

2015 Review of the National Transport Commission

REPORT TO THE TRANSPORT AND INFRASTRUCTURE COUNCIL
BY THE NATIONAL TRANSPORT COMMISSION REVIEW EXPERT PANEL

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Acknowledgements

This report was prepared by the National Transport Commission Review Expert Panel which was appointed by the Transport and Infrastructure Council.

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Foreword

The National Transport Commission (NTC) is a statutory body established in 2003 under the *National Transport Commission Act 2003* (NTC Act). The NTC's responsibilities are to develop, monitor and maintain uniform or nationally consistent regulatory operational reforms relating to road, rail and intermodal transport and to develop road user charging principles for heavy vehicles.

Section 51 of the NTC Act requires the Transport and Infrastructure Council (the Council) to review the NTC every six years from its establishment (the Terms of Reference are at **Appendix 1**). The 2015 review is the second such review under the NTC Act and is being undertaken by an independent Expert Panel (the Panel). This review must report on the operations of the NTC and the NTC Act, its associated *Inter-Government Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport 2003* (IGA), and make recommendations about whether the NTC should continue and/or the NTC Act be repealed.

In broad terms this review requires:

- an evaluation of the current operational effectiveness of the NTC;
- consideration of the NTC's future role and relationships; and
- recommendations on the future work priorities and governance arrangements, if the NTC is to continue.

The Panel also took into account two previous reviews into the NTC. These were the first statutory review of the NTC in 2009 and a 2012 review of the NTC and other relevant transport bodies. The recommendations of both the 2009 and 2012 reviews and their implementation status are summarised at **Appendixes 2 and 3 respectively**.

As part of the review process the Panel held discussions with agency heads or their nominees from each jurisdiction, NTC Commissioners and senior executive officers, as well as representatives of relevant national and state transport industry associations and the road and rail national regulators. The Panel's stakeholder consultation record is at **Appendix 6**. The Panel also received eight formal submissions on the review. A full list of submissions is at **Appendix 7** and the complete submissions have also been published on the Department of Infrastructure and Regional Development's website at www.infrastructure.gov.au.

An interim report of the 2015 review was provided to Council for consideration in May 2015.

While the Panel's analysis has taken account of its consultation and the submissions received, the findings and recommendations contained within this final report are the Panel's own.

The Council is expected to provide a report on this review to the Council of Australian Governments (COAG).

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1. Executive Summary

The NTC has recorded some significant achievements since the last statutory review in 2009, particularly in the establishment of the national law and regulators. The NTC's positive response to the 2012 review has also led to a marked improvement in its engagement and responsiveness to transport sector stakeholders.

However, with the establishment and increasing maturity of the national regulators, a key threshold question of this review has been 'should the NTC continue to operate?', and if so in what role?

This review has found that the jurisdictions and the road transport industry sector generally support an ongoing role for the NTC. It remains highly valued as a strong independent advocate on national policy and reform issues, accessible to both industry and jurisdictions alike. However, the Council will need to provide a strong mandate and clear agenda to the NTC for the Commission to operate effectively in the future.

There are conflicting views on the future role of the NTC in strategic rail transport reform and there are concerns regarding the NTC's lack of expertise in this area. The Panel notes it may be difficult to define a role for the NTC in the absence of a nationally agreed policy agenda for rail.

The Panel agrees with most jurisdictions that the NTC should maintain its responsibility for regulatory reform in the transport sector and associated policy and technical work. The transition of operational policy and routine maintenance of laws to the national regulators continues and should remain a priority for the NTC.

There is a strong view amongst stakeholders that the NTC should focus more on progressing the major strategic transport policy issues as directed by Council. This will also allow more operationally focused projects to be undertaken by other organisations. The Panel agrees with this view although for the NTC to effectively shift its focus to this more strategic approach it will need to ensure it has the appropriate skills and capabilities in place.

The strategic drivers and challenges for national transport reform are well known. Most significantly, they relate to ways to improve transport productivity, including reforms to road pricing and investment, regulation, intermodal issues and addressing the barriers to improving the adoption of current and emerging technologies.

There is general satisfaction with the value delivered under the current NTC governance and funding arrangements although the Panel does note that there is scope for the NTC to improve the efficiency of its consultation arrangements with industry. There is also a lack of consensus by stakeholders on the need for any significant change to the IGA, performance based framework or statement of expectations at this time. The Panel recognises the Council has the capacity and authority to deal with any changes to working arrangements without needing to amend the IGA.

In the light of these findings the Panel's recommendations are as follows:

Recommendations

Should the NTC continue in operation?

1. The NTC should continue as an independent statutory authority.
2. The Council should charge the Transport and Infrastructure Senior Officials' Committee (TISOC) to develop a nationally agreed policy agenda for rail and recommend whether there remains a role for the NTC, or another suitable organisation, to progress further reforms in this area.

The NTC's effectiveness

3. The NTC should continue to transition its focus to higher level strategic policy work, consistent with its core reform role to improve transport productivity, safety, environmental outcomes and regulatory efficiency, as directed by the Council.
4. The Council's current voting protocols and the NTC's reporting and accountability arrangements should continue.
5. The NTC should work with TISOC to develop a formal approach to reduce the consultation burden on industry stakeholders.
6. The current board governance arrangements of the NTC should be reconsidered in 2016, to ensure their continued effectiveness in providing expert advice to governments on transport policy reform.

Relationship between the NTC and the national regulators

7. TISOC should provide targeted oversight and clarification of the work programme boundaries to the NTC to ensure the efficient and effective transition of operational policy and the routine maintenance of national law to the national regulators which takes into account the developing capacity of the regulators and avoids duplication of roles.

The NTC's future work priorities and governance arrangements

8. The NTC should complete its current work programme including chain of responsibility, heavy vehicle charges determination and reviewing and simplifying national vehicle law.
9. The Council should identify those key strategic transport reform issues to determine the NTC's short to medium-term work priorities, including reforms to road pricing and investment (taking account of any response to the Harper Review), transport regulation, intermodal and addressing the regulatory barriers to increasing the adoption of current and emerging technologies by the transport sector.
10. The NTC should work with relevant technical/research bodies and industry to develop key performance indicators to track the effectiveness of reform initiatives to improve transport productivity and efficiency and provide an evidence base for future reforms.
11. The NTC should continue to ensure that it has the appropriate skills and capabilities best suited to delivering the Council's strategic transport reform agenda.
12. The NTC's current level of funding should continue.
13. Changes to the IGA should only be considered following agreement on a nationally agreed policy agenda for rail in accordance with **recommendation 2** and the Council's identification of key strategic transport reform issues in accordance with **recommendation 9**.

2. This review

The main purpose of this review is to advise the Council on whether the NTC should continue. The Panel recommends that the NTC should continue, subject to a narrowing in focus to high level strategic policy work that delivers against the Council's expectations and is consistent with the objectives of the IGA and the NTC Act. In reaching this conclusion, the Panel took into account three main considerations:

- the effectiveness of the NTC;
- the relationship between the NTC and the national regulators; and
- the strategic drivers impacting on the policy environment and the challenges for transport reform.

The review covers a significant period of transition for the NTC. During this period it had a major role in the establishment of the national regulators. The national regulators have significantly changed the national transport environment. As the regulators continue to mature in their roles, it is an opportune time to assess not only the effectiveness of the NTC to date, but how well it is placed to shape and respond to the future transport reform agenda. The Panel considers these issues below, drawing on consultations with jurisdictions and key industry bodies.

3. Should the NTC continue in operation?

The threshold question for this review is: should the NTC continue to operate? This same question was addressed by the 2009 review. The 2009 review argued that the NTC should continue, but with the primary objective of achieving seamless national regulation of road, rail and intermodal transport.

Six years later, the establishment of the national regulators in heavy vehicles and rail safety has made significant progress in meeting this objective. This was seen as an opportunity by some jurisdictions and industry to scrutinise alternatives to the NTC model and whether the NTC's remaining functions could be handled by other bodies.

So the question now becomes, what if any role there is for the NTC given the establishment of the national regulators? Has the NTC fulfilled its obligations under the IGA and NTC Act or is there more to do?

Generally, the jurisdictions are supportive of the NTC continuing, some strongly so. Several jurisdictions noted that if NTC were abolished then another entity would be needed, either within the state or commonwealth, to maintain national regulation. One jurisdiction promoted the concept of a restructured NTC, operating under a TISOC governance structure as an alternative to the statutory body. Other jurisdictions believe that a national entity is still required to ensure that the interests of all jurisdictions in future transport reform were represented, not just those participating in implementing national regulation.

Support for the NTC from jurisdictions reflected the NTC's ability to undertake national policy issues in transport reform that jurisdictions would otherwise have to undertake

themselves, in a suboptimal way. Jurisdictions acknowledged that government agencies, either Commonwealth or larger state governments, would have the capacity to undertake the NTC's remaining functions. However, most also thought that the lack of a national transport body, at arm's length from government, could lead to lack of trust from industry hampering the ability to promote better industry performance and achieve future transport reforms. Concern was also raised that locating national policy issues within one jurisdiction risked perceptions that the jurisdiction's interest would be furthered at the expense of the broader national benefit.

Some jurisdictions did raise concerns about the potential for unintentional overlap of functions of the NTC and other transport related bodies, such as Austroads and the ARRB Group (ARRB). A view was expressed that the Council and TISOC could have a role in ensuring a clearer demarcation of responsibilities and co-operation between the NTC and other transport related bodies when there is a shared agenda through oversight of entity work programmes and working relationships.

Similarly, many jurisdictions argued strongly that, with the regulators coming on line, it is essential now that the future role and responsibilities of the NTC are more clearly and sharply defined to ensure it continues to add value in progressing national transport reform consistent with its obligations under the IGA and the NTC Act.

Among the industry stakeholders, again generally there is support for the NTC continuing. Industry stakeholders value the independence of the NTC and its close engagement with industry.

The rail industry sector, however, was the exception to this view. It was less supportive of an ongoing role for the NTC, noting its limited involvement in the rail sector beyond the establishment of the Office of the National Rail Safety Regulator (ONRSR). Some in the rail sector noted that future and emerging rail issues could be more efficiently managed by other bodies such as ONRSR, the Australasian Railway Association (ARA) and the Railway Industry Safety and Standards Board (RISSB) through their direct engagement with TISOC, Council and relevant government departments.

This was not necessarily the view of the jurisdictions with some questioning whether there was another suitable organisation that could take on national rail policy. The Panel notes the valuable work previously undertaken by the NTC in the area of rail safety reform and freight productivity but that it may be difficult to define a role for the NTC in the absence of a nationally agreed policy agenda for rail.

The Panel considered the alternative operating model suggested by one jurisdiction where the NTC could be restructured to report to TISOC, supported by a secretariat facilitating greater involvement by government agencies in, and responsibility for, the achievement of outcomes. However, taking into account the views of all the jurisdictions and the strong need for independence promoted by industry stakeholders as well as the evidence of the NTC's effectiveness as discussed in section four, the Panel agrees that the NTC should continue with a strong mandate and clear agenda set by the Council.

Findings

- (i) The jurisdictions and the road transport industry sector generally support an ongoing role for the NTC.
- (ii) For the NTC to operate effectively in the future it will need a strong mandate and clearer agenda from the Council.
- (iii) There are conflicting views on the future role of the NTC in strategic rail transport reform and there are concerns regarding the NTC's lack of expertise in this area.

Recommendations

1. The NTC should continue as an independent statutory authority.
2. The Council should charge the TISOC to develop a nationally agreed policy agenda for rail and recommend whether there remains a role for the NTC, or another suitable organisation, to progress further reforms in this area.

4. The NTC's effectiveness

The Panel was asked to look at the effectiveness of the NTC in the following areas:

- its delivery and maintenance of regulatory and operational transport reform; and
- its governance arrangements.

4.1 Delivering and maintaining transport reform

During the period of review from 2009, the NTC played an important role in transport reform. Key examples identified by stakeholders where the NTC offered the greatest value include:

- The establishment of the national regulators: the NTC played a strong facilitative and coordination role with stakeholders and provided significant support to the reform project teams. It was instrumental in developing the legislation that underpinned the national regulator reforms. The establishment of the regulators is a major achievement, expected to improve transport productivity by reducing the variation across heavy vehicle and rail safety laws across Australia.
- The development of the National Ports Strategy: the NTC developed the Strategy in partnership with Infrastructure Australia and in consultation with governments. The Strategy focuses on encouraging long term thinking and the sharing of best practice and performance information to drive the development of efficient, sustainable, safe ports, fed by efficient landside supply chains. While the Strategy's key milestones have now been achieved, its underlying principles remain current and complement governments' broader land freight policies.
- The development of the publication, *Assessing Fitness to Drive*: this was developed in partnership with Austroads to improve road safety. It contains medical guidelines to provide guidance to health professionals and driver licencing bodies on the health assessment of private and commercial drivers of heavy vehicles, light vehicles and motorbikes. The guidelines came into effect on 1 March 2012.

- The NTC's work with the corporate sector on the *National Road Safety Partnership Programme*: the programme is a collaborative network for businesses, governments and researchers to share information and good practice regarding road safety. Its intent is to improve regulatory efficiency by encouraging voluntary industry actions to improve road safety. The programme was officially launched in May 2013 and is now hosted by ARRB Group.

Achieving transport reform requires effective stakeholder consultation. There is almost a universal view among stakeholders that there has been a marked improvement in the NTC's cooperation and consultation with industry and jurisdictions since the 2012 review. This is particularly since the changes in leadership and governance implemented in response to the 2012 review recommendations. Several stakeholders noted the new Chief Executive Officer is seen as the catalyst for this, bringing a more direct engagement between the NTC and stakeholders that has engendered greater confidence and trust in the organisation.

Based on feedback, the Panel considers there is some scope for additional improvement in the NTC's engagement with stakeholders. In particular the NTC could better tailor its communication and engagement to suit the diversity of organisations it interacts with, particularly smaller, regional organisations.

Broadly the NTC continues to be recognised as a strong independent advocate on national transport policy and reform issues. However, the value of the NTC to national and state transport industry bodies varies across road and rail demarcation lines:

- The road transport industry in general has a strong appreciation of the independence of the NTC's role and places high value on the provision of national transport reform initiatives, such as the national law and regulator establishment.
- The rail transport industry, while acknowledging NTC activities have value, are generally critical of the lack of focus by the NTC on strategic issues related to the rail transport industry. The industry considers the NTC's lack of specific expertise in rail would make it difficult for them to "step up" to take on a role in strategic rail transport reform.
- Where industry groups have a multi-modal or intermodal membership, greater value is placed on the NTC. This is particularly so when the NTC extends its focus toward a more strategic whole of freight task by addressing intermodal reforms that ensure a more "level playing field" across transport modes.

Nevertheless for industry, the NTC — as an organisation of non-aligned professionals — is seen as an accessible avenue on reform issues, particularly where there may be reluctance to openly engage with jurisdictions charged with policy and regulatory roles.

Indeed for some stakeholders the NTC should be bolder in its stance on transport reform, taking a 'thought leadership' role in promoting what may be, at times, controversial agendas. Several stakeholders recommended the NTC adopt a Productivity Commission style approach to developing policy reform proposals to ensure they are independent, evidence based, intellectually rigorous and supported by extensive consultation.

While stakeholders considered the NTC to be most effective in delivering on its role to provide expert advice on regulatory reform, it was seen to be less effective performing its other functions aimed at implementation planning, monitoring and reporting and reform maintenance.

Further, it was noted by several stakeholders that the NTC was not always able to secure jurisdictional and Council understanding and support for implementing key initiatives. The recent Heavy Vehicle Pricing Determination Review process was identified as an example. As the lead organisation on this reform process the NTC's modelling work and open consultation with industry were commended. However, it was suggested that more work could have been done by the NTC early in the design process to alert government ministers to the potential impacts of this reform, and to respond to the concerns raised that took account of the prevailing fiscal constraints facing jurisdictions.

Jurisdictions assessed the NTC's value as highest when it focussed on those major strategic policy and heavy vehicle pricing issues that clearly fall within its remit. Some jurisdictions noted the NTC's current work programme was too broad and comprehensive for a relatively small organisation. For some industry stakeholders, the projects that the NTC recommends to TISOC are not short to medium term priorities for industry.

There was a common view that the NTC should focus on fewer, but higher level projects that deliver against its core national transport reform role and allow more operationally focused projects to be undertaken by other organisations. This was reinforced by the strong view that the NTC should facilitate those major transport reforms that deliver against the Council's expectations. The Panel acknowledges that some of this transition is already underway and that the NTC, through its approved work programme, is placing greater attention on pursuing those strategic linkages required to deliver future reforms. This includes building upon the successful handover of the performance based standards (PBS) systems and scheme to the National Heavy Vehicle Regulator (NHVR) by assessing the effectiveness of the PBS marketplace to identify the barriers to realising productivity benefits.

Findings

- (iv) The NTC remains highly valued as a strong, independent advocate on national policy and reform issues, accessible to both industry and jurisdictions alike.
- (v) There a strong view amongst stakeholders that the NTC should focus more on progressing the major strategic transport policy issues that fall within its remit. This will allow more operationally focused projects to be undertaken by other organisations.

Recommendations

- 3. The NTC should continue to transition its focus to higher level strategic policy work, consistent with its core reform role to improve transport productivity, safety, environmental outcomes and regulatory efficiency, as directed by the Council.

4.2 Governance

Concerns were raised, primarily from industry, that the effectiveness of the NTC is hampered by the nature of its accountability and reporting responsibilities to TISOC and the Council. Some industry stakeholders believe the role of TISOC, in reviewing and endorsing NTC reform work prior to the Council, leads to issues being filtered down to the “lowest common denominator” of vested jurisdictional positions. This viewpoint was countered by others who noted that the NTC’s reform proposals often have to balance the interests of a range of stakeholders prior to being presented to TISOC.

For a few industry stakeholders, the NTC’s independence could be enhanced by it having a direct two way channel to ministers through the Council on key issues. Options suggested included allowing the NTC to submit proposed reforms directly to Council rather than through TISOC or changing the NTC’s role from providing expert advice to having a statutory decision making capacity.

For jurisdictions and some other stakeholders, a more direct NTC access to Council was not identified as a major issue given that the NTC is a voting member of Council.

The Panel also notes that the risk of the ‘lowest common denominator approach’ to national reform was considered in the 2012 review. The 2012 review recommended that this risk was best addressed by ensuring that, wherever practical, voting was done in-session by the Council to ensure consensus agreement across jurisdictions on national transport reforms and that all reform proposals are considered by TISOC so that concerns with the proposals are adequately addressed.

The Council adopted the 2012 recommendation to voting protocols and this approach has been reinforced by a 2013 COAG requirement that agreement to matters considered by ministerial councils must be by consensus. Out of session voting by the Council can occur but only in extreme and urgent circumstances.

The change to voting protocols in response to the 2012 recommendation was not supported by some industry stakeholders and the NTC. It was believed the biannual nature of the Council meetings, and the comprehensiveness of the NTC work programme, placed a strain on industry organisations, where time or resource constraints limit their capacity to adequately consider and comment on the reforms.

Given the relatively recent adoption by Council of this 2012 recommendation it is too early to comment on whether it has achieved its aims. Therefore, the Panel does not support any changes to voting protocols to national law or the NTC’s reporting and accountability arrangements to TISOC at this time. The Panel does recommend that the NTC work with TISOC to develop a formal approach that enables Council to consider key strategic reform issues while reducing the consultation burden on industry stakeholders and jurisdictions. The shift in the focus of the NTC to progress fewer, major strategic reform issues is likely to assist in reducing this burden.

There was limited comment on the performance of the new, post-2013, Board of NTC Commissioners. The Board was, however, given credit for supporting the improved approach to engagement and organisational performance. Some stakeholders also expressed support for the inclusion of two TISOC members on the Board on the grounds they were advocates with 'skin in the game' and could report back to Ministers.

Some jurisdictions and stakeholders would like to see the NTC move towards a fully skills based independent board, where Commissioners have those qualifications and experience relevant to the transport field but do not include government officials.

One formal submission suggested that the NTC could improve its role as an expert advisor on transport policy reform if it adopted the board structure and governance arrangements used by similar agencies in the water and energy sectors. This would entail a scaling down of the Board to three Commissioners, with at least one full time. These Commissioners would meet weekly to lead development of its advice to governments, ensure effective direction and oversight the analysis undertaken to support its decisions. The CEO would retain responsibility for implementing the decision of the Board and administer the day to day operations of the NTC.

However the Panel agrees with the more general view that the jurisdictional Commission members were appointed in 2014 to address concerns raised in the 2012 review, and this arrangement should stay in place until at least the expiry of the members' term at the end of 2016.

Findings

- (vi) The voting protocols adopted by the Council following the 2012 review have been reinforced by the 2013 COAG requirement that agreement to matters considered by ministerial councils must be by consensus.
- (vii) There is scope for the NTC and TISOC to improve arrangements to enable industry to comment on transport reform proposals while reducing the consultation burden.
- (viii) There is broad support for the current NTC governance arrangements introduced after the 2012 Review.

Recommendations

- 4. The Council's current voting protocols and the NTC's reporting and accountability arrangements should continue.
- 5. The NTC should work with TISOC to develop a formal approach to reduce the consultation burden on industry stakeholders.
- 6. The current board governance arrangements of the NTC should be reconsidered in 2016, to ensure their continued effectiveness in providing expert advice to governments on transport policy reform.

5. Relationship between the NTC and the national regulators

In 2008, COAG agreed to implement regulation and competition reforms under the *National Partnership Agreement to Deliver a Seamless Economy*. This led to the signing of intergovernmental agreements in 2011 committing Australian governments to reduce the costs and regulatory burden for transport companies in the heavy vehicle, rail and maritime sectors, while improving productivity in the national economy.

The commitments have largely been realised through the establishment of the NHVR under Queensland law and the ONRSR under South Australian law and harmonised marine safety law under the Australian Marine Safety Authority (AMSA). Further information on these and other COAG reforms can be found at https://www.coag.gov.au/a_seamless_national_economy.

Memoranda of Understanding (MoU) have been signed between the NTC and each of the ONRSR and the NHVR. Each MoU defines the NTC's responsibility for developing, monitoring and evaluating further reform proposals in respect of national laws to ensure they remain contemporary and consistent with their policy intent. The national regulators administer, monitor and review the maintenance and development needs from an operational perspective.

In this review stakeholders have identified the potential for duplication of effort between the NTC and the national regulators as the latter become more established. The NHVR noted that while it has had a strong working relationship with the NTC on several projects, there was an opportunity to improve collaboration between these organisations through better coordination and understanding of roles. Further information on the current roles of the national regulators, the NTC and Austroads is at **Appendix 4**.

In particular the NHVR raised concerns that currently both it and the NTC have a role in operational policy which is confusing to industry. The NHVR strongly argued that it should be formally recognised, through the IGA, as having primary responsibility for operational policy improvement. This would provide greater clarity to industry and government stakeholders on the respective roles of the NTC and the NHVR leading to improved efficiencies in the development and application of heavy vehicle law and regulations.

Most jurisdictions supported a clear separation of policy development on national law reforms and the implementation of regulation and compliance activities between the NTC and the national regulators. They also stress that by having the national regulators take on more responsibility for operational policy and routine law maintenance functions, the NTC can better focus on the strategic reform and policy agenda.

The NHVR, in its submission, raised the possibility that it could take over responsibility for developing or proposing changes to heavy vehicle law were the NTC to be discontinued. For the NHVR to do so would require a suitable transition period and funding stream to develop its capacity to the necessary level. For most jurisdictions and road industry stakeholders,

this approach would be at odds with their preference to maintain clear separation between policy development and its operational aspects.

Nonetheless it was well recognised that there needs to be effective consultation processes between the NTC and the regulators to ensure the NTC has a clearer appreciation of what their policy proposals will mean in practice and that the regulators are more responsive to ensuring the policy intent of national law is met. The regulators were also conscious of how changes to national law can impact on their operating budgets. The NHVR suggested that the NTC's future legislative or policy proposals, in relation to heavy vehicles, must be endorsed by the NHVR and should include full impact assessment on the operating budget of the NHVR. This would enable the NHVR to provide advice to ministers on costs, benefits and timelines for implementing changes to the regulatory framework.

For its part, the NTC has advised it remains committed to working with partners to enable the national regulators to become fully established and operational. The NTC envisages a period of 3-6 years to transition more routine maintenance of laws to the national regulators, while it continues to work to make these laws best practice and ensure these reforms are adopted by all states and territories. As responsibility for national law routine maintenance is transitioned to the national regulators, the NTC will continue to work with governments on new opportunities to progress the national transport reform agenda.

The Panel encourages TISOC and the Council to regularly assess how well this transition is progressing, through oversight of the annual work programmes of both NTC and the national regulators. In doing so, TISOC and the Council can provide targeted direction to ensure the transition of responsibility occurs as swiftly as possible, while taking into account the developing capacity of the national regulators and avoiding duplication of roles.

Findings

- (ix) The Panel agrees with most jurisdictions that the NTC should maintain its responsibility for regulatory reform in the transport sector and associated policy and technical work.
- (x) The transition of routine maintenance of laws to the national regulators continues and should remain a priority for the NTC.
- (xi) The NTC and the regulators should continue to strengthen their collaboration and ensure their ongoing roles are clearly defined. The MOUs between the NTC and the regulators may be the best vehicle for achieving this.

Recommendations

7. TISOC should provide targeted oversight and clarification of work programme boundaries to the NTC to ensure the efficient and effective transition of operational policy and the routine maintenance of national law to the national regulators which takes into account the developing capacity of the regulators and avoids duplication of roles.

6. Strategic drivers impacting upon the future role of the NTC

The transport industry remains a significant contributor to Australia's social and economic well-being. In 2012 the transport and storage sector was estimated to account for approximately 5 per cent of total GDP and employed over 580,000 people.

Between 1989/90 and 2011/12 total factor productivity growth of the transport sector averaged 1.3 per cent per annum compared to 0.9 per cent per annum for the national market sector. However, there has been a slowdown of productivity growth over the last decade in the transport sector, consistent with an industry wide slowdown both in Australia and some other developed countries².

A range of strategic policy issues were identified by stakeholders as being needed to be progressed to improve transport productivity and efficiency within Australia. Several key measures identified as potentially within the NTC scope of responsibility include road and investment reform, regulatory change and further application of technological improvements. These are discussed below.

6.1 Road pricing and investment reform

Several stakeholders expressed disappointment in progress to date on road charging and investment reform in the transport sector and welcome further work to address this issue. This was reinforced by the findings of the Australian Government Competition Policy Review (the Harper Review)³. The Harper Review argued that reform of road pricing and provision should be a priority. It noted that the lack of proper road pricing leads to inefficient road investment and distorts choices between transport modes, particularly between road and rail freight. It recommended:

‘Governments should introduce cost-reflective road pricing with the aid of new technologies, with pricing subject to independent oversight and revenues used for road construction, maintenance and safety⁴.’

This recommendation closely reflects the recommendations on road charging and investment in the 2014 Productivity Commission inquiry into Public Infrastructure (the PC Inquiry). Through its response to the PC Inquiry, the Australian Government acknowledged that there is sound economic rationale for wider application of road user charging, but that there are also many complex issues that will need to be worked through before user charging could be rolled out on the scale proposed by the PC Inquiry. To this end, the Government committed to work with state, territory and local governments to investigate opportunities to pilot new user charging regimes, particularly for commercial road users on key freight and transport corridors. This work is primarily being led by TISOC; however, to date no specific trials or pilot projects have been established.

The Harper Review similarly stressed that co-operation and commitment from all levels of government is required to transform the road transport sector to operate more like other

² Trends: Infrastructure and Transport to 2030: Commonwealth of Australia 2014.

³ The Australian Government Competition Policy Review, March 2015.

⁴ The Australian Government Competition Policy Review, March 2015.

infrastructure network providers. It recommended a working group of Australian Government and state and territory transport and treasury officials should be commissioned to develop pilots and trials. This working group would advise governments around: choosing technologies to allow mass time of use and location based charging; creating road funds; and directing revenues to these funds.

Reforms to road pricing will likely require changes to existing, indirect road charging regimes. A separate, but related process that is likely to impact on the debate around road user charging reform in 2015 and 2016 is the Australian Government's ongoing review of the Commonwealth taxation system.

The extent to which the Australian Government accepts the Harper Review recommendation may influence the future strategic agenda of the Council and TISOC. It has the potential to shape a future role for the NTC given its previous experience in road pricing, understanding of the sector and its capacity to work effectively across jurisdictions. One jurisdiction and several stakeholders suggested that the heavy vehicle charges determination function could be removed from the NTC and given to a pricing regulator. Further consideration should be given to this option following the Australian Government's response to the Harper Review.

Stakeholders interviewed as part of this review cautioned on the need to learn from previous failures to garner support for this reform. While the Harper Review recommendation may provide a necessary impetus, it was pointed out to the Panel that it will be important to secure support from relevant ministers for such a reform.

6.2 Regulatory reform

Although the establishment of the national regulators has largely been seen as a successful reform initiative, the Panel found differing views among stakeholders on whether further national reforms are necessary. For instance, some stakeholders questioned the general applicability of national reforms to all states (and regional areas). An ongoing challenge identified for future regulatory reform is the ability to develop national systems of reform that can be tailored to jurisdictions' legislative idiosyncrasies without significantly compromising the reform agenda. Concern was raised in some areas that too much emphasis on reducing red tape can risk shifting additional costs back to the states.

Several jurisdictions stressed that future regulatory reform should adopt a best practice approach to ensure clear, effective and targeted regulation solutions that are proportionate to the risk being managed. It was also noted that there remains significant work to be done to make the current national regulation best practice, particularly the heavy vehicle law.

Some industry stakeholders identified a role for the NTC to develop and promote a national framework for the transport industry to perform at best practice levels – not only in regulation, but also industry productivity and overall supply side efficiency.

6.3 Current and emerging technologies

Both current and emerging technological developments, such as advanced traffic control systems and telematics, can create opportunities to drive growth in the efficiency and productivity of freight movements and influence future infrastructure decisions.

Jurisdictional and industry stakeholders noted the NTC was well placed (with support from jurisdictions and other technical entities such as ARRB) to take a national approach to assessing and responding to the impacts of such technologies, particularly with regard to addressing the regulatory barriers to their uptake.

In terms of emerging technologies, autonomous vehicles are seen by several stakeholders as a priority for further work. Other emerging technological issues identified included the implications of ride sharing technologies such as 'Uber', and non-traditional fuelled vehicles — such as motorised bicycles — increasing the challenges of registered versus non registered vehicles on the road.

Findings

- (xii) The strategic drivers and challenges for national transport reform are well known. Most significantly, they relate to ways to improve transport productivity, including through reforms to road pricing and investment, regulation, intermodal and also the improved adoption of current and emerging technologies.
- (xiii) The Australian Government's response to the Harper Review may determine the extent of the NTC's future role in road pricing and heavy vehicle charges determination.

7. The NTC's future work priorities and governance arrangements

7.1 Work priorities

If the NTC is to shift its focus to progressing those strategic policy issues that fall within its remit, the question arises as to what its future work priorities should be.

A wide range of potential work priorities for the NTC were identified by stakeholders reflecting the diversity of views and interests within the transport sector. Key priorities already identified, consistent with the drivers of strategic change in transport, include road pricing and investment reform, continuing regulatory reform, and addressing the regulatory barriers to improving the uptake of current and emerging technologies.

There is a strong consensus from jurisdictions that the NTC should progress national transport reform initiatives agreed by the Council, focusing on facilitating national transport law, harmonising standards across road and rail, and on regulatory and micro-economic reform agendas. Several jurisdictions suggested the priority focus for the NTC over the next five to ten years should be on support for supply and demand side transport reforms. A priority for some road transport stakeholders is for the NTC to focus on achieving policy

outcomes that will deliver tangible productivity (and safety) benefits in the short to medium term.

A key issue identified by industry, the NTC and jurisdictions is the lack of robust key performance indicators (KPIs) for the transport industry to track the effectiveness of reform initiatives. Several stakeholders suggested the NTC could play a role in partnership with technical/research bodies in facilitating development of a KPI framework to enable industry and government performance to be tracked and evaluated and to improve the evidence base for future reforms. As a component of this work for the NTC, many stakeholders identified the need for more research and information on national freight movements and modal choice decision drivers.

With the exception of the rail industry sector, jurisdictions and industry groups stressed that the NTC should improve its focus on national intermodal transport reform consistent with the expectations of the IGA and improved productivity across the supply chains. The NTC has advised it has reengaged on this issue following a period of substantial focus on establishing the national law and regulators, and will continue to ensure it does not duplicate the work of other organisations in this area, particularly Infrastructure Australia and jurisdictions.

Improving the productivity and efficiency of Australia's passenger rail network was identified by some jurisdictions as a potential focus for NTC's future work.

Road safety was identified by the NTC as a potential future work priority noting that Australia's road safety levels have dropped comparatively to other countries. In the absence of any major road safety issues identified by Council, most stakeholders did not consider it a key and immediate strategic issue relevant to the NTC during this review. Further, while the NTC's role in the development of the Road Safety Partnership Programme was acknowledged, some stakeholders believed that this area was better handled by other existing national bodies working this space, principally Austroads. Nevertheless, the Panel recognises that the NTC has, and will continue to play a role in national road safety, however, this work needs to be considered in the context of the NTC's responsibility in delivering broader road reform objectives.

In addition to future policy priorities, the Panel agrees with several jurisdictions who stressed the importance of the NTC completing its current work programme. This includes chain of responsibility, and heavy vehicle pricing determination. The continued roll out of national transport law to all states and territories was also identified as a key priority with follow-up tasks still to be achieved (including addressing driver fatigue and supporting the implementation of electronic work diaries). Bedding down, reviewing and simplifying national law, transferring routine maintenance of law and regulations to the respective national regulators were also identified as priority measures by several industry stakeholders.

Findings

- (xiv) There remains a substantial amount of work for the NTC to complete under its current work programme.
- (xv) Jurisdictional and industry stakeholders have identified a range of potential work priorities for the NTC consistent with the drivers of strategic change identified in finding (xii).

Recommendations

- 8. The NTC should complete its current work programme including chain of responsibility, heavy vehicle charges determination and reviewing and simplifying national vehicle law.
- 9. The Council should identify those key strategic transport reform issues to determine the NTC's short to medium-term work priorities, including reforms to road pricing and investment transport regulation (taking account of any response to the Harper Review), transport regulation, intermodal and addressing the regulatory barriers to increasing the adoption of current and emerging technologies by the transport sector.
- 10. The NTC should work with relevant technical/research bodies and industry to develop key performance indicators to track the effectiveness of reform initiatives to improve transport productivity and efficiency and provide an evidence base for future reforms.

7.2 The role and governance of NTC in relation to governments

If the NTC is to continue, it would be important to clarify its role in relation to governments and their agencies. The Panel acknowledges the formal progress to date with changes to the NTC's governance arrangements that followed the Council's adoption of the statement of expectations and performance based framework and the enhanced TISOC representation on the NTC Board.

Jurisdictions continue to value the importance of a national entity on transport reform that operates impartially, provides independent advice, without a political or commercial impetus.

The NTC was also seen to provide an important voice and policy arm for smaller jurisdictions ensuring their issues are reflected on the NTC's work programme, thereby avoiding a skew towards 'east coast' concerns. While the larger jurisdictions may have the capacity to replicate NTC functions, they are still supportive of the co-ordinated approach the NTC provides.

For local governments, engagement with the NTC has been limited to date but they see the inclusion of local government road activities in any future supply side transport reform initiatives as critical. Visibility of decision processes and adequacy of funding for maintenance of local government road assets remains a high level agenda issue for them. Local government stakeholders have suggested a role for the NTC in ascertaining the volume of heavy vehicle transport carried on local government roads and formulating regional models for local-state jurisdiction cooperation on asset management and road funding.

7.3 Resourcing of the NTC

Among jurisdictions, there is general satisfaction with value delivered under the current level of funding provided to the NTC under the IGA. Value for money is greatest for the small to medium sized jurisdictions, who indicate they could not replicate the activities of the NTC without significant effort or cost to their organisations.

There was general agreement that the NTC had excellent skills and capabilities, which were valued by stakeholders. It was also recognised that as a relatively small organisation it will be impossible for the NTC to retain a skills base to cover all potential issues and some elements could be undertaken by other organisations with that expertise. This view was reinforced by rail industry stakeholders who raised concerns about the potential for duplication in the areas of rail policy and regulation that are, or could be, oversighted by other organisations. Some jurisdictions noted that the NTC did not have the capacity to progress some key issues but this could be bolstered through the temporary secondment of officers from the larger jurisdictions.

As noted earlier, the consensus is that the NTC should elevate its focus towards high level strategic work for which it has clear responsibility, with less effort on operational and tactical projects in future. This will likely mean that the value to all jurisdictions delivered under the existing funding regime will improve. This will also mean the NTC may need to transition the skills and capabilities of the organisation to suit.

The high regard for the capabilities of the NTC's executive team in improving the organisation's performance raised the issue that these capabilities need to be key consideration in future succession planning.

Findings

- (xvi) There is general satisfaction with the values delivered under the current level of funding provided to the NTC under the IGA.
- (xvii) For the NTC to effectively shift its focus to high level strategic work it will need to ensure it has the appropriate skills and capabilities in place.

Recommendations

- 11. The NTC should continue to ensure that it has the appropriate skills and capabilities best suited to delivering the Council's strategic transport reform agenda.
- 12. The NTC's current level of funding should continue.

7.4 Amendments to the NTC Act, IGA, performance based framework or statement of expectations

There was no broad consensus by stakeholders for any significant change to the IGA, performance based framework or statement of expectations. For many, the current objectives of the IGA remain relevant and do not warrant significant change. Some stakeholders believed the IGA could be amended to clarify the roles and responsibilities for NTC and NHVR regarding operational policy. Some rail industry stakeholders also suggested

narrowing the scope of the IGA to road reform while others recommended an expansion of the IGA to cover marine and aviation issues within an intermodal context.

Several minor changes were suggested to both the IGA and the Act to reflect current roles and responsibilities and relationships with other bodies.

It was noted that the 2012 Review recommended that any wholesale reconsideration of the content of the IGA should only be undertaken following completion of implementation of the national regulators, the current 2015 review and the proposed Productivity Commission review into the national transport regulation reforms.

The Panel notes that the Council has the capacity and authority to deal with any changes to working arrangements without needing to amend the IGA, as long as the change is broadly consistent with the original intent of the IGA in supporting national transport reforms and not contradictory to any statutory obligations. As noted earlier, COAG specified a requirement in the 2013 agreement that matters considered by ministerial councils must be by consensus. The Council adopted a voting protocol that implemented this requirement for consensus, which also, in effect, amended the IGA's voting arrangements to reflect the 2012 review and the establishment of national (rather than model) laws.

As such, the Panel is of the view that amendments to the IGA should only be made following those Council decisions that provide substantial clarification on the future role of the NTC.

Copies of the NTC Act, IGA, performance based framework and statement of expectations can be found on the NTC's website at: <http://www.ntc.gov.au/about-ntc/who-we-are-what-we-do/acts-statement-of-expectation-memorandum-of-understandings/>.

Findings

- (xviii) There was no broad consensus by stakeholders for any significant change to the IGA, performance based framework or statement of expectations at this time.
- (xix) The Council has the capacity and authority to deal with any changes to working arrangements without needing to amend the IGA, as long as the change is broadly consistent with the original intent of the IGA.

Recommendations

- 13. Changes to the IGA should only be considered following agreement on a nationally agreed policy agenda for rail in accordance with **recommendation 2** and Council's identification of key strategic transport reform issues in accordance with **recommendation 9**.

8. Other Issues

As part of this Review process a number of issues identified which, while outside the scope of this review, the Panel believes may be worthy of future consideration by TISOC and the Council.

As mentioned previously it has been noted that the NTC and other transport entities have the potential to cross over on a number of issues. Individually they do not have the scale to

take on major reform and transport research initiatives. An issue for further discussion, was a suggestion by some stakeholders that these entities, or their functions, be merged to provide greater integration of effort, efficiencies of scale and combined budgets to effectively tackle whole of transport strategic issues with the appropriate oversight of TISOC.

In its formal submission the NHVR has stressed that it is vital that the NHVR is directly involved in any discussions at TISOC that concern the operation of the NHVR. The NHVR preference is that this would occur through its formal appointment on TISOC as a voting member as is the case with the NTC. The Panel is of the view that this is a separate matter for TISOC but does note, however, that all three national regulators are invited to TISOC or the Council meetings where issues relating to their respective operations are being dealt with.

Appendix 1: Terms of Reference for the 2015 Review of the NTC.

Evaluation of the National Transport Commission's ('the Commission') operational effectiveness

The Review will assess the effectiveness of:

- the Commission in delivering regulatory and operational road, rail and intermodal transport reform in accordance with:
 - the *National Transport Commission Act 2003* ('the Act');
 - the Intergovernmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport;
 - the Statement of Expectations (November 2013);
- the Commission's reform maintenance process that supports the delivery of regulatory and operational reform; and
- the Commission's governance arrangements in facilitating the delivery of tasks and whether any changes should be considered.

Evolution of the transport reform environment—consideration of NTC's future role and relationships

The Review will:

- make recommendations on whether the NTC should continue in operation;
- examine the relationship between the Commission, the National Heavy Vehicle Regulator and the Office of the National Rail Safety Regulator—including consideration of the clarity of regulatory, policy advising and operational roles; and
- consider the strategic drivers impacting on the future role of the NTC and the advice that will be required by jurisdictions noting the policy environment and challenges that governments will face in coming years.

Future work priorities and governance arrangements (if the NTC is to continue)

If the Review recommends the continuation of the Commission, it will also make recommendations on:

- the NTC's future role and work priorities;
- the role of the Commission in relation to Commonwealth, state, territory and local governments and other government agencies;
- the appropriate level of resourcing for the future body; and
- any necessary amendments to the NTC Act and or the IGA to implement these changes.

Conduct of the Review

The Review will be undertaken by an Expert Panel with Secretariat support to be provided by the Commonwealth. The Expert Panel report will be prepared in a manner that will facilitate the Council meeting the requirements of section 51 of the Act.

The Expert Panel will provide an interim report to the Council (through TISOC) by 15 April 2015, to facilitate a discussion by the Council in May 2015. The final report will be lodged with the Council (through TISOC) by 1 August 2015.

The Panel will consult with jurisdictions and industry in line with this Terms of Reference.

Appendix 2: Response to 2009 Review of the NTC

The 2009 review found that while the NTC had a strong record of generating regulatory reform concepts and model legislation, the NTC's reform processes had not delivered the anticipated national benefits and that the NTC needed to share some responsibility for this. The Review noted that the reform process often faltered at the implementation stage and that harmonisation outcomes had been inadequate and provided little confidence for meeting the challenges ahead.

The 2009 review recommended that the NTC focus on core responsibilities; be given a more active role in facilitating implementation of reforms; improve governance, project prioritisation and reporting to inform and drive better reform results; and refocus its skill base on the NTC's core disciplines of road, rail and intermodal regulation, along with an annual funding justification process.

The Transport and Infrastructure Council (the then Australian Transport Council) responded to the 2009 review recommendations and these are summarised in the table below, along with the current status of each initiative.

2009 Recommendation	Response (ATC 2009)	Current Status
1. The NTC should continue as an independent statutory authority.	Agree, noting that in light of implementation of the national regulators for heavy vehicles and rail safety, a further review will be required to determine an appropriate balance between regulatory policy reform development and implementation responsibilities.	Completed/ongoing Independent authority status retained. Role of NTC versus national regulators has been clarified through MoUs. The future role of NTC is also being considered through 2015 review.
2. The NTC's primary objective should be to achieve seamless national regulation of road, rail and intermodal transport where national regulation drives improved transport safety, productivity, efficiency and environmental performance.	Agree. ATC directs the NTC to ensure its work program is focused on the priority regulatory reform agenda. In addition, the ATC may request the NTC to explore broad transport related issues and provide independent expert advice to policy makers.	Completed Council approved performance based framework and statement of expectations guides NTC work programme.
3. The NTC's mandate under the IGA should be explicitly expanded to include responsibility for working with jurisdictions to develop viable implementation plans to deliver desired reform outcomes.	Agree in principle, noting that this role will need to be considered further as the single national regulator work develops and that formal amendment of the IGA does not appear necessary to achieve this. ATC directs the NTC to work with jurisdictions to develop implementation plans.	Lapsed No formal amendment of IGA required. NTC works with jurisdictions and regulators to develop implementation plans for assigned tasks.
4. The NTC should develop a post-implementation review process on key reforms to	Agree. ATC directs the NTC to develop the proposed process, in consultation with	Completed Additional work has been undertaken on evaluation

review practical outcomes of regulatory reform and update or modify reforms where needed.	jurisdictions, for consideration at the first ATC meeting in 2010.	and reporting consistent with 2012 review.
5. The NTC should continue to report to, and be held accountable by, the ATC for the achievement of seamless national regulation of road, rail and intermodal.	Agree. Regular reports on progress are to be brought to ATC after due consideration by transport agency chief executives.	Completed/Ongoing Improved reporting requirements and governance arrangements in place with Council.
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.	Agree. ATC will provide direction to the NTC on priority projects. For 2009-10 to 2011-12 ATC requires the highest priority to be NTC's contributions to developing national heavy vehicle laws and rail safety law to be administered by the national regulators under development and to heavy vehicle pricing reform work contributing to the COAG Road Reform Plan.	Completed Subsequent priority projects undertaken, reflected through the performance based framework and Council approved NTC work programmes.
7. The NTC should regularly report to the ATC on progress of priority projects, including reform development, implementation and impact.	Agree. The NTC, in consultation with jurisdictions, will develop an activity and performance reporting system for approval by ATC in line with the review recommendation.	Completed NTC report on delivery of work program twice per annum through biannual report to TISOC and report on implementation status of reforms through annual National Transport Reform Implementation Status Report.
8. The NTC Commissioners should be appointed as a governing board under the <i>Commonwealth Authorities and Companies Act 1997</i> (CAC Act).	Agree. Consistent with the IGA, amendments to the NTC Act will be developed by the Commonwealth in consultation with jurisdictions.	Lapsed New approach to appointments approved by Council in May 2013. CAC Act replaced by <i>Performance and Accountability Act 2013</i>
9. A Director's Charter should outline the roles and responsibilities of the NTC Chair, Commissioners and CEO, and their performance should be reviewed on a regular basis.	Agree. ATC will develop a Director's Charter and direct the Commissioners to establish a regular review process.	Lapsed Charter replaced with performance based framework and statement of expectations.
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	Agree. The NTC will develop a process for a two stage sign off that includes the development of implementation plans. The process will inform future regulatory reform development and implementation. Where feasible, these two stages could be combined into one comprehensive package	Completed Council approved performance based framework for NTC governance and statement of expectations in place.

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.	inclusive of implementation plans.	
11. The NTC should continue to build the effectiveness of its external consultation to ensure all stakeholders are heard and informed.	Agree. As part of the reform process, the NTC is to report on stakeholder feedback, its appropriateness and the extent to which reforms have been adjusted in light of the stakeholder feedback.	Ongoing Recent reform work has included these elements (e.g. Heavy Vehicle National Law, Fatigue management RIS for National Rail Safety Law).
12. The NTC Commissioners should be more active advocates for the implementation of priority projects.	Agree. This recommendation will be given effect through the Director's Charter to be developed by ATC.	Completed Charter replaced with performance based framework and statement of expectations for NTC governance.
13. The NTC CEO should be a formal member of the Standing Committee of Transport (SCOT).	Agree.	Completed The NTC CEO is a member of TISOC (which replaced SCOT).
14. The NTC should evolve its mix of staff skills to become a centre of excellence for implementing national regulatory reform for road, rail and intermodal.	Agree. Staff skills that support and improve the NTC's technical capacity to fulfil its primary role should be given priority.	Ongoing.
15. The NTC should submit an annual resourcing plan to the ATC for approval, commensurate with the scope and timing of priority projects as determined by the ATC. The resourcing plan should be broken down at a project level over the lifetime of projects and also include overheads and administration costs.	Agree. The plan should be submitted to ATC through jurisdictions. It should also identify for the year ahead the specific products and reports on which the NTC will consult publicly or seek ministerial approval.	Completed/ongoing.
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 Rec: 15.	Agree. ATC notes that the level of funding of the NTC will need to be reviewed further as the single national regulator work develops.	Ongoing

Appendix 3: Response to 2012 Review of the NTC

Transport Ministers agreed in November 2011 the terms of reference for the review of the NTC, Austroads, ARRB, Transport Certification Australia and the Rail Industry Safety and Standards Board. The review examined the role and functions of these bodies going forward with the commencement of the new national transport regulatory systems in January 2013.

The 2012 review was formulated in response to the 2009 review of the NTC. The Council responded to the 2009 review by recommending to the Council of Australian Governments (COAG) that a further review of the NTC and other relevant transport bodies be undertaken in 2012, in light of the impending implementation of national regulators for heavy vehicles, rail safety and maritime safety, which was endorsed by COAG.

A further impetus for reconsidering the roles of these national organisations in the transport sector was the significant change to ministerial council arrangements under COAG, which commenced in mid-2011.

The Ministerial Council agreed all the review recommendations for the NTC, as summarised in the table below, along with the current status of each initiative.

Recommendation	Current Status
Part A: NTC	
Improving consensus and implementation of reform	
1. The voting arrangements for national laws should require consensus agreement for all model and national laws. In order to achieve consensus on model laws, the mechanism for voting for reforms covered by the NTC IGA should be in-session at SCOTI meetings unless there are extreme and urgent circumstances.	Completed. A decision making (voting) protocol was agreed by the Council in May 2013 and has been published on the Council website ('Publications').
2. If a jurisdiction proposes not to support a model law reform, it should provide a statement of reasons for consideration by Council members.	Completed as above.
3. Improve jurisdictional ownership of NTC's reform agenda through Commissioner appointments, by replacing one of the five ordinary members with the Chair of TISOC (ie the Commonwealth), another with a (rotating) jurisdiction member and the third ordinary member chosen on the basis of their industry knowledge and their ability to drive productivity reform in transport (plus the Chair and Deputy Chair chosen for their governance skills and their ability to drive organisational performance).	Completed The approach to Commissioner appointments was given full effect by the Council in May 2013 and subsequent appointment of a new Board of Commissioners on 1 January 2014.
4. Introduce a performance based framework to set and monitor the NTC's work program.	Completed. A performance based framework was agreed by

	<p>the Council in May 2013.</p> <p>A statement of expectations was also agreed by the Council in November 2013 as part of the performance based framework.</p>
NTC reform priorities	
<p>5. In relation to road transport reforms, the NTC must place their highest priority and allocate significant resources in relation to the following areas agreed by COAG and/or SCOTI:</p> <ul style="list-style-type: none"> (a) Support the work of the project directorate in finalising the heavy vehicle charging and investment reform process (in addition to the more urgent body of work to develop and gain support from industry and consensus agreement by jurisdictions to a new determination for heavy vehicle charging to apply in 2013-14); (b) Develop (and gain consensus to) further options to improve heavy vehicle access to road networks to deal with the rapidly growing freight task; (c) Implement SCOTI's commitment to industry to deliver the forward work program for further national heavy vehicle regulatory reform, and conduct a review of penalties in the national heavy vehicle law in 2014; (d) Progress COAG commitments regarding national heavy vehicle licensing and registration and occupational licensing for passenger vehicle drivers and dangerous goods; and (e) Implement the tasks identified for the NTC in the Implementation Plan for the National Ports Strategy. 	<p>Ongoing/Partially complete.</p> <p>Commitment reflected through the performance based framework and the following work plans:</p> <p><i>NTC Work Program 2013-14 to 2015-16</i>, approved by Council.</p> <p><i>NTC Work Program 2014-15 to 2016-17</i>, approved by Council.</p>
<p>6. In relation to rail regulatory reform, the key priority for the NTC should be to resolve any remaining issues relating to implementation of the national law and regulations, with two current issues relating to train communications and data loggers.</p>	<p>Completed</p> <p>No longer part of NTC work programme.</p> <p>The Rail Industry Safety and Standards Board is developing standards for train communications and event recorders which are expected to be completed by June 2015.</p>
<p>7. The NTC should finalise detailed implementation plans for each of these priority activities (and where relevant, with project offices), for consideration</p>	<p>Completed.</p> <p>The NTC reports that project plans are in place which includes implementation plans.</p>

and agreement by TISOC (given TISOC's role in implementing the reforms) and SCOTI.	
8. As a further priority, the NTC should commence work with the regulators and others (including BITRE) to identify and collect the data and undertake analysis that will be needed to assist the Productivity Commission in the review of national transport regulation reforms in 2016.	Completed The NTC reports that this work has commenced.
9. The NTC's national laws maintenance and forward work programs should be agreed by SCOTI and published, with timetables for implementation.	Completed/ongoing. The NTC's national laws maintenance and forward work program were included in <i>NTC Work Program 2013-14 to 2015-16</i> , approved by Council. <i>NTC Work Program 2014-15 to 2016-17</i> , approved by Council. Both work programmes were published on the NTC website.
NTC monitoring and evaluation functions	
10. To improve accountability for implementation of reforms, the NTC should: (a) undertake improved independent assessments in implementation reports, including the reasons for delay, the barriers to implementation, what is required to bring a jurisdiction back on target, and an analysis as to whether variations were implemented that would reduce the benefits of the particular reform; and (b) take on a similar role to the COAG Reform Council for transport reforms in relation to implementation reporting, with report cards to be considered by SCOTI and published.	Completed/ongoing. This commitment is reflected in performance based framework. Inaugural report provided to Council in November 2013 and published on NTC website. The NTC annually reports against this commitment.
11. Evaluations of existing reforms should be finalised by the NTC, including the reviews of the Australian Road Rules and Australian Vehicles Standards Rules, and the evaluation of the Dangerous Goods rules (identified in the NTC 2012-13 work plan). As part of these evaluations, the NTC should assess the extent to which further uniformity is required to achieve productivity and safety benefits, including the costs and benefits of doing so.	Completed. The underlying principle for the conduct of evaluations was incorporated into the performance based framework. The NTC reported on the evaluations to the Council in November 2013 and all recommendations were endorsed.
Other matters on the current NTC work program	
12. Maintenance by the NTC of the exemption framework for the Australian	Completed. Maintenance of the exemption framework for the

Defence Force from certain state and territory transport laws should continue.	Australian Defence Force continued in the NTC Work Program endorsed by Council in May 2013 and in subsequent work programmes.
13.The NTC's work on supply chain reform and rail freight investment reform should be discontinued, unless the NTC is able to identify specific deliverables and timetables for SCOTI consideration.	Completed. Consistent with commitment in <i>NTC Work Program 2013-2014 to 2015-2016</i> , NTC has ceased further work on rail freight investment and supply chain reforms.
14.The NTC's 2012-13 direct program delivery (the business partnerships road safety program) should be progressed by the jurisdictions rather than by the NTC.	Completed. The program was launched by the NTC in May 2014. The program is now managed by ARRB and is funded over the next three years by ARRB, NSW Centre for Road Safety, NSW Motor Accident Authority, the NTC, the South Australian Motor Accident Commission, VicRoads and the Transport Accident Commission.
NTC relationships	
15.The NTC should establish formal working arrangements with the national regulators as a priority in 2013.	Completed. The NTC agreed MoUs with the National Rail Safety Regulator and National Heavy Vehicle Regulator in August and November 2013 respectively.
16.The NTC should improve its efforts to gain consensus and ensure implementation of reform.	Ongoing. The NTC reports that this work is completed – the co-design model utilised in the Heavy Vehicle Charges Review and Determination project has been highly commended by industry and government stakeholders and will be replicated across projects of a similar nature.
17.The NTC should continue a strong industry consultation arrangement, coordinated with the national regulators where applicable.	Ongoing. The NTC engages and consults with the transport industry in a variety of ways including at regular meetings of the NTC Industry Advisory Group.
NTC Act and NTC IGA	
18.The Commonwealth is to make minor amendments to the NTC Act to replace references to the Australian Transport Council at the earliest opportunity, and no later than July 2016.	In progress Commonwealth anticipates introducing amending legislation in the winter 2015 sitting.
19.Voting arrangements for the former Australian Transport Council in the NTC IGA should be repealed through an addendum to the NTC IGA, which would include consensus voting arrangements for both model laws and national heavy vehicle and rail safety laws.	Completed. A decision making (voting) protocol was agreed by the Council in May 2013 and has been published on the Council website ('Publications').
20.Any wholesale reconsideration of the content of the NTC IGA should only be undertaken following completion of implementation of the national regulators (2013) the next 'section 51' review (2015) and the Productivity Commission review	Pending completion of Reviews.

into the national transport regulation reforms (2016).	
21. An efficiency dividend consistent with that in place for Commonwealth agencies should be applied to the NTC's resourcing on an ongoing basis, through adjustments to the automatic indexation amount (CPI) from year to year, and the NTC should be asked to identify any further savings that would arise from the work program changes outlined in this report for further consideration by TISOC and SCOTI.	Ongoing. Council did not seek efficiency dividend for the 2013-14 and 2014-15 approved budgets for NTC. Instead the NTC adjusted its budget downwards to reflect the revised work programmes.
PART B – supporting the strategic work of SCOTI, Austroads, ARRB, TCA and RISSB	
22. A closer cooperative approach between TISOC and Austroads should be implemented for national reform projects where Austroads is identified as the suitable vehicle for delivery, to take place under a Memorandum of Understanding between TISOC and Austroads, and include specific direction and accountability and an agreed framework for performance reporting.	Completed. A MoU was signed between Austroads and TISOC on 14 March 2013. The NTC and Austroads subsequently signed an agreement on 13 October 2013 to promote the cooperation and broadly identify their respective roles.
23. Austroads should report back to TISOC on how research priority setting and governance of research activities might be improved to support the SCOTI agenda, including examining the applicability of the AHURI model.	Completed The March 2013 TISOC meeting noted that Austroads would review its approach to research procurement and delivery including the sustainable expertise model. The review was undertaken by Austroads, Commonwealth and Tasmanian government officers and reported back to Austroads board in July 2013. Austroads wrote to the Secretary of the Department of Infrastructure and Regional Development on 18 November 2013 advising of actions arising out of the review intended to improve research priority setting and governance of research activities.
24. The TCA Board should report back to TISOC (through the TCA members) by March 2013 on the outlook for the company, future strategic directions and the potential for any new business opportunities, to facilitate a discussion by governments of the future arrangements for the company.	Ongoing. On 5 March 2013, TCA provided a report to TISOC regarding its strategic directions and future business opportunities in accordance with recommendation 24 of the NTC and other related transport bodies review. TISOC will now need to consider the future arrangements for TCA, in line with the discussion in the review report and provide advice to Council.
25. TISOC should negotiate a new agreement with RISSB that has a strong focus on the harmonisation benefits for national	Completed. TISOC and RISSB signed a MoU on 3 September 2013.

productivity and safety and includes agreed priorities to achieve that outcome.	
26. TISOC should work with the national rail safety regulator to develop government priorities for national harmonised standards that provide productivity and safety benefits.	<p>In Progress</p> <p>In November 2014, the Transport Infrastructure Council endorsed the national rail safety regulator's proposal to work closely with industry and jurisdictions to develop options that will support the full productivity and safety harmonisation objectives of the national rail reform, including the development of high quality national standards. The regulator will report back to Council in 2015.</p> <p>Work is also underway on a full legal, organisational and constitutional separation of RISSB and the ARA which will allow greater capacity to provide productivity and safety benefits.</p>
27. To improve accountability and communications between TISOC and RISSB, a quarterly meeting should be held between RISSB and a government representative (nominated by and accountable to TISOC) to consider progress on deliverables and discuss any changes to priorities or issues that may impact on delivery.	<p>Completed</p> <p>The 2013-2015 MoU between TISOC and RISSB established the Rails Standards Government Working Group. The MoU commits the working group to meeting at least twice and it has met twice since December 2014.</p>

Appendix 4: Roles of National Land Transport Bodies

National Transport Commission

The NTC is an independent authority responsible for developing regulatory and operational reform for road, rail and intermodal transport. The NTC is charged with improving the productivity, safety and environmental performance of Australia's land transport system. It develops and submits reform recommendations for approval to the Transport and Infrastructure Council (the Council) which comprises federal, state and territory transport, infrastructure and planning ministers.

The NTC also plays a role in implementation planning to ensure reform outcomes are realised on the ground, as well as coordinating, monitoring, evaluating and maintaining the implementation of approved reforms.

National Heavy Vehicle Regulator (NHVR)

The NHVR is an independent body established under the Heavy Vehicle National Law (HVNL). It is responsible for administering the NHVL as passed in each participating jurisdiction. In doing so the NHVR administers the heavy vehicle standards and mass, dimension and loading requirements, restricted access vehicles, heavy vehicle speeding compliance, heavy vehicle driver fatigue and the National Heavy Vehicle Accreditation Scheme. In addition, the NHVR monitors, investigates and enforces compliance with the NHVL and provides input on relevant policy proposals.

Office of the National Rail Safety Regulator (ONRSR)

ONRSR is an independent body established under the Rail Safety National Law (RSNL). The ONRSR aims to maintain and improve rail safety nationally through effective risk-based regulation, sharing and harmonising regulatory practice and improving co-regulatory approaches.

The ONRSR administers the RSNL, as passed in each participating jurisdiction. In doing so the ONRSR administers the accreditation regime under the RSNL and works with rail transport operators, rail safety workers and others involved in railway operations, to improve rail safety nationally. In addition the ONRSR monitors and investigates rail safety incidents in conjunction with the Australian Transport Safety Bureau and enforces compliance with the RSNL.

Austroads

Austroads is the association of Australian and New Zealand road transport and traffic authorities whose purpose is to promote improved Australian and New Zealand transport outcomes, provide technical input to national policy development on road and transport issues and promote consistency, improved practice and capability by road agencies.

Austroads also conducts strategic research to help road agencies address current and emerging issues and fosters international collaboration by engaging with and supporting international road organisations

Appendix 5: Expert Panel Biographies

Norm Mcilfattrick - Partner, Elphinstone Consulting

Norm Mcilfattrick is an independent Company Director and Advisor. He was Secretary of the Department of Infrastructure, Energy and Resources from 2008 to 2014, and the first rotating TISOC member of the NTC.

Previously, Norm was Secretary of the Department of Economic Development and Tourism and CEO of the Tasmanian Development Board following his roles as Managing Director of Aurora Energy and as a management consultant with PA Consulting, where he carried out major national and international assignments.

Norm has broad experience in senior management including customer service, sales, marketing, engineering services and strategic planning including roles with electricity utility Powercor Australia and the Hydro-Electric Commission in Tasmania. Norm was a founding Board member of Tasmanian Leaders Inc. and is passionate about developing leaders across all sectors of Tasmania.

Norm is a Companion to the Institution of Engineers Australia and member of the Australian Institute of Company Directors. He has post graduate management qualifications from the University of Tasmania and is an experienced company director with over 15 years' experience as a senior executive.

Mary Ann O'Loughlin - Executive Director, Policy, Programs and Evaluation, KPMG

Prior to joining KPMG, Mary Ann was previously Executive Councillor and Head of the Secretariat of the COAG Reform Council.

In 2008-09 Mary Ann was a member of the Prime Minister's National Health and Hospital Reform Commission and has also worked as a senior executive for a major publicly listed healthcare company. Between 2000 and 2008 Mary Ann was a Director of the Allen Consulting Group, a leading economics and policy advising firm.

Before joining Allen Consulting, Mary Ann was Senior Adviser on Social Policy to Prime Minister, the Hon Paul Keating MP, and held a number of senior positions in the Commonwealth Public Service.

Mary Ann is a Fellow of the Institute of Public Administration Australia and a Director of CEDA.

In 2013 Mary Ann was awarded a Member of the Order of Australia for significant service to public administration through the development of social policies and the reform of federal financial relations.

Appendix 6: Expert Panel's Stakeholder Consultation Record

NTC Review 2015 – Expert Panel's Stakeholder Consultation Record		
Date	Organisation	Met with
Feb/March 2015	Meet with all Australian Jurisdiction Transport Chief Executives	
20 th February MELBOURNE	Institute for Supply Chain and Logistics	Mr Peter Van Duyn
20 th February MELBOURNE	National Transport Commission (NTC)	NTC Board of Commissioners and NTC Executive officers
20 th February MELBOURNE	Transport Certification Australia	Mr Chris Koniditsiotis - CEO
2 nd March BRISBANE	National Heavy Vehicle Regulator	Mr Sal Petrocetto – CEO and other board members
6 th March PHONE	Northern Territory Road Transport Association	Mr Michael Swart – President Ms Louise Bilato – Executive Officer
11 th March PHONE	ARRB Group	Dr Gerard Waldron – Managing Director
11 th March CANBERRA	Australian Trucking Association	Mr Stuart St Clair - CEO
11 th March CANBERRA	National Road Transport Association	Mr Grant Johnson – Policy Director
12 th March CANBERRA	Australian Livestock and Rural Transporters Association	Mr Mathew Munro – Executive Director
12 th March PHONE	Intelligent Transport Systems Australia	Ms Susan Harris – CEO
12 th March CANBERRA	Australian Local Government Association	Mr Adrian Beresford-Wylie – CEO
13 th March CANBERRA	Australasian Railways Association	Mr Brian Nye – CEO Mr Phil Allan – Director Policy & Advocacy
13 th March CANBERRA	Rail Industry Safety and Standards Board	Mr Kevin Taylor - CEO
17 th March SYDNEY	Ports Australia	Mr David Anderson – CEO
17 th March PHONE	Australian Logistics Council	Mr Michael Kilgariff - CEO
17 th MARCH PHONE	Victorian Transport Association	Mr Peter Anderson - CEO
18 th March SYDNEY	Austroads	Mr Peter Duncan - Chair
23 th March ADELAIDE	Office of the National Rail Safety Regulator	Ms Susan McCarrey – CEO Ms Julie Bullas – Executive Director, Policy
24 th March PERTH	Freight & Logistics Council of Western Australia	Dr. Fred Affleck – Chair

24 th March PERTH	Livestock & Rural Transporters Association Western Australia	Mr Stephen Marley – President
25 th March ADELAIDE	Australian Rail Track Corporation	Mr John Fullerton – CEO Mr Simon Ormsby – Executive General Manager, Strategy & Corporate Development
25 th March ADELAIDE	South Australian Road Transport Association	Mr Steve Shearer – Executive Director
25 th March ADELAIDE	South Australian Freight Council	Mr Neil Murphy – CEO
30 March SYDNEY	Infrastructure Australia	Mr Paul Roe, Director Financing and Funding Policy and Mr Stephen Alchin, A/Infrastructure Coordinator

Appendix 7: Submissions to the Review

- Asciano, Aurizon and the Australian Rail Track corporation
- Australian Logistics Council
- Australian Railway Association Submission
- Australian Trucking Association
- Houston Kemp
- National Heavy Vehicle Regulator
- South Australian freight Council
- Toll Group

Appendix 8: Glossary and List of Shortened Forms

Glossary

2009 review	2009 Review of the National Transport Commission – Report to the Australian Transport Council
2012 review	2012 Review of the NTC and other Relevant Transport Bodies
The Council	Transport and Infrastructure Council
The Harper Review	Australian Government Competition Policy Review, Report, March 2015
National regulators	National Heavy Vehicle Regulator and the Office of the National Rail Safety Regulator
The Panel	The independent Expert Panel undertaking the 2015 review of the National Transport Commission
The PC Inquiry	2014 Productivity Commission inquiry into Public Infrastructure

List of Shortened forms

AFTD	Assessing Fitness to Drive
AHURI	Australian Housing and Urban Research Institute
AMSA	Australian Maritime Safety Authority
ARRB	ARRB Group Limited
ATC	Australian Transport Council
Austroads	Austroads Limited
BITRE	Bureau of Infrastructure, Transport and Regional Economics
CAC Act	<i>Commonwealth Authorities and Companies Act 1997</i>
COAG	Council of Australian Governments
HVCI	Heavy Vehicle Charging and Investment
KPI	Key Performance Indicators
MoU	Memorandum of Understanding
NHVR	National Heavy Vehicle Regulator
ONRSR	Office of the National Rail Safety Regulator

NTC	National Transport Commission
NTC Act	<i>National Transport Commission Act 2003</i>
PBS	Performance Based Standards
RISSB	Rail Industry Safety and Standards Board
RIS	Regulatory Impact Statement
SCOT	Standing Committee of Transport
SCOTI	Standing Council on Transport and Infrastructure
TISOC	Transport and Infrastructure Senior Officials' Committee
TCA	Transport Certification Australia

