

SUBMISSION Review of the National Transport Commission

24 March 2009



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1 Summary / Recommendations

Summary:

Road transport is a national industry critical to the economic wellbeing of Australia as it moves in excess of 75% of the national freight task. The efficient regulation of road transport is in the nation's interest and it is appropriate to have a National Transport Commission 'like body' focused intensely on recommending positive regulatory change within defined Government policy, and also leading implementation so that uniform and consistent outcomes are achieved.

High level strategic policy and investment decisions on road, rail and other modes should remain with separate Government bodies resourced to address these issues.

In our view, it is important to provide for an efficient cooperative development mechanism around the development of efficient regulations. The mechanism should be focused on delivering complementary road transport regulations and operational reforms. The mechanism needs to include processes to ensure that implementation occurs consistently across the nation, and that benefits outweigh costs.

Recommendations:

Recommendation 1

The importance of an efficient, effective and safe road transport industry is such that a National Transport Commission 'like body' ('NTC') is required to facilitate the development and delivery of efficient regulations for the industry.

- *Its charter should be more specific to delivering the regulatory reforms required to make road and rail transport more productive, whilst being mindful of ensuring adequate safety and having regard to other impacts, whilst minimising regulatory burden.*
- *Reform regulations should deliver real benefits that exceed real costs.*

Recommendation 2

There should be clear definition of rail and road functions within a future 'NTC'.

- *Functions for each mode should be adequately resourced with competent specialised staff.*
- *Clearly defined outcomes and expectations need to be articulated and delivered. There has been a clear decline in the quality of outcomes and the quantity of reforms since road and rail functions were combined, and we believe that inadequate resourcing and prioritising is a contributing factor to this.*
- *The effectiveness in developing, selling to ministers and guiding implementation of road reform requires the 'NTC' to be resourced with staff that know trucks and trucking operations well, and who also understand the regulatory structures and provisions.*
- *In addition these staff should have quality communication skills and leadership.*
- *It is recommended that the review team comment on the importance of having the right people within the new 'NTC'.*

Recommendation 3

The 'NTC' should not be allowed broaden its responsibilities beyond safety and productivity in the respective sectors (other than its existing role in road transport environment in conjunction with the National Environment Protection and Heritage Council).

- *National policy issues such as climate change, fuel supplies, and passenger transport are all important issues but they are currently dealt with by other government bodies which have clear responsibility in those areas.*
- *The 'NTC' should not be empowered to interact directly with other non-reform entities such as Infrastructure Australia, economic regulatory agencies and other non-transport government agencies such as those considering industrial relations agendas.*

Recommendation 4

The 'NTC' should extract the full benefits from its existing road transport reform regulatory packages.

- *This includes addressing vehicle standards, fatigue management, road rules, mass and dimensions, network access, and drivers licensing packages.*
- *They should ensure that uniform implementation occurs while at the same time applying a 'no-disadvantage' test that preserves intrastate and regional efficiencies.*
- *Other legislation should not intrude on the fields covered by the new 'NTC'.*

Recommendation 5

Future 'NTC' processes should include enhanced representation of industry and other stakeholders so that the policy and practicality issues raised by industry are addressed and incorporated. Lack of adequate and effective consultation in the past has lead to poor regulatory outcomes. The fatigue consultation process is a clear example of this.

- *The ATA Chair should have a seat at the Australian Transport Council table during debate of road transport reform matters.*
- *The 'NTC's' duties should be extended to include leading implementations and imposing a rigorous implementation review process that provides industry with an advisory role in these processes and in all maintenance processes.*
- *The 'NTC' should adopt management principles that keep reforms up to date and the 'NTC' needs to work cooperatively with industry to facilitate positive and productive on-going change.*
- *The 'NTC' needs to encourage industry feedback on actual on road regulatory experiences and deficiencies, standards, practices, administration and operational matters or other reform priorities. The 'NTC' needs to provide a streamlined readily accessible methodology to resolve these matters.*
- *If a single national body of road transport law and attendant single national regulator, is not delivered by the current reform proposal, the 'NTC' Inter Governmental Agreement needs to be amended to ensure implementation at state and territory level occurs without degradation of the 'NTC' reforms.*

Recommendation 6

The 'NTC' needs to regain control of the productivity agenda, and better balance the reform agenda to include industry desired reforms, and guide these reforms through agencies to implementation.

- *Reforms, and particularly those that potentially reduce productivity, should not be allowed to be implemented without proper consultation and rigour. Mass-distance-location pricing has been allowed to be pursued by agencies without ensuring an effective consultation and regulatory process is followed. Conversely, no rigour and process management has been applied to ensuring agencies have delivered productivity based Council Of Australian Governments reforms. These include mapping of all roads (including local roads) into the Performance Based Standards (PBS) road classification framework, providing a single PBS vehicle compliance decision making process that results in automatic network access for approved PBS vehicles, and delivering a workable inland inter-capital B-triple network for modular vehicles maximising the use of the existing heavy vehicle fleet.*
- *The review team stress to Ministers the importance of delivering reforms that produce real outcomes on the ground for the industry consistent with its desires for productivity and safety on broad scale, without regression of current efficiency and safety leaders.*
- *The current 'NTC' work plan contains matters not high on the industry's wish list and does not yet reflect the goals of industry.*
- *In developing a work plan and setting priorities the 'NTC' should be required to take guidance from the industry and transport user stakeholders on the outcome they are seeking.*

Recommendation 7

All future 'NTC' review committees should include the ATA Chair as a member. In past reviews of the NRTC and NTC the ATA chair has had significant involvement in the steering committee processes.

2 Foreword

Over the coming decades Australia is facing growth in freight demand and supply constraints that have the potential, if not appropriately addressed, to impose a devastating restriction upon the nation's prospects for continued growth and rising prosperity.

In the Australian context, the efficient regulation of transport markets and provision and use of transport infrastructure has and continues to be complicated by the federal separation of powers that confers jurisdiction over national markets to state and territory governments.

While much has been achieved to remove unnecessary economic burdens of state-centric approaches to infrastructure and cross-border inconsistencies in regulation, there remains much more to be done.

In the lead up to the establishment of the National Road Transport Commission (NRTC) in 1991 it was accepted that microeconomic reform in transport has the potential to increase productivity and stimulate the economy. That justification remains, and an NTC 'like body' continues to provide a way forward.

National reform priorities to improve efficiency and enhance productivity in the trucking industry are established, yet implementation is failing, as evidenced by the problematic implementation of heavy vehicle driver fatigue laws in 2008.

3 Introduction

The economic importance of a successful NTC reform process remains. Recent progress has not met industry expectations and the only realistic response currently available to the growing freight demand is to use more and more trucks. Maximisation of current infrastructure capacity and a system of road classifications relating to heavy vehicle capacity is urgently needed. Ongoing government investment in road infrastructure is crucial rather than having industry paying more or adopting more complex payment methods - we more than pay our fair share and distribution of revenue is a matter for governments. Focus on productivity reforms and leading implementation is required.

4 Australian Trucking Association

The ATA was originally established in 1989 as the Road Transport Forum and is the peak national body uniting and representing the interests of the Australian trucking industry.

Membership of the ATA's General Council comprises the peak state and sector based trucking associations, the Transport Workers' Union, some of the nation's largest transport enterprises and representatives of small fleet owners and owner drivers.

5 Comments

Recommendation 1

The importance of an efficient, effective and safe road transport industry is such that a National Transport Commission 'like body' ('NTC') is required to facilitate the development and delivery of efficient regulations for the industry.

- *Its charter should be more specific to delivering the regulatory reforms required to make road and rail transport more productive, whilst being mindful of ensuring adequate safety and having regard to other impacts, whilst minimising regulatory burden.*
- *Reform regulations should deliver real benefits that exceed real costs.*

Justification:

Providing drivers, operators and enforcement staff with clear, nationally consistent, user-friendly laws will promote compliance and safety outcomes for the trucking industry. The efficiency, or otherwise, of the laws imposed on road transport is directly accounted for in the economy as the trucking industry is a service industry, wherein its costs are passed on to clients and therefore the community. Hence, good laws are sound business for the community at all levels, locally, regionally and nationally. This requires consultation and decision mechanisms that capture the needs and desires of stakeholders. The Australian Transport Council taking decisions recommended by the NTC provides a mechanism to do this. Rail transport faces similar issues, and using the NTC to address these would appear to provide some structural and administrative savings to Government.

The major disappointment and short coming of the NTC process has been that during implementation departures arise that, regardless of intention, have the net effect of modifying the intended agreed national policies, thereby undermining outcomes. Improving implementation is necessary if the NTC lead microeconomic reform process is to maximise its potential. Further, the focus must remain on improving productivity for both road and rail, as this underpins economic activity and other core outcomes, such as safety and efficient energy use. However, it is critical that one mode is not restrained or priced in order to provide market share to the other. Modal choice should remain a matter for the free market to achieve economic efficiency.

Road and rail transport could both argue many regulations currently faced are unnecessary or burdensome. In many cases benefit versus cost assessments have been optimistic interpretations or have been based upon unrealistic costs. For example, in many cases the assumed road network available to operators under a particular productivity reform is not subsequently delivered. Estimated costs are exceeded in the actual post reform implementation market, for example, Intelligent Access Project in-vehicle devices and 'Adblue' SCR emission reduction catalyst. Even high profile reforms such as the fatigue package suffer from post implementation industry costs that are significantly higher than that allowed for, and in this case there is also growing evidence that casual influences have not been addressed and desired outcomes are not delivered in practice, as for example time, counting remains as an enforcement issue.

Recommendation 2

There should be clear definition of rail and road functions within a future 'NTC'.

- *Functions for each mode should be adequately resourced with competent specialised staff.*
- *Clearly defined outcomes and expectations need to be articulated and delivered. There has been a clear decline in the quality of outcomes and the quantity of reforms since road and rail functions were combined, and we believe that inadequate resourcing and prioritising is a contributing factor to this.*

- *The effectiveness in developing, selling to ministers and guiding implementation of road reform requires the 'NTC' to be resourced with staff that know trucks and trucking operations well, and who also understand the regulatory structures and provisions.*
- *In addition these staff should have quality communication skills and leadership.*
- *It is recommended that the review team comment on the importance of having the right people within the new 'NTC'.*

Justification:

The NTC has not been as successful as the NRTC in championing road transport productivity reforms. There is an argument that this is related to the additional rail focus of the NTC. A simple solution to this is to stream each mode within the NTC structure. Specialist knowledge is needed to understand and therefore advise on each mode. It would be unusual to find individuals with relevant knowledge and experience in both modes due to the very different legislative and operational circumstances of each mode. Accordingly, the NTC should ensure that it has adequate and suitable resources for the reform tasks in each mode.

The task assigned should be clearly articulated and outcome goals set, rather than process goals. While the journey is important and industry consultation paramount, it is meaningless if the agreed reform goals are negated by lack of commitment during implementation. Packaging and selling transport reforms so that agency commitment is enjoyed along with enthusiastic industry support is clearly a challenge that requires 'talented people', and strong working relationships with industry lobby groups. In quality, productivity focused reforms the messages to ATC Ministers will be the same from industry; NTC and agency heads. Recruiting and keeping 'talented people' requires adequate resources and incentives. The industry is more than happy to assist the NTC nurture staff and will provide both practical and technical support where possible. For example, the high productivity vehicle demonstration day provided to NTC staff last year.

Recommendation 3

The 'NTC' should not be allowed broaden its responsibilities beyond safety and productivity in the respective sectors (other than its existing role in road transport environment in conjunction with the National Environment Protection and Heritage Council).

- *National policy issues such as climate change, fuel supplies, and passenger transport are all important issues but they are currently dealt with by other government bodies which have clear responsibility in those areas.*
- *The 'NTC' should not be empowered to interact directly with other non-reform entities such as Infrastructure Australia, economic regulatory agencies and other non-transport government agencies such as those considering industrial relations agendas.*

Justification:

The NTC is an entity to advise the ATC on road and rail productivity focused transport reforms. These reforms should be stand alone, self sustaining in law and protected from legal or administrative encroachment by other laws or entities seeking to 'cover the same field'. To allow otherwise is inefficient and likely to impose conditions or restrictions in addition to the intended and agreed national transport reforms. The NTC's scant resources should not be applied to matters that are, or should be, addressed by other entities. Similarly, the NTC should not seek to influence those outside its charter, for similar reasons. A void or perceived short coming in policy development is not an invitation to the NTC to seek to save the day – if it tries its resources will be stretched and set reform agenda may fail. We would argue we have seen this in recent times, where the NTC has arguably stepped up to broader higher profile tasks at the expense of progress on the existing road reform agenda.

The industry needs the NTC to champion road (and rail) transport reform and to do it well.

Recommendation 4

The 'NTC' should extract the full benefits from its existing road transport reform regulatory packages.

- *This includes addressing vehicle standards, fatigue management, road rules, mass and dimensions, network access, and drivers licensing packages.*
- *They must ensure that uniform implementation occurs while at the same time applying a 'no-disadvantage' test that preserves intrastate and regional efficiencies.*
- *Other legislation should not intrude on the fields covered by the new 'NTC'.*

Regardless of what new reforms we may like to see happen, the fact remains that effective national delivery of the reforms that have been proposed, developed, are under development or in need of maintenance will deliver productivity and efficiency. A focus on these matters is necessary.

The effectiveness of the NTC in earlier times was significant with milestone reforms like six axle, 42.5 tonne semi-trailers as general access vehicles, national operation of B-doubles on gazetted routes, development of a chain of responsibility that includes clients, a national core of Australian Road Rules and common classes for driver's licenses. However, some brilliant ideas and opportunities have been quashed with the failures of the PBS, HML (in NSW), fatigue management, inland inter-capital B-triple network reforms, inability to advance prescriptive solutions to broader access to modular high productivity vehicles and failure to secure common mass limits for truck and dog trailers. The loss of policy control for IAP, and failure to provide for electronic work diaries based upon operators existing management systems, have also imposed operational costs on the industry for no gain. Delivering these reforms will unlock promised productivity.

A 'no disadvantage' test must apply to prevent local productivity schemes being lost to operators and their clients. Ideally these productivity schemes should become the reform models for like circumstances.

There are instances where implementation of reforms is disrupted by add on policies, or other obligations that cover the same material content in different ways. For example the application of IAP to HML in NSW & Qld is an 'add-on' not in the agreed HML policy, while the NSW mutual obligations award conflicts with and extends into matters covered in the NTC model fatigue package. Both of these examples add significant costs not accounted for in the regulatory impact statement assessments conducted by the NTC.

It should be noted that even prior to this additional hurdle the HML reform has not been able to deliver its promised benefits because the policy failed to properly address access to local government controlled roads - the "last mile" of the journey beyond approved state and federal road networks. This is an example where practical manifestation of the national reforms are well below the promised expectation and resulting economic efficiency is less than what Ministers understood would flow when they agreed.

Recommendation 5

Future 'NTC' processes must include enhanced representation of industry and other stakeholders so that the policy and practicality issues raised by industry are addressed and incorporated. Lack of adequate and effective consultation in the past has led to poor regulatory outcomes. The fatigue consultation process is a clear example of this.

- *The ATA Chair should have a seat at the Australian Transport Council table during debate of road transport reform matters.*
- *The 'NTC's' duties should be extended to include leading implementations and imposing a rigorous implementation review process that provides industry with an advisory role in these processes and in all maintenance processes.*

- *The 'NTC' should adopt management principles that keep reforms up to date and the 'NTC' needs to work cooperatively with industry to facilitate positive and productive on-going change.*
- *The 'NTC' needs to encourage industry feedback on actual on road regulatory experiences and deficiencies, standards, practices, administration and operational matters or other reform priorities. The 'NTC' needs to provide a streamlined readily accessible methodology to resolve these matters.*
- *If a single national body of road transport law and attendant single national regulator, is not delivered by the current reform proposal, the 'NTC' Inter Governmental Agreement needs to be amended to ensure implementation at state and territory level occurs without degradation of the 'NTC' reforms.*

Justification:

The ATA and its members are valuable tools to the NTC in that we have: knowledge, expertise, direct access to operators, industry clients, and we work within an organised structure. Without a doubt reforms that the industry and regulators both support, are more readily accepted by Ministers and more likely to be implemented without distortion. Hence, industry involvement in development, justification, selling and implementing reforms has merit. The more inclusive the NTC processes are of industry, the more likely the outcomes will be supported by the industry.

In our view the ATC Ministers would welcome supportive words from the ATA Chair where ATA support is offered to NTC reforms, and equally, they may wish to know when support is not forthcoming, and the reasons for this. The proposal is the ATA Chair be an observer during the sections of the ATC meeting dealing with NTC reforms, as we believe this will improve the decision making process and allow the ATA to commit to support NTC reforms more forcefully when necessary. It also provides us with an opportunity to comment on last minute agency concerns or alternatives raised during the meeting.

Currently, the NTC obligations largely end when the ATC has agreed to a NTC reform. In our view the knowledge developed during reform development by the NTC and industry are important aids in guiding and leading reform implementation which is often conducted by different agency staff to the policy development process. In the past, reform implementation has suffered from localised policy departures or policy modification that would be avoided if the proponent of the policy were involved in assisting the delivery of the policies through implementation as intended.

Consistent with normal quality management principles NTC reforms must be reviewed post implementation to ensure intended outcomes are achieved, and maintenance, adjustments, or issues arising are identified for action. Similar to OH&S processes, the need to resolve a reform problem should be able to be raised by any stakeholder. The NTC processes need to account for these two circumstances. Accordingly, involving the ATA and its family more formally in NTC reform review, maintenance, forward planning and problem identification is an essential improvement to keeping the laws applied to the road transport industry up to date relevant and effective.

Concurrently consideration of an option to provide for a single national body of road transport law is occurring. The outcomes of that process effects this review. If it does not resolve the implementation issues at the agency level through national provisions, amendments to the current attendant Inter-Governmental Agreement (IGA) for the NTC is required. Currently, the IGA has an 'easy to use' 'get out of jail provision' wherein a Minister can simply opt out of implementing any reform or part of a reform with no explanation. This needs to be amended to require Ministers to report more formally and provide transparent justification when they intend to not adopt a reform or to modify a reform. Such departures should be reported to COAG, as well as publicly. In some cases the NTC then may wish to review the whole reform as result of an 'opt out'. For example, the quad axle policy developed by the NTC was moderated significantly to ensure all agencies supported the outcome. Adopted mass limits for quad axles are below neutral road wear. However,

at the vote an agency opted out. We understand that agency was the primary reason such a conservative axle mass was applied to quad axles. Hence, it would now be appropriate to allow maximum benefits to flow for those communities that are adopting this reform, by adopting the neutral road wear mass limit for quad axles.

Recommendation 6

The 'NTC' needs to regain control of the productivity agenda, and better balance the reform agenda to include industry desired reforms, and guide these reforms through agencies to implementation.

- *Reforms, and particularly those that potentially reduce productivity, should not be allowed to be implemented without proper consultation and rigour. Mass-distance-location pricing has been allowed to be pursued by agencies without ensuring an effective consultation and regulatory process is followed. Conversely, no rigour and process management has been applied to ensuring agencies have delivered productivity based Council Of Australian Governments reforms. These include mapping of all roads (including local roads) into the Performance Based Standards (PBS) road classification framework, providing a single PBS vehicle compliance decision making process that results in automatic network access for approved PBS vehicles, and delivering a workable inland inter-capital B-triple network for modular vehicles maximising the use of the existing heavy vehicle fleet.*
- *The review team stress to Ministers the importance of delivering reforms that produce real outcomes on the ground for the industry consistent with its desires for productivity and safety on broad scale, without regression of current efficiency and safety leaders.*
- *The current 'NTC' work plan contains matters not high on the industry's wish list and does not yet reflect the goals of industry.*
- *In developing a work plan and setting priorities the 'NTC' should be required to take guidance from the industry and transport user stakeholders on the outcome they are seeking.*

Justification:

See justification under recommendation four and in addition: Demand for road freight continues to grow and while most of this is in the areas of non-contestable freight, the road transport related tasks of rail freight will also grow as rail seeks to maintain and grow market share in contestable freight tasks. The only viable whole of industry solution to this growth is currently to use more trucks as a broad scale lift in productivity has not flowed from the reform process in recent times. Good coverage from a PBS network and a workable inland B-triple inter-capital network remain largely undelivered. The concept of classifying all roads, including local government roads into the seven identified PBS classes plus a special B-triple class (a subset of level 2B) held great promise. But it has not been delivered.

The ATA believes the road classification process must be expedited and no funds should be released to roads that are not classified based upon the true physical characteristics. These assessments are geometric assessments as PBS does not provide any axle group mass increases, and nor raise bridge issues for generic PBS vehicles where compliance with the bridge formula is required. Maybe the establishment of an expert panel to aid others in progressing these classifications would help.

In our view about 80 percent of trucks are volume limited by allowed dimensions not mass limited by allowed axle mass limits. Hence, the industry's interest in using modular, high productivity combinations maximising the use for existing equipment. The remaining 20 percent are mass limited but only about half of these could achieve higher mass if it was allowed within existing dimension limits. However, for these operators, that gain in productivity would be very significant.

Productivity is part of the industry drive for safety improvement. As we continue to respond to demand with additional trucks, exposure increases and this is an accepted negative influence on

road safety outcomes. However, opportunities for productivity gains for the industry within the current legal framework are limited. Accordingly, we need the NTC to champion legislative reform that releases productivity. The productivity must not be tick box productivity such as PBS, it must be real on-ground gains for operators and clients such as the national use of 'standard' B-double on a good network.

However, legislative reform should always acknowledge industry led non-mandated innovations, reforms and systems as these are usually cost effective aids and in some cases better than regulatory intervention. Areas where recognition of industry systems that deliver outcomes is desired include:

- TruckSafe – industry's business risk management aid.
- Route Compliance aids – in lieu of IAP hardware.
- Alternative electronic driving/rest hours management and compliance aids – these provide high levels of assurance when used in conjunction with independently audited systems and secondary records
- Alternative mass compliance systems - again high levels of assurance with independent audit
- Energy reduction management systems such as reducing empty running by cooperative load sharing and industry and client led electronic load management - however, it is a very difficult area for any regulator or reform agency as commercial and client service provider relationships are critical and highly sensitive. Further, some empty running cannot be avoided as there are no suitable return loads, for example, food distribution vehicles and logging trucks.

However, the leading edge of the industry is making inroads with smart business tools and interdependent relationships and business systems while competing in the open market. However, having invested in such systems and technology or seeking to invest they are seeking regulatory acknowledgement that these systems are auditable compliance and assurance systems.

Incremental pricing features highly on the NTC work plan yet the path agencies are currently guiding the NTC down is such that we are already able to say this reform will be costly to administer, costly to use and of limited value as access will be very limited. In effect the model currently proposed has all the faults of the approach to HML in NSW, which has limited the benefits to that state for 10 years. On the other hand, new next-generation productivity focused activities are not featured on the NTC work program. The ATA and its family is seeking a higher level of involvement in assisting the NTC plan its activities.

Recommendation 7

All future 'NTC' review committees should include the ATA Chair as a member. In past reviews of the NRTC and NTC the ATA chair has had significant involvement in the steering committee processes.

Justification:

The ATA and its family represent the trucking industry and are able to provide strong support to any future review of the NTC and assist the review team to understand the industry and its views. We would expect the Australasian Railways Association to hold similar views. Direct involvement of both peak industry associations maximise benefits for all stakeholders and we ask the review teams to make a recommendation to that effect.