



Submission on the 2015 Review of the National Transport Commission

30 April 2015

Key Points

The current board governance arrangements of the National Transport Commission (NTC) are inconsistent with its role as a trusted expert advisor to governments on transport policy and reform. This is because the size and operation of the NTC's board means that Commissioners are unable to adequately direct and oversight the analysis undertaken to support its decisions.

Governments should be clearer about the role of the NTC in the framework for policy and reform options development affecting the transport sector. In our opinion, the NTC's role should be as a trusted expert advisor to governments on policy and reform matters affecting the transport sector.

Lessons can be drawn from the board structure and governance arrangements applying to agencies responsible for similar activities as the NTC, but in the electricity and water sectors.

We therefore recommend that:

- the number of Commissioners be reduced to three, with one Commissioner appointed as the Chair;
- at least one Commissioner be appointed on a full-time basis, with the remaining on either a full or part-time basis;
- the Commissioners in combination have expertise in economics, law, transport, and at a senior executive level in either the public or private sectors;
- a Chief Executive Officer be appointed, with responsibility for implementing the decisions of the Commission, and administering the day-to-day operations of the organisation; and
- the Commission meet weekly so as to lead the development of its advice to governments.

1. Introduction

HoustonKemp welcomes the opportunity to provide our perspectives on the matters raised as part of the 2015 review of the National Transport Commission (NTC).¹ Our perspective stems from our extensive experience working with regulators spanning the breadth of the energy, transport, water and gas

¹ Department of Infrastructure and Regional Development, (2015), *2015 Review of the National Transport Commission*, Scoping Paper, Canberra.

infrastructure sectors in Australia, New Zealand and Singapore. In particular, a number of our staff were at the forefront of efforts to put in place the governance and institutional arrangements applying in particular to the electricity sector in Australia, and so we are familiar with the matters that were taken into account as part of the development of those arrangements.

This submission focuses on how to improve the effectiveness of the NTC in its role as an expert advisor to governments on transport policy and reform generally, and heavy vehicle charges in particular. In our opinion, there is a need to more closely align the skills and experience of the Commissioners of the NTC to the advice sought by governments, while also changing the organisation governance arrangements operating within the NTC so that these skills and experience can be appropriately harnessed to deliver improved outcomes for the sector.

In this submission we provide our reflections on the principles that have been applied to the operational governance arrangements of other infrastructure regulators – the lessons from which provide guidance as to options for reform to the NTC’s operating governance arrangements. We believe that these changes will result in improved outcomes for both governments and the transport sector as a whole.

The remainder of this submission is structured as follows:

- Section 2 provides a brief description of the current governance arrangements applying to the National Transport Commission, as context for our submission;
- Section 3 discusses the governance arrangements for economic regulatory institutions in other jurisdictions, and explains the advantages of those structures to the decision making of the organisation; and
- Section 4 sets out our recommendations as to how the governance arrangements might be better framed for the NTC into the future.

2. Overview of the current governance arrangements

The National Transport Commission was established under the *National Transport Commission Act 2003* with responsibility to:²

... develop, monitor and maintain uniform or nationally consistent regulatory and operational reforms relating to road transport, rail transport and intermodal transport.

Its principle objectives are in accordance with the objectives of governments relating to road and rail industry as set out in the *Intergovernmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport* and agreed in 1991. Specifically:

2.1 The Parties affirm their commitment to improving transport productivity, efficiency, safety and environmental performance and regulatory efficiency in a uniform or nationally consistent manner. This will be achieved by:

- a) continuing the process of regulatory and operational reform in road transport previously managed or undertaken by the National Road Transport Commission;
- b) establishing a national approach to regulatory and operational reform for the rail industry;
- c) facilitating effective intermodal transport arrangements by addressing regulatory and operational issues;

² Section 3, *National Transport Commission Act 2003*.

d) encouraging and facilitating innovation and technological advances in the road, rail and intermodal transport industries where appropriate; and

e) putting in place appropriate compliance and enforcement and institutional and administrative frameworks, and administering these frameworks in a uniform or a nationally consistent manner as is possible;

while having due regard to the impact of reforms on infrastructure and regional and remote areas.

The NTC is guided in its activities by the Transport and Infrastructure Council (TIC), which comprises road and transport Ministers from each jurisdiction. The formal mechanism for this guidance is the periodic issuing of a Statement of Expectations (the Statement), the most recent of which applies for the period 1 January 2014 to 31 December 2016. The Statement mostly sets out the expectations of TIC on the process and approach to be taken by the NTC in undertaking its activities.

Over the years there have been a number of iterations for the formal internal governance of the NTC. Its current formulation involves:

- a governing board of five part-time Commissioners, including a Chair and Deputy Chair;
- a Chief Executive Officer, who is also an ex-officio Commissioner; and
- a senior executive management team with responsibilities for specific functions of the NTC.

Two of the current Commissioners are also heads of government transport agencies, with the remaining Commissioners having a diversity of transport and board governance experience. The Commissioners are appointed by the Commonwealth Minister of Infrastructure and Regional Development, with candidates being nominated by TIC.

We understand that the Board meets monthly to consider an agenda prepared by the executive team.

Currently, the NTC's core functions include:

- advising governments periodically on changes to heavy vehicle charges;
- advising on transport safety policy;
- providing information annually on carbon emissions from light vehicles;
- developing reforms to improve the productivity of the transport sector;
- investigating opportunities to make greater use of technology to improve safety, compliance and efficiency in the transport sector; and
- identifying opportunities to implement nationally consistent rules as relevant to the transport sector.

3. Governance arrangements for regulatory institutions

The internal governance arrangements of the NTC reflect those applying to many corporate and government agencies. The role of the board of the NTC is to provide strategic guidance to the senior management team on the direction of the organisation, and to make decisions on specific recommendations that are put to governments. The board members are appointed given their expertise, or experience principally in transport policy development or the transport industry.

The detailed analytical work of the NTC is undertaken by its staff, under the guidance of the CEO. This, in combination with monthly meetings, means that Commissioners have a relatively limited opportunity to interrogate in detail the basis of any recommendations being made, or to guide the analysis being undertaken in support of recommendations.

This governance structure can be contrasted with those applying to the NTC's equivalent agencies operating in the electricity and water sectors. Specifically, the Australian Energy Regulator (AER) and the Australian Energy Market Commission (AEMC) for the electricity sector, and the Essential Services Commission (ESC) of Victoria, and the Independent Pricing and Regulatory Tribunal (IPART) of New South Wales, for the water sector.

Each of these agencies have some similar responsibilities to the NTC in relation to determining prices for the use of the respective sector's infrastructure. IPART and the ESC also both conduct reviews at the direction of government, so as to provide advice to government on policy matters. The nature of the roles of these agencies means there is a need for each agency to have both sector specific capabilities, as well as technical legal and economic capabilities, so as to fulfil its roles.

The key distinction between the governance arrangements of these agencies, and those applying to the NTC is the composition and role of the board in the operations of the agency. Table 1 summarises the composition of the board across each agency, and how it compares with that of the NTC.

In short:

- the NTC's board has a significantly larger number of members compared to the other agencies, which only have three members;
- the other agencies have at least one full-time member, who has both an operational and formal board decision making role, with part-time members providing an expert peer review role drawing upon their own complementary skills and experience. The NTC's members meet principally for Commission meetings, and otherwise on an 'as required' basis;
- the NTC meets principally monthly to approve decisions, while the other agencies meet at least weekly and members are actively involved in internal meetings of the organisation to provide ongoing guidance on the analysis being undertaken; and
- the other agencies ensure members have specific skills that have been identified as being prerequisites for appointment, including skills in economics and law.

Table 1: Comparison of the key governance features between IPART, the ESC, the AER, the AEMC, and the NTC

	Independent Pricing and Regulatory Tribunal (NSW)	Essential Services Commission (Victoria)	Australian Energy Regulator	Australian Energy Market Commission	National Transport Commission
Board Composition	1 x Chair 2 x Members	1 x Chair 2 x Members	1 x Chair 2 x Members	1 x Chair 2 x Members	1 x Chair 1 x Deputy Chair 3 x Members 1 x Chief Executive Officer (ex-officio)
Employment Status	Part-time	Full-time (Chair) Part-time (Members)	Full-time (Chair) Full-time (Member) Part-time (Member)	Full-time (Chair) Part-time (Members)	Part-time (Members) Full-time (CEO)
Senior Management	1 x Chief Executive Officer	1 x Chief Executive Officer	1 x Chief Executive Officer	1 x Chief Executive Officer	1 x Chief Executive Officer
Board Meetings	Weekly	Weekly	Weekly	Weekly	Monthly

4. An alternative governance approach for the National Transport Commission

The starting point for considering the most appropriate governance arrangements for the NTC is for governments to be clear about the role that it wants the NTC to play within the overall system for the development of policy advice and reform options relating to the transport sector.

There are two principal alternative options for this role, depending on the needs of governments, namely:

- where the NTC acts as a trusted, independent expert advisor to governments relating to transport reform and policy, bringing together credible and robust stakeholder consultation processes with subject matter expertise, to provide governments with clear and implementable policy and reform options that achieve governments objectives; or
- where the NTC provides a mechanism to facilitate discussions with stakeholders, including governments, so as to inform the develop of policy options and reforms affecting the transport sector.

In our opinion, the greatest value that the NTC can play is as a trusted, independent expert advisor to governments given the technical complexities of the transport sector generally, and its heavy vehicle charging advisory function in particular.

We believe that the current board governance arrangements for the NTC is not consistent with it providing credible expert advice to governments. This is because the size and operation of the NTC's board means that Commissioners are unable to adequately direct and oversight the analysis undertaken to support its decisions. Importantly, these decisions require expert judgement, which requires Commissioners to have adequate time and opportunity to both direct and subsequently consider any analysis being undertaken. The current arrangements only allow for Commissioners to consider the analysis provided.

To address this problem, we believe that the NTC should adopt a board governance arrangement similar to that applying to the AER and the AEMC, the ESC and IPART. Specifically, this would involve:

- reducing the number of Commissioners to three, from the current membership of five, with one Commissioner appointed as the chair;
- appointing at least one Commissioner on a full-time basis, with the remaining on a full or part-time basis as required;
- a requirement that the skills mix of the Commission include, economics, law and transport sector experience, with senior executive level experience from either the government or private sectors;
- appointing a Chief Executive Officer, with responsibility for implementing the decisions of the Commission, and the day-to-day management of the organisation; and
- the Commissioners meeting weekly so as to be able to lead the development of advice to governments.

We believe that by reducing the number of Commissioners appointed to the board and requiring them to have specific expertise and experience as relevant to the functions of the NTC will significantly improve the credibility and quality of the advice provided to governments.

Regardless of the Review Panel's acceptance of these board governance recommendations, we believe that it is important for governments to provide clearer guidance on what role the NTC plays in the development of policy advice and reforms applying to the transport sector. From this basis, consideration can be given as to how best to establish the governance arrangements for the NTC, so that it can deliver on those expectations for the benefit of the transport sector, and the community at large.

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