirements for accredited operators to keep records including information on its bus fleet, drivers, documents related to its MIS and MMS, evidence of roadworthy inspections, and other documents related to its safe operation of a bus service.

In addition, the Department proposes to:

- introduce a requirement for registered operators to keep a more limited set of records including records of its bus fleet, evidence of roadworthy inspections and actions taken to rectify defects; and
- require operators to display the accreditation or registration number adjacent to the front passenger loading door, replacing the requirement to have a bus-specific number plate.

The Department estimates the cost of the proposed requirements to be between \$0.85m and \$1.1m, an increase of between \$0.25m and \$0.5m above the existing regulations. However, the Department notes that this represents the upper bound of costs, as operators would already keep many of these documents either for internal purposes or to satisfy other regulatory requirements.

Exemptions

The Act allows bus operators to apply for exemptions from various regulatory provisions. The Department's preferred option is to substantially remake the existing regulations in this space, including:

- the information to be contained in an application for exemption;
- that the provision from which an exemption is sought is excessively onerous or unreasonable and that the exemption will not compromise the safe operation of the bus service; and
- that the exemption can be subject to conditions.

The requirements for exemptions from provisions of the Act and regulations allow a reduction in compliance costs by operators without compromising safety. The Department notes that exemptions are rare; only two have been granted between 2014 and 2019.

Fees

The Department's preferred option is to substantially remake existing fees:

- 40 fee units (\$592.40 in 2019-20 values) for accreditation applications; and
- 20 fee units plus 5.5 fee units (\$1,106.48 for the industry average of approximately 10.95 buses) for each additional bus after the first.

These fees are expected to result in annual revenue of \$0.76m, recouping 17% of BSV's operating costs of \$4.48m per year.

The Department conducted a multi-criteria analysis of fee options, using the criteria of efficiency (weighted at 40%), equity (40%) and compliance (20%).

The highest-scoring option was for full cost recovery and an annual flat fee for registered operators. However, the Department explains that it does not recommend the changing of fee levels and structures at this time, because TSV's responsibilities have recently changed and legislative changes are being contemplated. Both these factors mean that the cost base is likely to change in the near future. The Department commits to reviewing these fees again in the next three to five years.

Implementation and Evaluation

The Department explains that TSV will provide guidance to operators to explain changes before the commencement of the regulations.

That the Department and TSV will also examine opportunities to improve data collection and analysis, such as by improving data sharing between TSV, VicRoads and Victoria Police, is to be applauded.

Should you wish to discuss any issues raised in this letter, please do not hesitate to contact my office on 03 9092 5800.

Yours sincerely



Anna Cronin

Commissioner for Better Regulation
Red Tape Commissioner