

## NATIONAL TRANSPORT COMMISSION REVIEW 2009

### AUSTRALIAN TRANSPORT COUNCIL'S RESPONSE AND RECOMMENDATIONS TO THE COUNCIL OF AUSTRALIAN GOVERNMENTS

#### Introduction

1. Under the *National Transport Commission Act 2003* (the NTC Act) and the Intergovernmental Agreement for Regulatory and Operational Reform for Road, Rail and Intermodal Transport (the IGA), the Australian Transport Council (ATC) is required to review the operation of the NTC Act and the IGA no later than the sixth anniversary of the commencement of the NTC Act (6 September 2009).
2. In November 2008, the ATC commissioned an independent Steering Committee to conduct this review. The Review Steering Committee members comprised Mr Bruce Wilson AM (Chair), former Director-General of Queensland Transport, Dr Tania Whyte, President Commercial, Linfox Logistics and Mr Adam Lewis, a Director of McKinsey and Company. The report of the Steering Committee was received by the Chair of the ATC on 26 August 2009.
3. The ATC is also required to give a written report of the review to members of the Council of Australian Governments (COAG) on the future role of the National Transport Commission (NTC), including recommendations on whether the NTC should continue and whether the NTC Act should be repealed or amended, and the reasons for these recommendations.
4. Overall, the review provides a range of advice and recommendations (the Executive Summary of the review is attached) that seek to strengthen the NTC's capacity to lead and deliver effective transport regulation in Australia. ATC welcomes and broadly supports the report, noting the emphasis on such key themes as policy planning, development and implementation, data and research, prioritisation and transparency of consultation processes. ATC's proposed response to the review is presented below for the consideration of COAG members.

#### The Significance of the Review and Direction of Response

5. The transport industry is essential for Australia's economic and social well-being and faces many significant challenges. These challenges need to be addressed with nationally consistent approaches and implemented across all Australian jurisdictions.
6. The review has noted, and ATC ministers acknowledge, that the NTC has a strong record of generating regulatory reform concepts and model legislation. ATC ministers also concur with the review's underlying observation that the current process of regulatory reform often falters at the implementation stage. The current rate of harmonisation must increase if the nation is to improve transport productivity, efficiency, safety and environmental performance to meet the challenges that lie ahead.
7. ATC strongly supports the Review's observation that policy planning and development must be led by Governments. ATC is driving the national reform agenda through its agreed national vision and objectives for transport's role in developing the Australian economy, including the development of data and research to assist the reform agenda.

8. The key ATC priority, as agreed by COAG, is the development and implementation of national regulatory frameworks for heavy vehicles, rail safety and investigations and maritime safety. Consistent with this, a key tenet of ATC's development of national heavy vehicle and rail safety regulators is to reduce the degree of variations in the adoption of nationally agreed reforms. ATC has also agreed that capacity for local productivity variations will be retained in the new arrangements. In addition, ATC is overseeing on COAG's behalf the research and other studies which will provide the basis for a feasibility study of more direct pricing options for heavy vehicles as recommended in the report of Phase I of COAG's Road Reform Plan (CRRP).
9. Successful implementation of these agendas will significantly shape the NTC's future role, structure and resourcing. In particular, ATC ministers expect that each of the national regulators would in future have as a major part of their roles the development of operational reform, and successful implementation of effective regulation in their respective spheres of responsibility. Future national regulators will also be significant sources of advice to ATC as to the appropriateness of various regulatory measures and possible regulatory reform opportunities. The balance between the role of a national "regulatory policy reform advisory body" such as the NTC and the national regulators will be more clearly understood in light of the creation and initial operations of the regulators.
10. To ensure the continuing correct alignment of arrangements for the NTC's regulatory policy reform role in a dynamic industry future, ATC ministers propose that a further review of the NTC, the NTC Act and the IGA would be necessary in three years, with timing to be considered further as the single national regulator work develops. ATC will keep this issue under notice and make a further recommendation to COAG in due course.
11. In the meantime, the NTC's overwhelming priorities must be through active engagement and leadership in project offices responsible for implementing national regulators in the heavy vehicle and rail safety areas. The NTC's leadership is essential in ensuring that each of these regulators come into being with regulation to administer that meets best practice principles of efficiency and effectiveness and which improves safety outcomes for the community and productivity for industry. Given the NTC's staff expertise in the area, the NTC is also leading the pricing reform stream of the CRRP work and should continue to give this a very high priority. Such engagement for the NTC's current staff will best secure their future flexibility to respond to any changes to institutional structures which might be identified through that subsequent review.
12. ATC welcomes the review's recognition of the important role of consultation. The NTC has built effective relationships across a range of industry stakeholders and the ATC agrees that the NTC must continue to build those relationships, including with the rail industry, smaller industry participants and local governments. ATC is also embedding stakeholder engagement strategies within its key projects. For example, the CRRP Project Board and Project Team have commenced engagement with stakeholders on the reforms to heavy vehicle road charging and funding.
13. ATC further welcomes the review's observation that NTC Commissioners should be more active advocates for the implementation of the priority work. The geographical and skills breadth of the NTC Commissioners provide opportunities for Commissioners to provide significant input to the regulatory reform priority projects identified above.

## Governance

14. ATC ministers also affirm that future governance arrangements for Commonwealth-administered bodies such as NTC must adhere to current best practice in governance, reporting and accountability. Accordingly, the review's proposal to ensure that the NTC's governance is in accordance with the *Commonwealth Authorities and Companies Act 1997* (CAC Act) is fully supported. At present, the NTC Act applies the CAC Act's financial management and annual reporting provisions. By coming fully under the CAC Act, the NTC would be also subject to:
  - Enforceable conduct rules for the NTC's Commissioners and senior managers;
  - Strengthened provisions on the content of, and accountability to, the strategic plan;
  - Keeping the Minister informed on operations and significant events (in addition to annual reporting) and providing other reports/information as required; and
  - The Commonwealth Finance Minister's policies for Commonwealth authorities (e.g. reporting, financial, protective security).
  
15. This would involve a number of legislative amendments to the NTC Act, including:
  - Repealing Section 38 and inserting a note under Section 5(2) to state that the CAC Act to the applies to the NTC; and
  - Amending or repealing other sections (e.g. Sections 19(2) and 31) to appropriately align the NTC Act with the CAC Act.
  
16. Consistent with the IGA, details of amendments will need to be fully considered and developed in conjunction with jurisdictions and with the appropriate legal areas of the Commonwealth Department of Finance and Deregulation and the Office of Parliamentary Counsel. At this stage, ahead of the future review noted above, there does not appear to be a formal need to amend the IGA. This reflects the review's advice and recommendations being broadly consistent with the IGA. ATC will advise COAG further if any earlier amendments to the IGA appear necessary.
  
17. Amendments to the NTC Act could be progressed simultaneously with proposed amendments to the Financial Framework Legislative Amendment Bill due to be considered by the Federal Parliament in February/March 2010.

## Further Response to Individual Recommendations

18. In addition to the broad review response identified above, ATC ministers' further responses to the NTC Review's individual recommendations are set out below.

<b>Review Recommendation</b>	<b>ATC Response</b>
1. The NTC should continue as an independent statutory authority.	Agree, noting that in light of implementation of the national regulators for heavy vehicles and rail safety, a further review will be required to determine an appropriate balance between regulatory policy reform development and implementation responsibilities.
2. The NTC's primary objective should be to achieve seamless national regulation of road, rail and intermodal transport where national regulation drives improved transport safety, productivity, efficiency and environmental performance.	Agree. ATC directs the NTC to ensure its work program is focused on the priority regulatory reform agenda. In addition, the ATC may request the NTC to explore broad transport related issues and provide independent expert advice to policy makers.
3. The NTC's mandate under the IGA should be explicitly expanded to include responsibility for working with jurisdictions to develop viable implementation plans to deliver desired reform outcomes.	Agree in principle, noting that this role will need to be considered further as the single national regulator work develops and that formal amendment of the IGA does not appear necessary to achieve this. ATC directs the NTC to work with jurisdictions to develop implementation plans.
4. The NTC should develop a post-implementation review process on key reforms to review practical outcomes of regulatory reform and update or modify reforms where needed.	Agree. ATC directs the NTC to develop the proposed process, in consultation with jurisdictions, for consideration at the first ATC meeting in 2010.
5. The NTC should continue to report to, and be held accountable by, the ATC for the achievement of seamless national regulation of road, rail and intermodal.	Agree. Regular reports on progress are to be brought to ATC after due consideration by transport agency chief executives.

<p>6. The ATC should set a short list of focussed priority projects for the NTC, which remain consistent over time so that the NTC can drive reforms through to impact in a timely manner.</p>	<p>Agree. ATC will provide direction to the NTC on priority projects. For 2009-10 to 2011-12 ATC requires the highest priority to be NTC's contributions to developing national heavy vehicle laws and rail safety law to be administered by the national regulators under development and to heavy vehicle pricing reform work contributing to the COAG Road Reform Plan.</p>
<p>7. The NTC should regularly report to the ATC on progress of priority projects, including reform development, implementation and impact.</p>	<p>Agree. The NTC, in consultation with jurisdictions, will develop an activity and performance reporting system for approval by ATC in line with the review recommendation.</p>
<p>8. The NTC Commissioners should be appointed as a governing board under the Commonwealth Authorities and Companies Act 1997 (CAC Act).</p>	<p>Agree. Consistent with the IGA, amendments to the NTC Act will be developed by the Commonwealth in consultation with jurisdictions.</p>
<p>9. A Director's Charter should outline the roles and responsibilities of the NTC Chair, Commissioners and CEO, and their performance should be reviewed on a regular basis.</p>	<p>Agree. ATC will develop a Director's Charter and direct the Commissioners to establish a regular review process.</p>
<p>10. The ATC should establish a two-stage sign-off process for national regulatory reforms facilitated by the NTC. Stage one would comprise in-principle agreement to the draft reform (as per the current process) plus agreement on the desired outcomes of that reform and metrics to measure those outcomes. Stage two would comprise approval of a national implementation plan (made up of individual jurisdictional plans) and any modifications required to the original proposal as a result of the national implementation plan. Stage two sign-off would occur before implementation commences.</p>	<p>Agree. The NTC will develop a process for a two stage sign off that includes the development of implementation plans. The process will inform future regulatory reform development and implementation. Where feasible, these two stages could be combined into one comprehensive package inclusive of implementation plans.</p>
<p>11. The NTC should continue to build the effectiveness of its external consultation to ensure all stakeholders are heard and informed.</p>	<p>Agree. As part of the reform process, the NTC is to report on stakeholder feedback, its appropriateness and the extent to which reforms have been adjusted in light of the stakeholder feedback.</p>
<p>12. The NTC Commissioners should be more active advocates for the implementation of priority projects.</p>	<p>Agree. This recommendation will be given effect through the Director's Charter to be developed by ATC.</p>

13. The NTC CEO should be a formal member of the Standing Committee of Transport (SCOT).	Agree.
14. The NTC should evolve its mix of staff skills to become a centre of excellence for implementing national regulatory reform for road, rail and intermodal.	Agree. Staff skills that support and improve the NTC's technical capacity to fulfil its primary role should be given priority.
15. The NTC should submit an annual resourcing plan to the ATC for approval, commensurate with the scope and timing of priority projects as determined by the ATC. The resourcing plan should be broken down at a project level over the lifetime of projects and also include overheads and administration costs.	Agree. The plan should be submitted to ATC through jurisdictions. It should also identify for the year ahead the specific products and reports on which the NTC will consult publicly or seek ministerial approval.
16. The NTC's current level of funding should continue, at least until any changes occur in the work program as a result of the implementation of Recommendation 15.	Agree. ATC notes that the level of funding of the NTC will need to be reviewed further as the single national regulator work develops.

Australian Transport Council  
November 2009

Endorsed by the Council of Australian Governments, including for publication  
7 December 2009.

## Executive summary from the Report by the National Transport Commission Review Steering Committee

### The transport industry

The transport industry is vital for Australia's well-being. It is essential for our economic and social well-being, directly contributes around five per cent of Australia's GDP, and employs one in seven Australians.

However, the industry faces many significant challenges such as: improving road safety; reducing regulatory inconsistency; overcoming infrastructure constraints; establishing a national framework for infrastructure investment and planning; and addressing urban congestion and environmental sustainability. Nationally consistent regulation and coordinated infrastructure investment are essential to tackle most of these issues. To have a real impact, we require not only well considered regulation reforms and investment, but also effective implementation across all jurisdictions.

### The National Transport Commission

The National Transport Commission (NTC) was established in 2003 when the former National Road Transport Commission expanded to include rail and intermodal transport reform. It reports to the Australian Transport Council (ATC), comprising Australian and New Zealand transport ministers.

The NTC has a strong record of generating regulatory reform concepts and model legislation. However, the process often falters at the implementation stage. The current slow rate of harmonisation cannot continue if we are to improve transport productivity, efficiency, safety and environmental performance to meet the challenges that lie ahead.

The NTC needs to be able to focus on agreed priority projects within its scope, and to follow through with a stronger role in facilitating implementation of reform across jurisdictions. Change is required across the whole system. However, we also need to be practical about what we can achieve. Our recommendations are cast in that light.

### Our recommendations

#### The NTC's scope and mandate

- Recommendation 1: The NTC should continue as an independent statutory authority.
- Recommendation 2: The NTC's primary objective should be to achieve seamless national regulation of road, rail and intermodal transport where national regulation drives improved transport safety, productivity, efficiency and environmental performance.
- Recommendation 3: The NTC's mandate under the IGA should be explicitly expanded to include responsibility for working with jurisdictions to develop viable implementation plans to deliver desired reform outcomes.

- Recommendation 4: The NTC should develop a post-implementation review process on key reforms to review practical outcomes of regulatory reform and update or modify reforms where needed.

### **The NTC's governance**

- Recommendation 5: The NTC should continue to report to, and be held accountable by, the ATC for the achievement of seamless national regulation of road, rail and intermodal.
- Recommendation 6: The ATC should set a short list of focused priority projects for the NTC, which remain consistent over time so that the NTC can drive reforms through to impact in a timely manner.
- Recommendation 7: The NTC should regularly report to the ATC on progress of priority projects, including reform development, implementation and impact.
- Recommendation 8: The NTC Commissioners should be appointed as a governing board under the *Commonwealth Authorities and Companies Act 1997* (CAC Act).
- Recommendation 9: A Directors' Charter should outline the roles and responsibilities of the NTC Chair, Commissioners and CEO, and their performance should be reviewed on a regular basis.

### **The NTC's operations**

- Recommendation 10: The ATC should establish a two-stage sign-off process for national regulatory reforms facilitated by the NTC. Stage one would comprise in-principle agreement to the draft reform (as per the current process) plus agreement on the desired outcomes of that reform and metrics to measure those outcomes. Stage two would comprise approval of a national implementation plan (made up of individual jurisdictional plans) and any modifications required to the original proposal as a result of the national implementation plan. Stage two sign-off would occur before implementation commences.
- Recommendation 11: The NTC should continue to build the effectiveness of its external consultation to ensure all stakeholders are heard and informed.
- Recommendation 12: The NTC Commissioners should be more active advocates for the implementation of priority projects.
- Recommendation 13: The NTC CEO should be a formal member of the Standing Committee on Transport (SCOT).

### **The NTC's resources**

- Recommendation 14: The NTC should evolve its mix of staff skills to become a centre of excellence for implementing national regulatory reform for road, rail and intermodal transport.
- Recommendation 15: The NTC should submit an annual resourcing plan to the ATC for approval, commensurate with the scope and timing of priority projects as determined by

the ATC. The resourcing plan should be broken down at a project level over the lifetime of projects and also include overhead and administration costs.

- Recommendation 16: The NTC's current level of funding should continue, at least until any changes occur in the work program as a result of the implementation of Recommendation 15.