



AUSTRALIAN LOGISTICS COUNCIL

APRIL 2015

ALC SUBMISSION TO THE NATIONAL TRANSPORT COMMISSION REVIEW



THIS SUBMISSION HAS BEEN PREPARED WITH THE
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SUMMARY OF ALC VIEW

Retention of the National Transport Commission (NTC)

The general view of the Australian Logistics Council is that whilst in the intermediate to long term modal specific national regulators may take over relevant policy responsibilities, for the time being the NTC should be retained, although some changes could be made to its governance structures.

They include:

1. Redrafting the *Inter-governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport (the IGA)* so it reflects the modern COAG structure.
2. Amending Part 3 of the *National Transport Commission Act 2003* (the **NTC Act**) so Commissioners are required to have experience in industry, law, economics, transport or freight chain operations. Government administrators should not sit as Commissioners.
3. Considering the establishment of an inquiries mechanism similar to Part 3 of the *Productivity Commission Act 1998* so as to allow Commissioners to gather evidence in a manner similar to the Productivity Commission.
4. Requiring any NTC report containing recommendations to be presented straight to the Transport and Infrastructure Council Secretariat (**TIC**) secretariat and not to the Transport and Infrastructure Senior Officials Committee (**TISOC**) beforehand.
5. Amending Clause 11 of the IGA, which sets out how the NTC work programme should be developed, to make clear a proposed reform project only needs to go to TIC once and not twice, as well as to allow TIC to require NTC to conduct a reform project to address urgent needs in the Australian supply chain.
6. To remove the effective jurisdictional veto that exists under the current voting protocol, the protocol contained in clause 9 of the IGA should be reinstated. This requires only a simple majority for reforms to proceed in most cases, which should encourage the earlier adoption of reform.
7. Finally, after the future role of NTC has been determined, the skill sets required for the delivery of relevant outputs should be identified and staff possessing those skills engaged.

Absorption of Austroads

The two bodies have similar 'owners'. They also have interests in similar subject areas. A current example is the issue of the funding of roads.

There is no reason why NTC cannot manage the project development process and manage outcomes, particularly if the staff review discussed above is implemented.

The general view of ALC therefore is that for reasons of economies of scale and elimination of duplication arising from having different research arms effectively owned by the same entities (governments) investigating the same thing, Austroads could be absorbed into NTC.

Were this to occur, there is some scope to consider whether the NTC Board should have oversight of the operation of the ARBB Group.

Alternatively, if this recommendation is not accepted Austroads should be specifically tasked with technical issues that relate to the operation of roads such as bridge and pavement analysis, traffic engineering, traffic network optimisation, road safety infrastructure and direction signing, and leave other matters such as law enforcement and road safety to other agencies with more direct responsibilities.

NTC projects

It is noted that the IGA is an agreement for 'regulatory and operational reform in road, rail and intermodal transport'.

However, a review of the current NTC work programme reflects its heavy emphasis on road-related projects.

ALC also observes that for historical reasons NTC has not considered 'supply side' reform projects.

Accordingly, the general view of ALC is that future projects should be assessed on a 'whole of supply chain' basis, with resources donated to those projects that best advance the interests of the Australian supply chain as a whole rather than concentrate on just one mode alone.

Suggestions for possible projects have been requested.

Possible candidates include:

1. Creating a mandatory requirement for heavy vehicles to record certain data requirements, using telematics devices;
2. A national economic rail regulator for (to commence with) interstate railway lines;
3. Consideration of the desirability of operator licensing of heavy vehicles in Australia.

ALC SUBMISSION TO THE NATIONAL TRANSPORT COMMISSION REVIEW

The Australian Logistics Council (ALC) welcomes the opportunity to make a submission to the 2015 Review of the National Transport Commission (NTC).

Background

What is now the National Transport Commission grew out of the microeconomic reform process commenced during the special premiers' conferences of 1990 and 1991.

These conferences established what was called national competition policy and had as one of its goals, uniformity and consistency in road transport regulation.¹

Clause 5 of the 2002 *Inter-governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport (the IGA)* subsequently set out the modern functions of NTC.

Responsibilities conferred under this agreement include (amongst other things) the development of uniform or nationally consistent regulatory and operational arrangements for road, rail and intermodal transport.

It also confers on the NTC the responsibility to develop road use charging principles, until such a time as the (then existing) Australian Transport Council decides that another organisation should undertake the function.²

For the last 3-4 years ALC has advocated for the abolition of NTC.

This position was taken because:

- » of dissatisfaction as to the length of time that NTC was taking in coming to conclusions about matters it was looking into; as well as
- » the fact that national road and rail safety laws and sectoral regulators had been created; the time had come to disperse the responsibilities exercised by NTC to other entities better placed to exercise those functions.

However, it is clear that for the time being the National Heavy Vehicle Regulator is insufficiently mature to immediately pick up broader road transport policy and regulation making responsibilities.

Similarly, the National Rail Safety Regulator still has a very narrow remit, with limited jurisdictional appetite to provide further responsibilities to this regulator.

Commitment to the development of genuinely national regulation of the transport sector has also slowed.

Whilst in the intermediate to long term modal specific national regulators may take over relevant policy responsibilities, for the time being the general view of ALC is that the NTC should remain.

However, some improvements in (particularly) process are necessary.

Operation of the Commission

NTC as thought leader

The general view of ALC is that the NTC should be the 'thought leader' in transport and supply chain issues.

It should be independent of the bureaucratic process and should provide unfiltered advice to governments.

The current structure of NTC would appear to restrict this capacity.

As indicated in the Scoping Paper prepared for this review:

The (2012) Review (contained in a document called *2012 Review of the National Transport Commission and Other Relevant Transport Bodies* conducted by members of the Transport and Infrastructure Senior Officials' Committee (TISOC) considered the slow implementation of agreed reform..... The 2012 Review also proposed governance changes through a performance based framework to set and monitor the NTC's work program. Under the framework adopted in 2013, the Council gave TISOC the new role of oversight for the NTC's reform implementation planning and performance monitoring.

¹ Discussed generally in Moore and Starrs *Road Transport Reform in a Federal System* presented at 18th Australasian Transport Research Forum, 29 September – 1 October 1993

² See particularly paragraphs 5(1)(a) and 5(1)(c)(i) of the IGA.

Governance of the NTC was (also) examined by the 2012 Review. It sought to improve jurisdictional ownership of NTC's reform agenda through Commissioner appointments. The Standing Council gave in-principle agreement to the recommendations, including that two of the five ordinary members of the NTC be filled by the Chair and one other member of TISOC, a third ordinary member be chosen on the basis of their industry knowledge and their ability to drive productivity reform in transport, and the Chair and Deputy Chair be chosen for their governance skills and their ability to drive organisational performance.³

The Scoping Paper also noted that the key propositions of the report in relation to the NTC's reform work were:

- » National law voting arrangements – moving to unanimous voting arrangements in line with broader COAG council requirements (model laws used majority voting arrangements, which significantly weakened harmonisation and therefore productivity and regulatory outcomes).
- » The relationship between the NTC and jurisdiction departments of state – no expansion of NTC's current role, but a greater role for jurisdiction transport departments in determining the work program (with better defined outcomes and stronger prioritisation of activities).
- » Strengthened monitoring and evaluation functions and implementation planning.
- » Reform to the Commission's composition, with TISOC representation.⁴

The pre-existing IGA voting principles and the new arrangements were integrated into a standalone 'voting protocol' adopted by the Council in May 2013 to replace the voting arrangements set out in the IGA to a scheme that requires most votes to be unanimous.⁵

Whilst a clear attempt has been made to give effect COAG requirements⁶, it has not worked very well in practice.

There is a perception that recommendations are developed in a way that will 'get through TISOC' (and then in turn 'what will get through TIC') rather than what is considered as being best practice.

To that extent it is noted that one of the changes is for two of the five Commissioners to be public servants who are members of TISOC in order to 'improve jurisdictional ownership of the NTC Reform Agenda'.⁷

It is also noted that recommendation 7 of the 2012 Review requires NTC to:

finalise detailed implementation plans for consideration **and agreement** by TISOC (given TISOC's role in implementing the reforms).
(emphasis added)

Finally, the need for unanimity in decision making effectively gives each jurisdiction a veto power. This again creates the perception that reforms giving effect to the lowest common denominator will only gain passage.

Project Selection

The way projects are selected is slow.

Currently, NTC prepares a 'candidate' project for the consideration of TIC. If approved, a business plan for a draft project is prepared which is then again submitted to TIC for approval.

The effect of this double approval process means that it can take up to 2 years for a proposal to become a fully-fledged project.⁸

Given the dynamic nature of the transport and logistics industry, this process can mean that matters requiring urgent consideration cannot receive the prompt attention that the subject matter deserves.

3 Australian Government 2015 *Review of the National Transport Commission-Scoping Paper* (2015): 7

4 Ibid: 6-7

5 As set out in a document called *Transport and Decision Making (Voting) Protocol*

6 As contained in the documents *Handbook for COAG Councils: A Guide for Best practice Operations for COAG Council Secretariats*

7 Recommendation 3 of the *2012 Report*

8 Clause 11 of the IGA anticipates that projects must be developed in accordance with the NTC Strategic Planning and Work Program be submitted to what is now TIC before they commence, but the IGA does not seem to suggest that the current 'two approval' approach is required.

As an example, an ALC member with an interest in testing the proposition as to whether there should be national economic regulator for the rail sector was simply told that it would be at least 2 years before the issue could be considered.

This is unsatisfactory.

Staff capacity

ALC has previously noted that NTC participates in policy developments in areas as wide as:

- » the technical areas dealt with by the Heavy Vehicle National Law and the Rail Safety National Law,
- » developing corporate approaches to transport safety,
- » the desirability of in vehicle telematics,
- » the development of a heavy vehicle pricing regime,
- » the development of laws for the carriage of dangerous goods,
- » development of an intelligence access to infrastructure programmes,
- » developing processes to improve level crossing safety; and
- » participating in the development of a national ports strategy.

This is not an exhaustive list.

All of these policy areas require different skill sets. ALC has previously suggested that an administrative body such as NTC constituted largely by a small body of generalist administrators covering this breadth of policy is not best placed to provide the technical policy advice necessary for TIC to make informed decisions.

This was the response to one of the recommendations contained in the previous 2009 review of NTC:

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.

Possible reforms

There are a number of reforms that could be adopted.

A genuinely independent Commission

Part 3 of the *National Transport Commission Act 2003 (the NTC Act)* currently allows the Commonwealth Minister to appoint Commissioners, on the nomination of (what is now) TIC.

The Act does not require Commissioners to possess any specific qualifications.

ALC believes that transport administrators should not sit on the Board; rather, the Commission should constitute people who are leaders in the transport field.

Section 7 of the *Competition and Consumer Act* establishes who may be a Commissioner of the Australian Competition and Consumer Commission and how they are appointed.

It reads:

Constitution of Commission

1. The Commission shall consist of a Chairperson and such number of other members as are from time to time appointed in accordance with this Act.
2. The members of the Commission shall be appointed by the GovernorGeneral and shall be so appointed as fulltime members.
3. Before the GovernorGeneral appoints a person as a member of the Commission or as Chairperson, the Minister must:
 - a. be satisfied that the person qualifies for the appointment because of the person's knowledge of, or experience in, industry, commerce, economics, law, public administration or consumer protection; and
 - b. consider whether the person has knowledge of, or experience in, small business matters; and

- c. if there is at least one fully participating jurisdiction—be satisfied that a majority of such jurisdictions support the appointment.
4. At least one of the members of the Commission must be a person who has knowledge of, or experience in, consumer protection.

The general view of ALC is that the NTC Act should be amended in a similar manner, with Commissioners to have experience in (and not just ‘knowledge of’) industry, law, economics, transport and supply chain operations.

Consideration could also be given to establishing an inquiries mechanism similar to Part 3 of the *Productivity Commission Act 1998* so as to allow these experienced Commissioners to gather evidence in a manner similar to the Productivity Commission.

This would give industry participants confidence that the recommendations that go to TIC have gone through a transparent, rigorous process and create a requirement to articulate why an NTC recommendation has been varied or not accepted.

In any event, any NTC report containing recommendations should be presented straight to the TIC secretariat and not to TISOC beforehand.

Senior Departmental officers will always have the opportunity to advise their ministers as they prepare for TIC meetings.

This approach will again give industry comfort that NTC recommendations are designed to give effect to best practice, and not just what the Commission thinks will get through the bureaucracy.

Clause 11 of the IGA effectively sets out how the NTC work programme should be developed.

It should be amended so that a proposed reform project is only required to go to TIC once and not twice.

The IGA (which should be generally rewritten in any regard to reflect the modern COAG structure) should also be amended so that TIC can require NTC to conduct a reform project to address urgent needs in the supply chain.

To remove the effective jurisdictional veto, the voting protocol contained in clause 9 of the IGA should be reinstated. This requires only a simple majority for reforms to proceed in most cases, which should encourage the earlier adoption of reform.⁹

Finally, after the future role of NTC has been determined, the skill sets required for the delivery of relevant outputs should be identified and staff possessing those skills engaged.

Absorption of Austroads

There is some scope for NTC to absorb Austroads.

The two bodies have similar ‘owners’. They also have interests in similar subject areas. A current example is the issue of the funding of roads.

Moreover, Austroads have been increasingly becoming involved in general policy areas such as investigations to ‘determine the benefits of compliant behaviour in the freight context’ as well as ‘improving high productivity access through potential charging regimes’¹⁰ – projects that one would have thought would have been conducted by NTC.

It is finally noted that memoranda of understanding have needed to be signed between Austroads and NTC. It appears odd that agencies with the same ‘owners’ require the signing of MOUs to govern their relationship.

There is no reason why NTC cannot manage the project development process and manage outcomes, particularly if the staff review discussed above is implemented.

⁹ Attachment B of the IGA lists the matters not requiring a simple majority. They are largely ‘constitutional’ in nature. Changes to the road use charging principles require a 2/3 majority.

¹⁰ Two current projects listed in the 2013-17 Austroads Freight Program. It should be noted that proposed project FS 2032 (*Compliance and Productivity*) has been deferred until the fate of the business case for proposed NTC project *Better understanding the costs of compliance for the land transport industry* has been determined.

The general view of ALC is that for reasons of economies of scale and elimination of duplication arising from having different research arms effectively owned by the same entities (governments) investigating the same thing, Austroads could be absorbed into NTC.

Were this to occur, there is some scope to consider whether the NTC Board should have oversight of the operation of the ARBB Group. Alternatively, if this recommendation is not accepted Austroads should be specifically tasked with technical issues that relate to the operation of roads such as bridge and pavement analysis, traffic engineering, traffic network optimisation, road safety infrastructure and direction signing, and leave other matters such as law enforcement and road safety to other agencies with more direct responsibilities.

Possible projects

It is noted that the IGA is an agreement for 'regulatory and operational reform in road, rail and intermodal transport'.

However, a review of the current NTC work programme reflects its heavy emphasis on road-related projects.

It is for this reason that some ALC members with specific interest in rail do not favour the continuation of NTC in its current form.

ALC also observes that for historical reasons NTC has not considered 'supply side' reform projects.

Accordingly, the general view of ALC is that future projects should be assessed on a 'whole of supply chain' basis, with resources donated to those projects that best advance the interests of the Australian supply chain as a whole rather than concentrate on just one mode alone.

Suggestions for possible projects have been requested.

They include:

Telematics

Recommendation 3 of the 2015 Competition Policy Review (otherwise known as the **Harper Report**) is:

Governments should introduce cost reflective road pricing with the aid of new technologies, with pricing subject to independent oversight and revenues used for road construction, maintenance and safety.

To avoid imposing higher overall charges on road users, governments should take a cross jurisdictional approach to road pricing. Indirect charges and taxes on road users should be reduced as direct pricing is introduced. Revenue implications for different levels of government should be managed by adjusting Australian Government grants to the States and Territories.

whilst the Treasury's 2015 tax discussion paper *Re: think* said:

User Charges

Cost-reflective road pricing (or user charging) has been supported as a means to promote efficient investment in road transport, improve congestion and reduce vehicle costs. The Productivity Commission in its inquiry into Public Infrastructure recommended that the Australian Government actively encourage state and territory governments to undertake pilot studies of user charging for light vehicles.

The Government supported this recommendation in principle as a long-term reform option. However, it also noted that user charging for roads was a complex issue and that matters like equity, as well as technological and privacy implications, would also need to be considered.

Most recently, the Competition Policy Review Draft Report recommended governments introduce cost-reflective road pricing and work across jurisdictions to reduce indirect charges and taxes on road users, as direct pricing is introduced.¹¹

ALC notes:

- » that the Harper Review published a ‘road map’ suggesting that within 12 months of agreeing their recommendation, a working group of Australian Government and state and territory transport and treasury officials should be commissioned to develop pilots and trials¹²; and
- » in May 2014, the Transport and Infrastructure Council of COAG agreed to commence work to implement a series of initial investment and access reform measures aimed at increasing transparency and improving the quality of services that road agencies provide to heavy vehicle operators.

It would appear to be duplicative for NTC to be directly involved in this process. However, value could be added to the process if NTC developed as a matter of priority a project that considered the mandatory use of telematic systems in long haul heavy vehicles.

ALC has long argued for this outcome. A so-called ‘candidate project proposal’ is slowly moving through the current project approval system, which argues in favour of the proposal because of the benefits to safety that the mandatory recording of (amongst other things) the latitude, longitude and of heavy vehicles was recorded.

This data also would have a role in direct charging of vehicles—something that is slowly but surely being developed by Australian governments.

The proposed telematics project should therefore be advanced as a matter of priority.

Economic Regulator for Rail

The economic regulation of utilities is also a developing issue.

As ALC said in its submission to the Competition Review:

ALC notes the Panel’s recommendation on pages 295-297 of the Draft Report for a single national access regulator for utilities. ALC has long supported the idea of national institutions being responsible for the seamless administration of services essentially provided within a national market.

For that reason, it has supported the establishment of institutions such as the National Heavy Vehicle Regulator and the Office of National Rail Safety, and is attracted to the establishment of a body suggested by the Panel. ALC notes that the Productivity Commission considered such an idea in its Draft Report on Public Infrastructure, before recommending that roads be funded using the ‘building block’ methodology with funds drawn from state based road funds. As a first step, a single economic rail regulator could be established.

The benefits of this approach are:

1. A single economic regulator would reduce uncertainty — as it delivers a consistent approach to key regulatory rules — e.g. cost of capital, contracting approaches, network rules;
2. The regulatory regime would differ according to circumstances: for instance there would be different rules for grain versus coal networks, different rules for vertically integrated versus non-vertically integrated track providers. However, any differences would have an economic rationale;
3. Having a single national economic regulator would reduce the risk of regulatory capture;
4. The volume of rail work for the national regulator would allow for the creation of a specialised centre of rail expertise rather than spread over six different organisations, as is currently the case; and
5. The movement of freight across state borders by rail would have the same access rules throughout the country, an appropriate outcome given the effective single national market that exists in Australia in the 21st Century.

The ultimate Harper recommendation was to create a single national Access and Pricing Regulator that would have regulatory responsibilities in the telecommunications, water and energy industries as well as having vested given to the ACCC.¹³

However, as explored at an NTC ‘IAG Rail Workshop’ meeting held at NTC on 26 November 2014, there is some desirability for national consistency in pricing and access decisions with regards to, at first, interstate railway lines.

¹² See page 490

¹³ Recommendation 50

This issue is another matter that should be reviewed as soon as possible.

Heavy vehicle operator licensing

Finally, as ALC indicated in its submission on the Heavy Vehicle Roadworthiness Program Consultation Regulation Impact Statement:

Some ALC members have expressed concern that even the current proposals are insufficient to capture marginal operators who 'cut corners' to maintain viable vehicles, to the commercial detriment to those operators who 'play by the rules', including those relating to vehicle safety.

They point to the fact that it is largely the financial capacity of the operator that governs how well the vehicle is maintained.

It is also noted that pages 7 and 8 of the Frontier analysis observed the presence of capability constraints (of a technical and informational nature) and cognitive biases (particularly in the presence of financial and managerial constraints) in some operators.

In that context, the introduction of operator licensing could be considered.

Using the United Kingdom as an example, an operator would have to display that they:

- » are of good repute and fit to hold a licence;
- » have sufficient financial standing to run a business;
- » have good enough facilities or arrangements to maintain vehicles; and
- » are capable of ensuring that the company and its staff obey all laws before they can be licensed.

The issue of operator licensing was effectively scoped out of consideration in this RIS process.

It would appear to be an issue that some regulators, as well as some industry participants, consider as being an issue worthy of investigation.

Given this, it may be appropriate for NTC to include in its work program a project on operator licensing of heavy vehicles in Australia.

Australian Logistics Council

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