

Review of the National Transport Commission

**Report to the Australian Transport Council
by the National Transport Commission Review
Steering Committee**

June 2009

Acknowledgement

This report was prepared by the National Transport Commission (NTC) Review Steering Committee, which was appointed by the Australian Transport Council.

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Foreword

We are pleased to present our report on the review of the National Transport Commission (NTC).

The NTC was established in 2003 with responsibility to develop, monitor and maintain uniform or nationally consistent regulatory and operational reforms relating to road transport, rail transport and intermodal transport. The *National Transport Commission Act 2003* (NTC Act) requires the Australian Transport Council (ATC) to review the NTC's operations after six years.

We were appointed by the ATC in January 2009 as an independent expert panel to undertake this review. In broad terms, our task was to consider:

- the NTC's effectiveness in meeting the objectives as set out in the NTC Act and Inter-Governmental Agreement for the Regulatory and Operational Reform in Road, Rail and Intermodal Transport (IGA) to deliver regulatory and operational reforms to improve road, rail and intermodal transport
- the future of the NTC in light of the transport policy and regulatory challenges.

The full Terms of Reference for the review are at [Appendix A](#).

As part of the review, we sought feedback on the NTC's performance through public submissions and interviews. We received 39 submissions and interviewed 34 stakeholders. A list of submissions received is at [Appendix B](#). Submissions are published on the review website <www.infrastructure.gov.au/transport/australia/ntc/>.

While we have drawn on the submissions and interviews for our analysis, the views presented in this report are our own.

This report provides background on the strategic context of the review, outlines the existing mandate of the NTC, discusses the effectiveness of the NTC, and provides detailed recommendations on a way forward.

The ATC is expected to provide recommendations to the Council of Australian Governments (COAG) by September 2009.



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National Transport Commission Review Steering Committee

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Executive summary

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.

Chapter 1: Strategic context for the review

Key points in this chapter

The transport industry is vital for Australia's economic and social well-being. In addition to being a key enabler, the industry directly contributes around five per cent of Australia's GDP and employs one in seven Australians.

Between now and 2020, Australia's passenger and freight tasks are expected to grow substantially.

Governments and industry need to address significant transport safety, productivity, efficiency and environmental performance issues to successfully respond to the predicted transport growth and to underpin Australia's further economic and social development.

Nationally consistent regulation and coordinated infrastructure investment are essential to tackle most of the issues. The return for improved regulation and investment decisions in the freight sector alone is estimated at \$2 billion (2005–06 dollars).

To have a real impact, we not only require well considered reforms to regulation and investment but also effective implementation.

Importance of the transport industry

Safe, efficient and sustainable transport is crucial to Australia. As a large country with a dispersed population a long way from many trading partners, transport is a key enabler of our economic and social activity. For example:

- GDP—the transport and storage sector accounted for approximately 4.7 per cent (or \$44.5 billion) of total GDP in 2006–07.¹
- Employment—one in seven working Australians is employed in Transport and Logistics.²
- Domestic freight—the Australian domestic freight task measured 521 billion tonne kilometres in 2007, with 35 per cent carried by road, 40 per cent by rail and 25 per cent by coastal shipping. The domestic freight task has doubled in size over the past 20 years—averaging growth of 3.5 per cent per annum. This trend is likely to continue, albeit with slightly slower growth into the future, but still doubling between 2000 and 2020.³

¹ Bureau of Infrastructure, Transport and Regional Economics (BITRE) *Australian Transport Statistics Yearbook*, 2007

² Apelbaum Consulting Group (ACG), *Workforce Participation In Australian Transport And Logistics* report prepared for the Australian Logistics Council, Queensland Transport and the Transport and Logistics Industry Skills Council Ltd, 2008

³ BITRE, *Greenhouse gas emissions from Australian transport: Base case projections to 2020*, Working Paper 73, forthcoming

- Domestic passengers—domestic passenger travel totalled approximately 381 billion passenger kilometres in 2007 with road vehicle travel accounting for 73 per cent of total motorised passenger travel. Domestic passenger travel grew by just over 50 per cent over the last 20 years. Total passenger travel is projected to grow by around 45 per cent between 2000 and 2020.⁴

Activity mix within the transport industry

Approximately 70 per cent of Australia’s population, income, economic growth and employment is in our capital cities. While long distance (country and interstate) transport accounts for a significant proportion of activity by kilometres, metropolitan transport makes up the bulk of the passenger and freight tasks by trips. Managing congestion has become an increasingly important aspect of transport policy, affecting both the passenger and freight sectors.

Passenger vehicles (cars, buses and motorcycles) comprise about 82 per cent of registered vehicles and account for 75 per cent of road kilometres travelled.⁵ The total number of registered vehicles grew by 15 per cent between 2001 and 2006.⁶ In 2006, in Australia’s eight capital cities, 16.1 per cent of urban home – work/education commuters used public transport.⁷

Within the freight task, the five years to 2006 have seen highest growth in rail (see Table 1).

Table 1—Total domestic freight (road, rail and shipping)⁸

	Freight: tonne-kilometres (million)		
Year	Road	Rail	Shipping
2000–01	132,422	137,700	104,501
2005–06	168,320	189,040	122,040
Increase	27%	37%	17%

⁴ Ibid

⁵ Australian Bureau of Statistics (ABS), Survey of Motor Vehicle Use, Cat No. 9208.0, 2007

⁶ BITRE *Australian Transport Statistics Yearbook*, 2007

⁷ BITRE, Information Sheet 31, *Urban passenger transport: how people move about in Australian cities*, April 2009

⁸ BITRE, Australian Transport Statistics booklets, June 2003 and June 2008

The freight sector is very diverse:

- Road—the road freight sector is highly competitive, but fragmented due to the relatively low barriers to entry. Participants range from owner operators with a single truck, to large intermodal companies with fleets of more than 4,000 vehicles.
- Rail—rail is largely privatised and more capital-intensive, so has higher barriers to entry. Relative to the road sector, there are fewer commercial rail passenger businesses (however, there are many small historical passenger railway companies).
- Shipping—foreign vessels carry almost all of Australia’s international sea freight and a growing share of the domestic sea freight task.⁹
- Air—the aviation market has changed significantly over the last 20 years with new competitors entering the market.

Government funding

The total amount of funding for road-related expenditure by the Commonwealth, State, Territory and Local Governments in 2006–07 was \$12 billion. Between 2000–01 and 2006–07, total road-related expenditure increased by an average of 8.9 per cent per year in nominal terms.¹⁰

The network of funding relationships, which incorporates finance transfers between governments, is very complex. But, State Governments provide the bulk of expenditure on roads. Accurate expenditure figures for rail are not available because the rail sector is largely privatised.

Challenges facing the industry

Australia must address a significant set of transport issues over the next decade. Many of these issues and associated challenges are not new. They have been catalogued in numerous government and private sector reports, and extend beyond ‘pure’ transportation industry issues. Submissions to this review demonstrate that these issues, which are outlined briefly below, continue to pose considerable challenges for our future transport system.

Safety

The National Road Safety Strategy, endorsed by the ATC, has a target of reducing road fatalities per 100,000 population by 40 per cent, from 9.3 in 1999 to no more than 5.6 in 2010. The rate at September 2008 was 7.0 per 100,000. We are currently not on track to

⁹ House of Representatives Standing Committee on Infrastructure, Transport, Regional Development and Local Government, *Rebuilding Australia’s Coastal Shipping Industry—Inquiry into coastal shipping policy and regulation*, 2008 and Shipping Australia Limited (2004), Australian Shipping Industry <http://www.shippingaustralia.com.au/DesktopDefault.aspx?tabid=79> [accessed 12/05/09]

¹⁰ BITRE, *Public road-related expenditure and revenue in Australia 2008 Update*, Information Sheet 29, 2008

achieve the 2010 target¹¹ and so a significant task remains to reduce fatalities and serious injuries.

There are ongoing community concerns about sharing the roads with trucks. About one in five road deaths involve heavy vehicles, with speed a factor in around 30 per cent of these incidents and driver fatigue a factor in up to 60 per cent.¹² There is also growing concern about the use of stimulants by truck drivers driven, at least in part, by the economic pressures of the industry.¹³

Actions to address these issues include the heavy vehicle fatigue reforms, which jurisdictions are currently considering or implementing. However, given the task ahead to address safety issues, more work is undoubtedly required.

Regulatory inconsistency

The Commonwealth, State, Territory and Local Governments are all responsible for different areas of transport regulation. The resulting differences in transport regulation have long been a source of inefficiency and confusion to the transport industry and its users. Some of the more obvious inconsistencies and duplication in regulation include rail safety accreditation, vehicle licensing and registration, driver fatigue laws, mass loading limits and vehicle design regulation. These regulatory differences can cause issues such as:

- Rail—lack of formal mutual recognition of rail safety accreditation between jurisdictions. Rail operators must demonstrate that they meet accreditation requirements in each jurisdiction where they wish to operate. Variations in each jurisdiction's accreditation requirements add further complications, distorting competition in rail operations by creating an additional barrier to entry for rail operators wishing to expand their operations interstate.¹⁴
- Road—additional permit requirements and different operating restrictions for vehicles operating cross-border. This adds to costs. For example, a standard load trip from Sydney to Adelaide may require three to five certificates/permits from different authorities. This requirement can double for non-standard loads.¹⁵ Enabling access to higher mass limits could result in estimated cost savings of \$250 to \$750 a load.¹⁶

¹¹ Australian Transport Council (ATC), *National Road Safety Action Plan 2009–2010*, 2008, p. 13

¹² Media release by The Hon Anthony Albanese MP, Minister for Infrastructure, Transport, Regional Development and Local Government, *Road Safety and Productivity Package*, 29 February 2008

¹³ National Transport Commission (NTC) with The Hon Lance Wright QC and Professor Michael Quinlan, *Safe Payments—Addressing The Underlying Causes of Unsafe Practices In The Road Transport Industry*, October 2008

¹⁴ NTC *Single, National Rail Safety Regulatory and Investigation Framework: Draft Regulatory Impact Statement*, report prepared by the NTC with Booz & Company, November 2008

¹⁵ Information supplied by Linfox, 2009

¹⁶ Australian Logistics Council, *The cost impact of regulation disparity in cross border regions*, 2009

- Vehicles—inconsistent regulation forces operators to use a ‘lowest common denominator’ approach, choosing a less efficient vehicle to ensure they comply with the laws that apply in all the States and local municipalities involved in a particular journey (for example, using a smaller truck to comply with access restrictions when a larger vehicle may provide greater economy of scale).

The National Transport Commission (NTC) estimates that regulatory reforms developed since 2003 could deliver net productivity and safety benefits of \$2.9 – \$3.5 billion over 10 years if implemented consistently.¹⁷

The Productivity Commission estimates that regulatory reform in road and rail freight transport, together with improvements in investment decision-making processes and cost recovery mechanisms, could generate a five per cent productivity improvement, worth \$2 billion annually (2005–06 dollars).¹⁸ This estimate does not take into account the effect of measures to address urban congestion and reform of road and rail passenger transport.

In addition, the historic ‘silo’ approach to transport regulation has resulted in a lack of consistent performance information within and across modes. This impedes accurate measurement and comparison of performance across modes and systems, and without the data, it limits the ability to optimise across modes and throughout the entire system.

Infrastructure constraints

Investment in transport infrastructure has not kept pace with activity growth. Also, there is no agreed national framework for designating, planning, funding and tendering nationally significant transport infrastructure. Infrastructure Australia is now seeking to address this.¹⁹ Infrastructure constraints have limited the industry’s ability to meet growing and changing demand patterns. For example:

- As a result of lack of investment in rail infrastructure, the average speed of trains on the Melbourne-Sydney-Brisbane line remains slow. The slowest is from Sydney to Brisbane, with an average speed of 45 kilometres per hour. The northward journey takes more than two hours longer than the southward journey.²⁰ The resulting increase in travel times reduces the ability of rail to compete with road.

¹⁷ NTC Submission to the NTC Review, 2009, p. 24

¹⁸ Productivity Commission, *Potential benefits of the national reform agenda*, report prepared for the Council of Australian Governments (COAG), 2006

¹⁹ Section 5 of the *Infrastructure Australia Act 2008*

²⁰ Bureau of Transport and Regional Economics (BTRE), Information Paper 59, *Australian rail freight performance indicators 2005–06*, June 2007

- Mass load limits on major freight corridors remain inconsistent despite productivity reforms such as Performance Based Standards (PBS) and the national B-triple network gaining the support of transport ministers. State road authorities and local councils have been reluctant to offer greater access to their networks due to concerns about the ability of their infrastructure (particularly bridges) to support these vehicles.
- In rail, the deterioration in grain lines has affected the reliability of services²¹ and gauge variations between jurisdictions have limited the ability of regions, such as the Sunraysia-Mallee region in Victoria, to transport produce interstate.²²

Forecasts that the freight task will double in the 20 years to 2020, resulting in an additional 50,000 trucks on the road, pose significant challenges for infrastructure provision. Pressure on government budgets due to the current economic downturn is likely to add to the challenge.

Problems (such as congestion) associated with the interface with ports (including airports) also cause significant productivity impediments. This is already an issue for the resources and agricultural sectors, and will become a bigger issue in the future as international trade increases.

Urban congestion

The effectiveness of urban transport infrastructure and systems is critical to achieving improved productivity, liveability and sustainability. Infrastructure investment alone does not guarantee improved system performance. There is growing concern that simply upgrading road transport infrastructure to cater for peak period traffic volumes, particularly in space-constrained cities, is not economically, socially or environmentally sustainable.

Avoidable congestion costs are expected to more than double from \$9.4 billion in 2005 to an estimated \$20.4 billion by 2020. In the same period, total kilometres travelled on urban roads are expected to increase by 37 per cent. Commercial vehicle traffic is forecast to grow more strongly (averaging around 3.5 per cent per annum) than private car traffic (about 1.7 per cent per annum), although in absolute terms the numbers of cars will far outweigh the number of trucks.²³

²¹ NTC Rail Productivity Issues Discussion Paper, August 2008

²² Sunraysia-Mallee Economic Development Board, *Mildura Derailed*, Rail Freight Impact Study, September 2008

²³ COAG Competition and Regulation Review Working Group, *Review of Urban Congestion, Trends, Impacts and Solutions*, report to COAG, December 2006

Environmental sustainability

Transport accounted for 14.6 per cent of Australia's national greenhouse gas emissions in 2007.²⁴ In 2007, road contributed 84.9 per cent of total transport emissions, civil aviation 8.0 per cent, rail 4.6 per cent, and domestic navigation (shipping) 2.4 per cent.²⁵

The Commonwealth Government's proposed emissions trading scheme will affect the transport industry. There are widespread concerns regarding how the scheme will work, including:

- which companies/sectors will be covered versus exempt, and how this will impact domestic and international competitiveness;
- what administrative costs the scheme will entail; and
- when the scheme will be phased in, particularly in light of the global economic crisis.

Regardless of the practicalities of the scheme, the transport industry will have to evolve to reduce the overall level of emissions. This will lead to a shift in favour of optimising lower emission transport modes and lower emission forms of transport within modes.

Current landscape of transport regulation

The regulation of the transport sector has evolved at all three levels of government in Australia—a legacy of our Federation, and a practical implication of the role of Local Government. Recently, the need for greater coordination between jurisdictions has resulted in the creation of national coordinating bodies and a desire for overall national policy.

Three levels of government

Different levels of government are responsible for different areas of transport regulation. Broadly:

- nine governments regulate motor vehicles (the Commonwealth, six States and two mainland Territories);
- development of road regulations are shared between States and Local Governments;
- all six States and the Northern Territory regulate rail safety;
- the States regulate most public transport;
- eight different regulatory systems (the Commonwealth, six States and the Northern Territory) govern the operation of commercial vessels in Australian waters; and

²⁴ Australian Government Department of Climate Change, *Australian National Greenhouse Accounts—National Greenhouse Gas Inventory*, May 2009

²⁵ BITRE, *Australian Transport Statistics Pocketbook*, June 2008

- the Commonwealth Government is responsible for ensuring Australia meets its obligations under international treaties, including the global framework of safety and environment protection standards for the international aviation and shipping industries.

The Commonwealth, State, Territory and Local Governments share responsibility for transport policy.

All governments contribute to investment in transport infrastructure through an extensive array of direct and indirect funding measures.

All governments also have transport planning roles.

The resulting network of responsibilities is complex and often confusing for those who need to deal with it as part of their daily operations. It is even more complex for those trying to reform the system.

Coordinating government bodies for transport

For some time, Australia's governments have recognised that all governments and industry must work together to address this complexity by improving long-term planning, coordination and investment in Australia's transport infrastructure.

At the national level, the ATC is the forum for Commonwealth, State, Territory and New Zealand ministers to consult and provide advice to governments on the coordination and integration of transport issues. It includes transport ministers from each jurisdiction, and is chaired by the Commonwealth Minister for Infrastructure, Transport, Regional Development and Local Government. The Australian Local Government Association has observer status. The ATC usually meets twice a year.

One or more government departments support each ATC minister. The heads of these departments make up the Standing Committee on Transport (SCOT). The SCOT meets at least twice a year and also forms and oversees working groups to progress particular issues.

In addition to the ATC and the SCOT, a number of special purpose national bodies or committees provide regulatory advice and/or regulation in transport, including the NTC, which covers road, rail and intermodal regulatory and operational reform. Other bodies include the National Road Safety Council (pending), the SCOT Security Sub-Committee (infrastructure security standards), Austroads (technical advice to support infrastructure providers), the Australian Maritime Group, the Australian Maritime Safety Authority (possible future national maritime safety regulator), the Australian Transport Safety Bureau (possible future national rail safety investigator), and Airservices Australia.

National transport policy

On 8 May 2008, the ATC ministers agreed on a vision to guide future national transport policy:

*Australia requires a safe, secure, efficient, reliable and integrated national transport system that supports and enhances our nation's economic development and social and environmental well-being.*²⁶

To achieve this vision, Australia's transport ministers committed to the following policy objectives to:

- Promote the efficient movement of people and goods in order to support sustainable economic development and prosperity.
- Provide a safe transport system that meets Australia's mobility, social and economic objectives with maximum safety for its users.
- Promote social inclusion by connecting remote and disadvantaged communities and increasing accessibility to the transport network for all Australians.
- Protect our environment and improve health by building and investing in transport systems that minimise emissions and consumption of resources and energy.
- Promote effective and efficient integration and linkage of Australia's transport system with urban and regional planning at every level of government and with international transport systems.
- Provide transparency in funding and charging to provide equitable access to the transport system, through clearly identified means where full cost recovery is not applied.

²⁶ ATC Joint Communiqué, 8 May 2008

Chapter 2: The NTC's current mandate, governance, operations and resources

Key points in this chapter

The objective and the scope of activities set out in the Inter-Governmental Agreement for the Regulatory and Operational Reform in Road, Rail and Intermodal Transport (IGA) focus on regulatory and operational reform of road, rail and intermodal transport. It provides scope for the NTC to become involved in an array of regulatory reform areas, from safety to environmental performance.

The NTC reports to the ATC. However, the ATC meets twice yearly and cannot realistically be expected to provide governance oversight of the NTC.

The role of the NTC Commissioners is not stipulated in the IGA or the NTC Act. Whether or not the NTC Commissioners are seen as a governing board has implications for how the NTC is brought into line with the Governance Arrangements for Australian Government Bodies (August 2005).

As outlined in Chapter 1, there are many participants and stakeholders involved in transport reform and a complex set of issues that directly or indirectly impact on transport. The NTC's current role in this arena is discussed below.

History

The National Road Transport Commission (NRTC) was formed in 1991 to develop and coordinate regulatory reform for nationally consistent road transport laws. In 2003, its mandate was extended to rail and intermodal transport regulatory and operational reform and it became the National Transport Commission (NTC).

This review is the first since the NTC's inception, or the third review taking into account two prior reviews into the former NRTC.²⁷

²⁷ Independent Committee to Review the National Road Transport Law, *Reform and Australian Road Transport—A Review of Process, Progress and Impacts of the National Road Transport Commission, and Recommendations for Its Future*, December 1996; Affleck Consulting Pty Ltd and Meyrick & Associates Pty Ltd, *Review of National Road Transport Commission Act 1991—Review Report*, July 2002

Scope and mandate

Legislative provisions

To provide a degree of independence, the NTC was established as a Commonwealth statutory body under the *National Transport Commission Act 2003* (NTC Act) and the Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport (IGA). These provisions define the NTC's objectives, responsibilities and functions.

Objectives and priorities

The objective of the IGA is to improve transport productivity, efficiency, safety and environmental performance, and regulatory efficiency—with the primary focus of reform on matters that demonstrably warrant a uniform or nationally consistent regulatory or operational approach.

The NTC Act envisaged that the NTC would have an ongoing responsibility to develop, monitor and maintain uniform or nationally consistent regulatory and operational reforms relating to road transport, rail transport and intermodal transport.

Responsibilities and functions

The IGA defines the NTC's responsibilities and functions as:

- developing uniform or nationally consistent regulatory and operational arrangements for road, rail and intermodal transport, for consideration by the ATC, including, but not limited to:
 - amendments to previously agreed reforms;
 - reforms relating to a framework to improve and strengthen the co-regulatory system for rail safety;
 - national policy on key rail safety issues and procedures and standards to manage major rail safety risk factors;
 - the development of heavy vehicle road use charges and principles underpinning these charges;
 - special regulatory and operational arrangements to apply in certain parts of Australia, where local circumstances warrant this and with the agreement of the jurisdiction where these special arrangements would apply;
- recommending other matters to the ATC that will promote the objectives of the IGA;
- monitoring and reporting on the implementation of agreed reforms;
- maintaining and reviewing agreed reforms, including the development and implementation of the Code of Practice for the Defined Interstate Rail Network;
- providing secretariat support to the industry owner of the Code of Practice for the Defined Interstate Rail Network;

- collating information on State and Territory expenditure on road construction and maintenance; and
- undertaking any further responsibilities and functions determined by the ATC.

Governance

The NTC is headed by five non-Executive Commissioners and one Executive Commissioner (CEO), who collectively report to the ATC. The non-Executive Commissioners are nominated by the jurisdictions and appointed by the Commonwealth Government on a two-thirds majority vote of the ATC. Two of the Commissioners are appointed to the Chair and Deputy Chair positions by a majority vote of the ATC. The CEO is appointed by the Commissioners.

Neither the NTC Act nor the IGA explicitly identifies the role of the Commissioners.

The IGA requires the NTC to prepare a rolling three-year strategic plan. Further, the IGA directs the NTC to prepare an annual work program, covering details of all proposed reforms and activities related to the NTC's responsibilities and functions. The work plan is submitted to the ATC for approval.

The NTC Act and the IGA require the NTC to report annually to the ATC on how it has performed its functions or exercised its powers, as well as to produce an annual report for tabling in Parliament. The NTC also reports to the ATC on progress of implementation of agreed reforms.

In 2004–05, the Commonwealth Government undertook a review into corporate governance of statutory authorities and office holders (the Uhrig Review). As a result, it introduced a new corporate governance policy (Governance Arrangements for Australian Government Bodies, August 2005). This policy applies to inter-governmental agencies, including the NTC, and will require changes to the NTC's enabling legislation. The policy states that when statutory agencies are established or reviewed, they should come under either the *Financial Management and Accountability Act 1997* (FMA Act) or the *Commonwealth Authorities and Companies Act 1997* (CAC Act). An important factor in deciding which Act is most relevant is whether a governing board or executive management arrangement is best for the agency.

Our recommendations on governance (Chapter 5) include which of these Acts we consider is the most appropriate for the NTC.

Operations

The NTC's core function is to formulate draft regulatory reform and/or model legislation for consideration by the ATC. Developing proposed new regulation typically involves consultation with industry and governments, publication of a regulatory impact statement, further analysis and consultation, and then formulation of model legislation for the ATC's approval.

The NTC generally conducts three rounds of public consultation when developing regulatory impact statements, and often establishes advisory or reference groups to further promote stakeholder engagement in the development of regulatory reforms. The NTC liaises with

many bodies, including government agencies, industry associations and particular interest bodies. Information on the range of bodies the NTC consults with is available in the NTC's annual reports and on its website.

The NTC is an active participant in several policy and research working groups formed under the auspices of the National Transport Policy Plan and Framework. The NTC's Chairman and CEO have observer status on the SCOT, and the NTC works collaboratively with transport research organisations, such as Austroads, on joint research projects.

Resources

The NTC consists of around 35 permanent staff members across five key areas: safety and environment; economics and productivity; communications and strategy; corporate; and legislation and compliance.

The cost of running the NTC is shared between the Commonwealth, State and Territory Governments on a proportional basis agreed by the ATC ministers. The Commonwealth pays 35 per cent, and the States and Territories pay the remaining 65 per cent on per capita basis. The NTC was established with a base budget of \$7 million in 2004–05, which is maintained in real terms through indexation by the Consumer Price Index.

Chapter 3: The NTC's effectiveness

Key points in this chapter

While the NTC has performed well in generating regulatory reform concepts and model legislation, the resulting impact on transport outcomes has fallen short of what should be expected.

Overall, Australia cannot continue with the slow rate of harmonisation that we have seen for the last few decades. We must increase the pace of reform if we hope to meet the challenges that lie ahead, and realise substantial improvements in transport safety, productivity, efficiency, and environmental performance.

Change needs to occur across the whole system. However, we also need to be practical about what we can achieve. Our recommendations are cast in that light.

This chapter outlines the NTC's achievements and its effectiveness in delivering national harmonisation and nationally consistent regulation.

Major achievements

For a small organisation, the NTC has been prolific in developing reform proposals for the ATC's consideration, including the following highlights.

Safety

- Development of innovative 'chain of responsibility' laws to ensure those in a position to influence driver behaviour, such as consignors, operators, loading managers and schedulers, take reasonable steps to ensure their actions do not encourage or force drivers to break the law.
- Development of compliance and enforcement model legislation to provide a common legislative framework to underpin chain of responsibility laws covering speed, fatigue and loading-related offences.
- Development of model rail safety legislation and associated reform package aimed at establishing a nationally consistent regulatory approach.
- Development of a heavy vehicle driver fatigue reform package, including model legislation. There are three fatigue management options available under these laws, some of which allow longer work hours in return for adopting appropriate counter-measures to manage higher fatigue risks.
- Maintenance of National Australian Road Rules—the aim is to deliver common road rules covering general driving behaviour to reduce confusion for those travelling interstate.

- Maintenance of the National Australian Vehicle Standards Rules—the aim is to deliver a nationally consistent approach to vehicle standards for ‘in-service’ vehicles and combinations, modifications and wear and tear/maintenance.
- Development of a National Heavy Vehicle Safety Strategy and associated action plans. One of the aims of the strategy is to encourage agreement on broad priorities for improving heavy vehicle safety and implementing the associated action plans.
- Development of the Australian Code for the Transportation of Dangerous Goods by Road and Rail and associated model legislation. This work provides consistency with the relevant United Nations model regulation and codes for other modes.
- Development of the Intelligent Access Program (IAP) model legislation. This model legislation provides a framework for electronic monitoring of higher productivity vehicles, such as those approved under Performance Based Standards.
- Revisions to Fitness to Drive standards and development of a new National Standard for Health Assessment of Rail Safety Workers. These standards facilitate a nationally consistent cross-sectoral approach to health standards and assessment provisions.

Productivity

- Development of an approved heavy vehicle charges determination. The charges aim to ensure that all classes of heavy vehicles pay their share of common costs, as well as costs for road construction and maintenance that are attributed to heavy vehicle use.
- Development of Performance Based Standards. This reform developed a national framework to assess the suitability and appropriate level of access to the road network for vehicles that do not comply with traditional prescriptive regulations.
- Development of a quad axle policy framework to allow the more general use of quad axle groups, with higher mass limits. A final proposal on quad axle mass limits is currently under development.
- Development of a 26 metre B-double policy, which increased the length limit to 26 metres for B-doubles fitted with front underrun protective devices and stronger cabs. The aim is to improve the efficiency of management of vehicle fleets.
- Development of concessional mass limits. This sought to provide greater consistency in mass limits for heavy vehicles and a higher limit concession for accredited vehicles.

Environment

- Development of new engine brake noise standards incorporating a new in-service test and limits specifically designed to address engine brake noise. The aim is to address community concerns about heavy vehicle engine brake noise.
- Preparation of a discussion paper, *Freight Transport in a Carbon Constrained Economy*. The report discusses key issues for addressing greenhouse gas emissions from freight transport and proposes remedial actions.

Policy

- Publication of *Twice the Task* report. This report quantifies the expected freight task growth and proposes changes from prescriptive to performance based regulation. It has influenced much of the NTC's recent work program.
- Development of the National Transport Policy Plan and Framework. The plan proposes a framework and holistic action agenda across a broad range of areas, not just regulation, to improve transport efficiency, productivity, safety and sustainability.

Effectiveness in achieving the objectives of the IGA

The record of achievements outlined above illustrates that the NTC is effective in developing draft legislation or standards and obtaining the ATC's in principle agreement to proceed with reforms. The NTC's 2007 annual survey of stakeholders confirms that the NTC performs well in leading national transport regulatory reform.²⁸

However, examination of the reforms above highlights that the process often falters at the implementation stage. Of the 15 reforms listed (excluding Environment and Policy), only five have been implemented in all jurisdictions, only three of these were implemented with a high degree of consistency, and only three met the original timeframe (see [Appendix C](#)).

Independent reviews commissioned by the NTC on individual reform initiatives concluded that the initiatives did not achieve the objectives of uniform or consistent legislation, or realise the benefits estimated in regulatory impact statements.²⁹ The general consensus is that current regulatory reform processes fail to deliver real productivity or efficiency benefits at planned levels, and that inconsistent application of reforms unduly increases the compliance burden to businesses. In the area of safety, these concerns have prompted the ATC to pursue the establishment of national regulators for maritime safety (commercial vessels), rail safety and heavy vehicles.

Clearly, there remains a considerable lack of uniformity in regulation across the nation and the NTC's real impact on safety, productivity, efficiency, and environmental performance has been disappointing. It is our view that model legislation or regulatory reform proposals cannot be regarded as high quality if they are not implemented, or if they are unable to be implemented in the real world. Therefore the NTC's effectiveness in meeting the objective of the IGA has been limited.

Most of the issues the NTC deals with are highly contentious and changes involved in regulatory reform inevitably generate local political issues that jurisdictions must address

²⁸ NTC 2008 Annual Report, p. 9

²⁹ As cited in *A National Framework for Regulation, Registration and Licensing for Heavy Vehicles—Consultation Regulatory Impact Statement*, Department of Infrastructure, Transport, Regional Development and Local Government, December 2008

during implementation. The IGA (Section 12.2) provides for the jurisdictions to vary legislation under exceptional circumstances. During the review we received a strong message that jurisdictional sovereignty takes precedence where a jurisdiction perceives a reform not to be in its best interests. In addition, the IGA imposes only a basic audit requirement on the States and Territories to monitor the outputs of the reform process (Sections 12 and 13). This contributes to a lack of accountability on behalf of the jurisdictions for achieving reform outcomes.

In this context, factors that have constrained the NTC's capacity to achieve its reform objectives include:

- the lack of a national strategy for transport, according to which priorities can be determined;
- the lack of timely and consistent data across the industry and, consequently, the lack of proven benefits and ways to quantify the impact of reforms;
- the fact that responsibility for implementation, and control over implementation outcomes, rest with the jurisdictions and that traditionally the NTC has not been involved in this part of the process;
- the NTC's failure to appreciate at the draft reform stage all the practical and political implementation constraints that will be faced by the jurisdictions;
- the impact of lobbying by stakeholders with vested interests who seek to modify draft reforms to accommodate their particular needs and/or slow the progress of implementation; and
- the inability of available infrastructure to support reform and/or arguments about who will fund required infrastructure upgrades.

Addressing these issues is not entirely within the control of the NTC, so we believe responsibility for the outcomes delivered must be shared by jurisdictions. However, the NTC's performance must ultimately be judged in terms of impact delivered, even though it does not have direct responsibility for either transport policy or reform implementation. Analysis of the NTC's strengths and weaknesses provides some insight into possible ways forward.

Relative strengths and weaknesses

The NTC's strengths

Overall, the NTC is regarded favourably by both industry and government stakeholders, and is seen to have been successful and/or play a valuable role. Strengths include:

- It has been active and successful in identifying the need for, and developing, new innovative technical standards to underpin future improvements in freight productivity.
- It has consistently delivered model legislation and operational standards that the ATC has endorsed.

- Its development of regulatory impact statements, model legislation and administrative guidelines reduces the workload for jurisdictions, enabling them to apply their resources elsewhere.
- It has contributed to raising awareness of issues affecting the competitiveness of the freight sector by framing key issues with data/research to assist in constructive policy and regulatory debate (for example producing the report, *Twice the Task*, and the National Transport Policy Plan and Framework).
- It is regarded as one of the best sources of knowledge on State transport laws and how they differ across the country, and has expertise in the technical aspects of drafting model legislation and regulatory reform.
- It has a high profile in the transport industry—the NTC’s reports and people are readily accessible to both industry and government.
- It is widely regarded as a good conduit and ‘voice’ for the industry, enabling a wide range of industry groups to raise issues and to be heard where they would not otherwise find an effective avenue to government. (Although we note that the consultation process could usefully be expanded to include more emphasis on local councils, industry operators and governments in smaller jurisdictions.)
- It is a valuable source of independence in an environment with significant inter-jurisdictional tensions and it plays a critical role in developing national model legislation and other regulatory reforms.

The NTC’s weaknesses

Based on feedback from submissions and our own independent assessment, we have identified areas of relative weakness of the NTC that are hindering its capacity to better influence reform outcomes, including:

- It has not yet fully evolved to have sufficient focus on rail and intermodal activities (as opposed to road). This is demonstrated by the balance between road, rail and intermodal achievements listed above. A lack of expertise in rail regulation within the NTC may have contributed to the narrow focus to date. On the other hand, we note that many intermodal issues, for example around the port-transport interface, require a locally tailored approach, and/or involve complex transport-land use planning issues, and are not readily amenable to a uniform or nationally consistent regulatory or operational approach.
- It does not give sufficient attention to implementation issues or implementation support. The IGA requires that the NTC present all proposed reforms in sufficient detail to enable uniform or nationally consistent implementation (Clause 12.4). Despite this, stakeholders have consistently given the NTC feedback that it needs to do more to properly consider the impacts of proposed reforms.³⁰ Small jurisdictions in particular feel that the process to

³⁰ NTC 2008 Annual Report, p. 10

sign-off model legislation is rushed. This lack of detailed attention to implementation issues means the NTC has often failed to take into account the potential implementation barriers. Consequently, neither the NTC nor the ATC members have always fully appreciated what governments were signing up to, and implementation has accordingly been slow.

- There is a lack of clarity regarding the NTC's purpose and priorities, in particular, the balance between ensuring delivery of reforms already underway and working on new issues. The NTC's natural desire to be seen as responsive, and its tendency to tackle new issues, has exacerbated the slow pace and incomplete progress of regulatory reform.
- The large number of issues potentially in scope has led to a significant increase in the breadth of the NTC's work program. The breadth of the NTC's work program has also hampered its ability to improve the implementation speed and impact of reforms.
- The NTC's implementation reviews tend to be process or output-oriented rather than focusing on outcomes, or what the reforms actually achieve. This represents a missed opportunity to explore other viable options to improve reform outcomes and adapt the regulatory approach based on lessons learnt.
- Updates to model legislation are not as timely as they could be. For example, updates to the model rail safety regulation could begin before the regulation is fully implemented, so that lessons from early adopters can be incorporated into the model legislation for the benefit of those that follow. Concerns were also expressed about the lack of forward commitment to an update (that is, maintenance) program for the Australian Dangerous Goods Code.

Having outlined the context for this report in terms of industry issues and the recent history of the NTC, the following chapters contain our recommendations from this review. They cover scope and mandate; governance arrangements; operational changes; and resources.

Further, we note that the NTC is not in a position to address all of the concerns raised in this report and so we conclude with additional considerations for broader systemic change.

Chapter 4: Recommendations on the NTC's scope and mandate

This chapter details our recommendations for the ongoing role of the NTC, as well as its scope, objective and key purpose, and mandate.

Recommendation 1: The NTC should continue as an independent statutory authority.

Achieving seamless national markets is a key priority of the Council of Australian Governments (COAG) to improve Australia's international competitiveness. This involves minimising transport inefficiencies, overlaps and bottlenecks.

This is intrinsically difficult in a Federation. Consequently, there is general consensus among submissions to the review that there is ongoing value in having a national body as a vehicle for achieving national harmonisation of transport regulations. Without a national body, we would have to rely on either circumstantial alignment of regulation or one jurisdiction taking the lead on a particular issue. Based on history, neither of these options is likely to result in a single national approach in the area of transport.

Even if governments decide to establish single national regulatory bodies for maritime, rail and heavy vehicles, there would still be a need for a body to provide national transport regulatory advice and/or to coordinate the development of new or modified regulation. This is because the new bodies are likely to have limited scope (for example, rail safety, heavy vehicles) and/or be focused on compliance with existing regulations.

Smaller jurisdictions in particular find the NTC's services (for example, consultation processes and developing regulatory impact statements) help to defray the costs of engaging in national regulatory reform and ensure that their interests are taken into account. Industry stakeholders also find the NTC's consultation arrangements enable them to contribute to the assessment of regulatory and operational reform options, and appreciate the transparency in decision-making. This is particularly valued in the road transport industry, where there are so many small operators.

The NTC's credibility depends on it being independent of jurisdictions, the bureaucracy and industry. To facilitate effective reform, the NTC must be as inclusive and pragmatic as possible, building relationships with both government and industry stakeholders. At the same time, the NTC must maintain its mandate and willingness to speak independently to the ATC, and at times raise unpopular or overlooked issues. Its organisational values should be based on partnering, rather than competing with other parties.

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.

This review has highlighted the importance of facilitating regulatory reforms in achieving successful outcomes. The NTC's primary purpose, therefore, should be to facilitate implementation of, rather than just develop, national regulatory and operational reform. It should focus on reforms that demonstrably warrant a uniform or nationally consistent regulatory approach and where it can demonstrate benefits in terms of improved transport safety, productivity, efficiency and/or environmental performance.

We recommend that the NTC remain focused on road, rail and intermodal transport because there is wide acknowledgement (including by the NTC itself) that there is still much to achieve in this arena. This is where the NTC has deep expertise and the best chance of facilitating successful implementation. Some submissions to the review, particularly from industry, argued for the NTC to take on a much broader formal role in other modes (for example, maritime) and in policy development. We do not support this. We have come to this conclusion because:

- nationally harmonised regulatory reform in road, rail and intermodal transport will create substantial value;
- the NTC has been most successful in achieving reforms where it has been able to bring a distinctive technical competence in brokering agreements based on objective, fact-based assessment of technical standards. This requires deep expertise;
- there is substantial value to be created through better implementation within and across jurisdictions as, to date, many promising reforms sponsored by the NTC have been compromised by policy trade-offs through the implementation process; and
- other bodies, such as government departments, are better placed to deal with policy and non-regulatory issues.

Focusing the NTC primarily on the national regulatory reform of road, rail and intermodal transport raises the important question of the extent to which the NTC will become involved in other activities in, or adjacent to, the sector. We must acknowledge that the transport sector is complex and affected by many cross-sectoral issues and, as an independent body with a wealth of knowledge representing the transport sector, the NTC will both need to consult across these adjacent areas and be called upon to provide expert opinions and independent advice to policy-makers. In evaluating this, we see the following types of activities:

- examining issues that are one or two steps removed from regulation, but have a clear link to regulatory outcomes—current examples might include carbon pricing impact on transport, population trends and implications for transport, and the impact of higher energy costs;

- providing independent expert input or advice to policy-makers on transport-related issues; and
- exploring issues adjacent to road, rail and intermodal in order to best inform transport regulation—examples might include climate change issues or the national ports strategy.

All other things being equal, we would prefer that the NTC not become involved in areas too far removed from its core purpose as we believe that losing focus will result in less impact in the primary purpose of regulatory reform. However, acknowledging practical considerations, we believe that it is legitimate for the NTC to participate in the broader transport areas on two conditions:

1. The participation should have a plausible link to the primary objective of ‘seamless national regulation of road, rail and intermodal transport where national regulation drives improved transport safety, productivity efficiency and environmental performance’.
2. The participation in these activities does not distract the NTC from its core purpose of achieving impact from regulatory reform. This implies that if requests for contributions of these kinds are made, the ATC must give consideration either to increasing the resources of the NTC and/or to the cost of lost opportunities/progress in core areas.

We acknowledge that this proposed scope and conditions means other agencies will need to deal with some issues in the transport sector, and we discuss this further in Chapter 8. It will be essential for all government agencies to work closely together, drawing on their different skills and expertise, to contribute to the delivery of national outcomes.

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 the desired reform outcomes.

The overarching objective of the current IGA is to improve transport productivity, efficiency, safety and environmental performance, and regulatory efficiency in a uniform or nationally consistent manner. Therefore the NTC’s performance must ultimately be assessed in terms of its impact against these indicators, even though the NTC does not have lead responsibility for either transport policy or reform implementation.

There is widespread consensus that, while there has been progress in national harmonisation of road and rail regulation, it has been too slow and has not delivered the full expected benefits. This is because jurisdictions have generally been unable or unwilling to implement the model legislation without making considerable changes to accommodate local requirements and/or interests.

As already stated, our view is that draft legislation or regulatory reform cannot be regarded as high quality if it cannot be implemented in the real world. To develop quality model legislation and other regulatory proposals, the NTC will need to be highly aware of implementation considerations.

Implementation of regulatory reforms should be, and will remain, the responsibility of jurisdictions. However, the NTC can play a valuable role in coordinating implementation planning and facilitating implementation. In this way, it should become a centre of excellence for achieving national regulatory reform, and be the organisation that governments come to for advice on national transport regulation matters.

Specifically the NTC should:

- specify desired industry outcomes and how they will be measured, as part of initial reform proposals put to the ATC;
- build its awareness of each jurisdiction's legislative landscape, so that model legislation is drafted with the practicalities of how it will 'fit' in mind;
- work with each jurisdiction to understand key barriers to implementation of the model legislation as drafted, and then identify how best to address each barrier to achieve the desired outcomes (the model legislation itself is not the desired outcome);
- coordinate across jurisdictions and if appropriate amend the model legislation or national system so that, where practical, common approaches are used to address barriers to implementation;
- review the jurisdictions' implementation plans and generate a realistic national timeframe for implementation; and
- report back to the ATC on what can realistically be delivered from the jurisdictions' implementation plans against the specified desired outcomes.

While we acknowledge suggestions from some stakeholders that Commonwealth funding should be tied to the implementation of reforms, we do not support this. We consider that the risks of general incentive payments outweigh the potential benefits. In transport, the myriad of stakeholders and funding mechanisms introduces a substantial risk of jurisdictions failing to undertake infrastructure spending or maintenance, and instead waiting for another government to step in. We note that this is already an issue even under current funding arrangements; we consider payment for reform would exacerbate the problem. We also note that the Commonwealth Government has moved away from specific-purpose tied funding arrangements in other areas.

There may be merit, however, in targeted funding (for example, assistance to particularly affected freight operators, selective infrastructure funding) to encourage the removal of specific major reform impediments identified during the implementation planning process. Funding sources would form part of the total reform package.

We consider that the NTC may need to take additional steps to make this recommendation effective. In particular, the NTC should publicly raise implementation issues (successes and failures) where appropriate and report on implementation outcomes across jurisdictions.

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.

A recommendation of the previous NRTC review was to give a high priority to updating reforms to ensure national consistency is achieved and/or maintained. Without a timely and responsive program of updates, jurisdictions are more likely to act unilaterally to adapt their regulations as issues emerge. This raises the likelihood of greater inconsistencies developing over time, undermining the sustainability of harmonisation outcomes.

Post-implementation reviews (and appropriate action to update reforms) should be a core part of the NTC's responsibilities. As such, the NTC should be accountable for updating reforms in a timely fashion.

The current IGA requires the NTC to 'monitor implementation of Agreed Reforms by Parties and regularly report to the [ATC]'. This requires the NTC to monitor which jurisdictions have implemented the reform, and the extent to which their legislation is consistent with the model legislation approved by the ATC. It does not specifically require the NTC to evaluate the regulatory outcomes achieved in each jurisdiction.

Post-implementation reviews would provide an opportunity for the NTC to be more proactive in putting firm recommendations to the ATC for addressing identified flaws or problems. For this to work, this process would need to be more about reviewing effectiveness rather than purely an audit of status. We consider that the IGA should be changed to require jurisdictions to provide information to the NTC on the outcomes for transport safety, productivity, efficiency and environmental performance (as appropriate), and particularly take into account additional compliance costs to businesses of any jurisdictional variations.

The possible establishment of single national regulators (as outlined above) would not diminish this responsibility. We anticipate that the NTC would have a leading role in carrying out post-implementation reviews and updating legislation in consultation with such regulators and other relevant stakeholders.

Chapter 5: Recommendations on the NTC's governance

This chapter details our recommendations for how the NTC should report; how its priorities should be set and agreed; and the role of its Commissioners.

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.

The NTC should continue to report to the ATC. As the governing body representing Commonwealth, State and Territory ministers, the ATC is the only natural entity to which the NTC can report.

The ATC should hold the NTC accountable for the quality of its advice, including the extent to which that advice can be implemented and reform outcomes delivered. This will focus the NTC's attention and resources on areas where it can deliver best value for money. If governments are not ultimately committed to make the changes necessary to achieve the objectives of the IGA, once the recommendations of this review are in place, then the *raison d'être* of the NTC must be questioned.

We note that the NTC must work collaboratively with the Standing Committee on Transport (SCOT), which is comprised of the Commonwealth and State transport chief executives who are key advisors to their relevant ministers. For the ATC ministers to agree to the NTC recommendations, the NTC needs to work closely with the SCOT to ensure its recommendations align with current advice and policy frameworks. However, the relationship must be collaborative—not one where the SCOT governs the NTC. It is essential that the NTC is accountable to the ATC as the ultimate authority. Although the SCOT may request information to brief ministers outside the ATC process, we consider any requirement for the NTC to report through the SCOT acting as gatekeeper, would undermine the NTC's independence.

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.

In our view, seeing a small number of priority reforms through to successful implementation will have a more positive industry impact than developing, but not fully implementing, an exhaustive agenda of issues. We believe that the breadth of the NTC's work program to date has overly stretched its resources, slowing the pace of implementation. It is important that the NTC remain engaged in the reform process until completion (that is, including implementation) and until results can be seen and assessed.

Strengthening the NTC's role in facilitating implementation and deepening its expertise to become a centre of excellence for implementing national regulatory reform for road, rail and intermodal transport, will require a more tightly focused work program, unless its resources are substantially increased.

In putting forward possible priority projects for the ATC's approval, the NTC must be cognisant of its capacity to deliver, given the status of its existing work program. Projects should only make the priority list if they 'demonstrably warrant a uniform or nationally consistent regulatory or operational approach' and where the benefits would clearly improve transport safety, productivity, efficiency, and environmental performance.

The NTC Commissioners, as the governing board, have a responsibility to ensure that the NTC abides by its scope and mandate (see Recommendations 8 and 9). This may entail occasionally reminding ministers of the boundaries of the NTC's scope. Ultimately, the Commissioners must be held accountable for the performance of the organisation as a whole. The NTC should not deviate from its priorities when facing resistance to implementing change. Rather, it should work innovatively with other organisations as a change agent to facilitate reform consistent with its priorities.

Recommendation 7: The NTC should report to the ATC on progress of priority projects including reform development, implementation and impact.

The NTC should provide detailed, project-level reports to the ATC. Greater emphasis on outcomes-based reporting will provide a feedback loop to guide prioritisation and resourcing of the reform agenda and associated work program.

The NTC should be accountable for its performance, based on the outcomes it achieves. This accountability for outcomes should be reflected in the IGA and the NTC Act.

While the NTC should continue to report directly to the ATC, we consider there would be merit in the NTC and the SCOT jointly developing an activity and performance reporting

system for approval by the ATC. This would also include developing key operational and outcomes-based performance metrics for the ATC's consideration. The reporting system would outline the level and type of detail required in reporting on:

- strategies;
- projects (including milestones and budget outcomes);
- operational and regulatory impact risks (including changes to the risk profile);
- stakeholder issues;
- delivery against implementation plans;
- delivery against audit and evaluation plans; and
- results of evaluations and audits.

Recommendation 8: The NTC Commissioners should be appointed as a governing board under the *Commonwealth Authorities and Companies Act 1997* (CAC Act).

The NTC's enabling legislation and the IGA is silent on the role of the Commissioners. Their governance role is implied rather than explicit. A number of respondents to the review were unclear about the Commissioners' role and value.

Ministerial councils generally do not perform governance functions, except in so far as they provide strategic direction on policy issues. We therefore consider that it is necessary for the NTC Commissioners to fulfil the governance role. It would be appropriate for the ATC to continue to provide strategic direction, including on priorities, through a Statement of Expectations (as recommended by the Uhrig review into corporate governance of Commonwealth statutory agencies and adopted by the Commonwealth Government).

We recommend that the NTC should be governed under the *Commonwealth Authorities and Companies Act 1997* (CAC Act) in view of the NTC Commissioners taking on a governance role, rather than an executive management role. This is consistent with the Commonwealth's governance decision-making framework.

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 ATC should provide additional direction to the NTC Commissioners on their role and functions. We consider that a Directors' Charter would help the Commissioners better understand what the ATC expects from them.

The NTC board should also establish an annual process to review its own performance, the performance of individual members, and the CEO. Information gained from such performance reviews will assist the NTC board to identify where it needs to improve governance processes and/or address skills gaps.

Chapter 6: Recommendations on the NTC's operations

To achieve a number of the recommendations outlined above for scope, mandate and governance, the NTC will need to change the context in which it operates. The activities of the CEO and Commissioners should also evolve as a result. Our recommendations on the NTC's operations are outlined below.

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 result of the national implementation plan. Stage two sign-off would occur before implementation commences.

Submissions to the review generally agreed that inconsistent implementation has compromised reform outcomes and increased compliance and operational costs.

We recommend the ATC establish a two-staged process for approval of national regulatory and operational reforms. The first stage would provide for in-principle approval by the ATC of national proposals, with final approval based on the preparation of suitable jurisdictional implementation plans. Ideally, jurisdictions would have received appropriate approval for the plan within their own jurisdiction prior to final presentation to the ATC.

The NTC should be responsible for coordinating the development of these plans in consultation with stakeholders. Single regulators, if established, could work closely with the NTC on developing and implementing plans and reform maintenance programs. This coordinated approach should expedite implementation by jurisdictions.

Recommendation 11: The NTC should continue to build the effectiveness of its external consultation to ensure all stakeholders are heard and informed.

The NTC's consultation processes are one of its key strengths. However, we consider there is room for improvement, especially with stakeholders from the rail sector, smaller industry players and jurisdictions, and key local councils.

As the NTC becomes more focused on facilitating implementation, and as the issues within the transport sector become more complex (requiring consultation with entities outside the transport sector), expertise in external consultation will become critical. The NTC needs to further develop distinctive expertise in engaging with a wide variety of stakeholders.

Recommendation 12: The NTC Commissioners should be more active advocates for the implementation of priority projects.

Beyond basic governance, we consider that the NTC Commissioners have a vital role to play in assisting and driving implementation of regulatory reforms. They should be active champions of national reform, visible on the national stage, and encourage others to adopt harmonised regulation.

We consider that this role should be formally adopted into the Directors' Charter to be developed as part of Recommendation 9 (page 33).

Recommendation 13: The NTC CEO should be a formal member of the Standing Committee on Transport (SCOT).

As noted, we believe it is vital for the NTC to work collaboratively with the SCOT. Members of the SCOT are the main policy advisors to transport ministers around Australia. Bringing the NTC CEO formally into this advisory group will increase collaboration between the SCOT and the NTC and instil greater confidence that both parties are working to a common goal.

As we mentioned previously, however, the SCOT should not seek to fulfil a governance function in relation to the NTC. Our recommendations will enhance governance outcomes by ensuring that the SCOT is engaged in a constructive dialogue with the NTC on its performance goals, work program and areas for improvement at an operational level. This is why we recommend that the NTC CEO, rather than the Chair, become a formal member of the SCOT.

Chapter 7: Recommendations on the NTC's resources

Our previous recommendations impact on the resource requirements of the NTC. This chapter considers the mix of skills, the level of resources, and the budget justification process required by the NTC.

Recommendation 14: The NTC should evolve its mix of staff skills to become a centre of excellence for achieving national regulatory reform for road, rail and intermodal.

Some review respondents were critical of what they saw as a loss of the NTC's technical skills and a lack of rail expertise, as it has recently pursued wider roles. Assuming our recommendations about a clearer, more focused mandate for the NTC are accepted, the NTC will need to re-build/strengthen skill levels in its core disciplines of road, rail and intermodal regulation.

Deep expertise in understanding the regulatory landscape in each jurisdiction and in facilitation skills will become even more vital for the NTC as it takes on responsibility for working with jurisdictions in developing implementation plans.

We anticipate that the NTC may need to consider a range of staffing models to meet its new role, including the greater use of secondments from both industry and jurisdictions to supplement permanent staff with expertise on particular reforms/regulatory regimes. Similarly, facilitating implementation is likely to involve the NTC's staff spending time in the jurisdictions working with the relevant departments.

Recommendation 15: The NTC should submit a 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 the project and also include overhead and administration costs.

Given the desire for highly accountable and effective government spending and the potential for the NTC to become involved in a broad range of activities, we consider it important that the NTC provide the ATC with a detailed annual work program and budget broken down at the project level. This will enable the ATC to assess the nature, scope, and costs and expected benefits of individual projects, as well as their fit within the ATC's priorities.

We anticipate that, as a matter of practicality, the NTC will work with the SCOT to agree on priority projects and appropriate resourcing to be considered by the ATC, but shall not require the SCOT's approval or consensus on these matters.

Given the multi-year nature of many of the NTC's projects, the annual plan should also identify known 'carry forward' work for future years. These out-year expenditures should be approved when the ATC approves each project, providing improved certainty for the NTC's staff and planning.

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

Without a clear definition of the benefits that are possible from future reforms and the scope and timetable of the NTC's future work, it is difficult to estimate an appropriate level of resources. Initially, we see value in maintaining the NTC's current funding, at least until the full scope of its responsibilities becomes clearer in the light of this review and COAG's deliberation on single national regulators for heavy vehicles, rail safety and maritime safety.

We also acknowledge that some certainty of future funding is important to retain good staff and therefore suggest setting a floor for funding purposes. The floor should be re-set periodically in line with the work program and need for key resources.

Taking a more active role in implementation planning is likely to be more resource intensive than the NTC's current activities. This could leave the ATC with the choice of either scaling back the number of activities, or increasing resources for the NTC. Without clarity on these issues it is not possible to recommend changes to the current levels of funding.

That said, however, if trade-offs on the NTC's scope are required, our clear preference is for fewer rather than more priorities, and for more of the available resources to go towards facilitating implementation. All resources must be justified under the auspices of Recommendation 15.

Chapter 8: Other issues

In discussing the NTC's effectiveness (Chapter 3), we noted that it has been prolific in recommending regulatory reform to the ATC. We also noted that progress beyond the ATC to translate these recommendations to actual reform has been slower than desirable and hampered by issues beyond the strict purview of the NTC.

In that context, we believe there are issues that need to be addressed by other stakeholders in the regulatory reform system.

These are not formal recommendations per se, but are important aspects of our report nonetheless:

- **The need for a national transport plan**

It has proven difficult to achieve a national transport plan. The ATC has articulated its vision but strategic planning and prioritisation at a national level to achieve that vision has been relatively ad hoc. Neither the ATC nor the SCOT appears to dedicate time to strategic planning on an ongoing basis.

In early 2008, the Chair of the ATC asked the NTC to commence a national planning process. There are mixed views on the success of this initiative to date. Nevertheless, there is a need for strong national transport planning as a foundation for improving system outcomes.

In our opinion, governments, perhaps led by the Commonwealth Government, are best placed to drive improved planning. Organisations like the NTC and Infrastructure Australia can inform this process with advice on possible regulatory and/or investment impediments.

- **Data and research to support planning**

A shared view is required on the data and analysis needed to support improved national transport planning—including evidence required to determine national priorities and establish the economic case for transport development and reform, as well as the data necessary to implement and evaluate initiatives.

The NTC has a role to play in helping agree quantification frameworks and thus identify what data needs to be collected, but its focus and resourcing precludes it from being the primary source or collector of shared data. Governments and the Australian Bureau of Statistics should take on this responsibility.

- **Trade-offs**

We recognise there may be significant issues at a local level that necessitate variations to national regulations. However, we also acknowledge stakeholder concerns that Section 12.2 of the IGA (which provides for local variations under exceptional circumstances) has been over-used, limiting progress towards national uniform regulation. Accordingly, there may be a need for stricter limits on what constitutes an acceptable variation and a

condition that, where allowed, variations should make economic sense from a national perspective. The ATC should consider this issue and determine if a change in the IGA is warranted.

- **Prioritisation**

A more systematic, evidence-based process for establishing priorities would enable the ATC to focus on areas for reform that provide the greatest net benefit to the economy and society.

We have recommended that the NTC focus on the important task of achieving implementation of regulatory and operational reform. We urge the ATC to take into account the longer-term impact on the NTC's ability to realise the ATC's regulatory reform program, if considering proposals which may divert the NTC from achieving that objective.

- **Transparency**

One of the key strengths of the NTC is the transparency of its regulation review and development processes. In contrast, many industry and user groups raised concerns about the lack of transparency of some of the ATC's subsidiary processes (for example, working groups). Many believe that the transparency of these processes could be improved through the ATC's subsidiary groups modelling their stakeholder engagement on the consultation practices of the NTC.

The NTC was formed by the ATC for the purpose of national regulatory reform. The NTC needs, therefore, to carry responsibility for achieving that objective. The ATC, and member jurisdictions, also need to accept responsibility for providing appropriate strategic direction and focus, and for driving or supporting other initiatives to achieve that end.

Appendix A: Terms of Reference for the review of the NTC

The ATC agreed the following terms of reference for the NTC Review at its meeting held on 7 November 2008.

The Review should:

- a) Be overseen by a steering committee;
- b) Call for public submissions;
- c) Provide to the steering committee a copy of every submission received by the review;
- d) Assess the effectiveness of the National Transport Commission in meeting the objective of the Intergovernmental Agreement to improve transport productivity, efficiency, safety and environmental performance and regulatory efficiency in a uniform or nationally consistent manner
- e) Assess the effectiveness of the NTC in delivering regulatory and operational road, rail and intermodal transport reform for the ATC in terms of timeliness, quality, content and value for money;
- f) Assess the effectiveness of the NTC's reform maintenance process in supporting the delivery of regulatory and operational reform;
- g) Assess the overall effectiveness of the governance arrangements outlined in the NTC Act and the IGA, and advise on their effectiveness in ensuring the delivery of tasks determined by ATC and whether any change is warranted to either the NTC Act or the IGA;
- h) Make recommendations on whether the NTC should continue in operation and whether there are other alternate governance, institutional or legislative structures that would give an enhanced outcome for road, rail and intermodal reform;
 - If the recommendation is to continue to operate, make recommendations on any suggested amendments to both the NTC Act and IGA;
 - If the recommendation is to discontinue the operation of the NTC, suggest alternate institutional arrangements for recommending road, rail and intermodal reform to Australian Transport Ministers;
- i) In considering appropriate institutional arrangements for regulatory and operational reform for road, rail and intermodal transport, the review will address:
 - Whether those arrangements should encompass issues beyond regulatory and operational reform, and address both passenger and freight transport issues;
 - Whether, and how, the National Transport Commission should interact directly (that is, outside any direct tasking by the ATC) with other national and state/territory agencies that potentially impact on national transport policy development and implementation, such as Infrastructure Australia, economic regulatory agencies, or other government agencies;
- j) Recommend what would be the appropriate level of resourcing for the future body; and
- k) Provide findings, recommendations and the background reasoning in a report that would be provided to First Ministers in line with legislative requirements; and
- l) The review is to have regard to the work being undertaken as part of the National Transport Policy Framework and the impact that this may have on the NTC, the Act and the IGA.

Appendix B: Submissions to the review

- ACT Department of Territory and Municipal Services
- ARRB Group Ltd
- Asciano Limited
- Australasian Railway Association Inc
- Australian Conservation Foundation
- Australian Local Government Association
- Australian Rail Track Corporation Ltd
- Australian Logistics Council
- Australian Rail, Tram and Bus Industry Union
- Australian Trucking Association
- Austroads
- BikeSydney
- Bus Industry Confederation
- Business Council of Australia
- Council of Tramway Museums of Australasia Inc
- Department of Planning and Infrastructure, Northern Territory
- Department for Planning and Infrastructure, Western Australia
- Department for Transport Energy and Infrastructure, South Australia
- International Association of Public Transport (Australia and New Zealand)
- Laird, Dr Philip
- Maritime Union of Australia
- Mason, Dr Chloe
- Natroad Ltd
- National Transport Commission
- New South Wales Government
- Northern Rivers (NSW) RDA
- Office of the Infrastructure Coordinator, Infrastructure Australia
- Qantas Airways Ltd
- QR Ltd
- Queensland Government
- Railway Technical Society of Australasia
- Shipping Australia
- South Australian Freight Council Inc
- The Haire Truck and Bus Repairs Pty Ltd
- Tourism and Transport Forum
- Transport Certification Australia
- Transport Workers Union of Australia
- Truck Industry Council
- Victorian Government

Appendix C: Outcomes of the NTC's reforms

Safety reforms	Status	Consistency	Met original timeframe?
'Chain of responsibility'	Implemented by some jurisdictions	Some variations	No
Model rail safety legislation and associated reform package	Implemented by some jurisdictions	Yet to be evaluated—some variations from early adopters	No
Compliance and enforcement model legislation	Implemented by some jurisdictions	Some variations	No
Heavy vehicle driver fatigue reform package	Implemented by some jurisdictions.	Some variations	No
Australian road rules (ARRs)	Implementation of the original ARR is complete Recent amendments yet to be fully implemented	Some variations	Yes for original ARR, but jurisdictions are about two to three years behind on implementing recent amendments
Australian Vehicle Standards Rules	Implementation complete Recent amendments yet to be fully implemented	Some variations	Yes
Australian Dangerous Goods Code 7th Edition	Implemented by some jurisdictions	Yet to be evaluated	No
Intelligent Access Program (IAP) model legislation	Implemented by some jurisdictions	Yet to be evaluated	No
Revised standards for assessing Fitness to Drive and new National Standard for Health Assessment of Rail Safety Workers	Implementation complete	High degree of consistency	Yes

Productivity reforms	Status	Consistency	Met original timeframe?
2008 heavy vehicle charges determination	Implementation complete on 1 July 2009	High	Yes for States NT, ACT and Commonwealth took longer than original timeframe
Performance Based Standards	Administrative arrangements in place Policy currently under review	Degree of network access varies between jurisdictions	No
Quad axle policy	Final policy to be developed, pilot arrangements in place	Permit arrangements vary	Final policy to be developed
26 metre B-double policy	Implementation complete.	High degree of consistency	Yes, in most instances
Concessional mass limits	Implemented by some jurisdictions	Some variations	Yes, in most instances

Environmental reforms	Status	Consistency	Met original timeframe?
Engine brake noise standards	Implemented by some jurisdictions	Not evaluated	No