



INFORMATION, ANALYSIS
AND ADVICE FOR THE PARLIAMENT

INFORMATION AND RESEARCH SERVICES

Bills Digest
No. 1 2003–04

National Transport Commission Bill 2003

ISSN 1328-8091

© Copyright Commonwealth of Australia 2003

Except to the extent of the uses permitted under the *Copyright Act 1968*, no part of this publication may be reproduced or transmitted in any form or by any means including information storage and retrieval systems, without the prior written consent of the Department of the Parliamentary Library, other than by Senators and Members of the Australian Parliament in the course of their official duties.

This paper has been prepared for general distribution to Senators and Members of the Australian Parliament. While great care is taken to ensure that the paper is accurate and balanced, the paper is written using information publicly available at the time of production. The views expressed are those of the author and should not be attributed to the Information and Research Services (IRS). Advice on legislation or legal policy issues contained in this paper is provided for use in parliamentary debate and for related parliamentary purposes. This paper is not professional legal opinion. Readers are reminded that the paper is not an official parliamentary or Australian government document. IRS staff are available to discuss the paper's contents with Senators and Members and their staff but not with members of the public.

Inquiries

Members, Senators and Parliamentary staff can obtain further information from the Information and Research Services on (02) 6277 2646.

Information and Research Services publications are available on the ParlInfo database. On the Internet the Department of the Parliamentary Library can be found at:
<http://www.aph.gov.au/library/>

Published by the Department of the Parliamentary Library, 2003

INFORMATION AND RESEARCH SERVICES

Bills Digest
No. 1 2003–04

National Transport Commission Bill 2003

Brendan Bailey
Law and Bills Digest Group
30 July 2003

Contents

Purpose.	1
Background.	1
The National Road Transport Commission	1
Convergence of Road and Rail Transportation: Proposed National Transport Commission	2
Government Policy: Transport Reform	3
Labor Party's Comments	3
Consequence of the Non-Passage of the Bill	3
Main Provisions	4
Part 1—Preliminary.	4
Part 2—Establishment, functions and powers of Commission.	4
Part 3—Constitution of the Commission.	4
Part 4—Operations of the Commission.	5
Part 5—Finance	5
Part 6—Chief Executive Officer, staff and consultants.	5
Part 7—Miscellaneous.	6
Concluding Comments.	6
Endnotes.	7

National Transport Commission Bill 2003

Date Introduced: 4 June 2003

House: House of Representatives

Portfolio: Transport and Regional Services

Commencement: The main provisions of the Act commence on a day to be fixed by Proclamation

Purpose

The purpose of the Bill is to establish a National Transport Commission (NTC) with a broader transport charter than the existing National Road Transport Commission (NRTC), which is due to cease operations in January 2004. The Commonwealth, State and Territory Heads of Government have agreed to the creation of the new body (the NTC).

Background

The National Road Transport Commission

The National Road Transport Commission was established in 1991 under the *National Road Transport Commission Act 1991 (NRTC Act)*. The NRTC was formed to overcome the lack of uniformity in State and Territory regulation of transport vehicle operations, including vehicle standards, weights and dimensions. The variations in regulations impacted adversely on interstate transport operations. In addition, the NRTC assisted in making interstate haulage efficient and safer and contributed to a reduction in road transportation's environmental impacts. The NRTC implements transport reforms approved by Australia's nine Transport and Road Ministers. The *NRTC Act* contains a sunset clause. The two key provisions concerning the operation of the NRTC are:

- 46 (1) This Act ceases to be in force at the end of 12 years after its commencement.
- (2) It is the intention of the Parliament that, before this Act ceases to be in force because of subsection (1), the assets and liabilities of the Commission should be dealt with as determined by the Australian Transport Council by resolution carried by all its members.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

- 47 (1) At least 12 months before this Act is due to cease to be in force because of subsection 46(1), the Australian Transport Council must:
- (a) prepare a written report that contains a recommendation in accordance with subsection (2) and that sets out the Council's reasons for making that recommendation; and
 - (b) give a copy of the report to the head of government of each of the parties to an Agreement.
- (2) The report must contain either:
- (a) a recommendation that this Act should cease to be in force under subsection 46(1) and should not be re-enacted; or
 - (b) a recommendation that this Act should continue to be in force, or should be re-enacted, for a further period not exceeding 6 years, subject to the making of such modifications (if any) as are set out in the report.

Consistent with the provisions of the *NRTC Act*, a review of the operation of the NRTC has been carried out and the recommendation of the review is that a new body with a broader regulatory reform focus should be established.¹ Details of the *Terms of Reference* for the review and the composition of the review panel were provided to Parliament in a written answer to a Question on Notice from Senator Kerry O'Brien on 25 February 2002 (Question No. 139) which was answered on 14 May 2002.²

Convergence of Road and Rail Transportation: Proposed National Transport Commission

It is reported that the Bureau of Transport Economics is forecasting that freight demand for road and rail will double by 2015 and that both road and rail will have to work together to cope with the demand.³ In part, this increasing demand on national transport is said to be due to specialisation in production where product components and processing are sourced from suppliers and processors on an interstate basis. An appropriate response is to foster convergence between road and rail. Representatives of the road and rail sectors agree that there should be national development of an integrated transport system. Media commentary has noted:

Both parties and the federal government foresee a transportation system with intermodal depots—places where containers can be switched between the two major modes of transport.⁴

The Explanatory Memorandum to the Bill confirms that the proposed National Transport Commission will be:

[A]n independent statutory body with responsibility for developing, monitoring and maintaining uniform or nationally consistent regulatory and operational reforms relating to road, rail and intermodal transport.⁵

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Government Policy: Transport Reform

On 31 October 2002, the Hon John Anderson, MP, Minister for Transport and Regional Services, noted that, subject to the agreement of Heads of Government, there was a need to establish a body with responsibility for intermodal transport. He said:

The NTC will replace the National Road Transport Commission in January 2004 and build on its successful history of reform in road transport. We are working on transitional arrangements to enable it to start work on urgent rail reform and inter-modal reform issues before its official commencement date.⁶

Labor Party's Comments

The Shadow Minister for Transport and Infrastructure, Mr Martin Ferguson MP, gave a speech to the Australian Trucking Association Annual Conference in Hobart on 3 May 2003. In that speech he noted the review of the NRTC and said:

I expect the review process will come up with some new ideas for the future of the NRTC. This should include an option to consider a structure that includes other modes and a focus on the interaction between them.

...

In my view, we should all have an open mind to a broader structure, but I agree that any new structure should not divert from the pace of the national road reforms.

...

The structure of the NRTC must be resolved in a timely manner so that it is not permitted to disintegrate into a range war that grinds all productive reform to a halt.⁷

In his speech, Mr Ferguson also noted that it was the Labor Party that had established the national road transport reform processes, including the NRTC.

Consequence of the Non-Passage of the Bill

The sunset provision at section 46 of the NRTC Act means that if the Bill is not passed there will be no national body to drive uniform regulatory reform for the Australian road transport system and, in particular, a lack of impetus for intermodal convergence of road and rail in national transport. The proposal for an NTC has bipartisan and inter-government support. As noted above, the existing NRTC is due to cease operation in January 2004.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Main Provisions

Part 1—Preliminary

Clause 3 of the Bill provides a summary of the purpose of the legislation. Its stated purpose is to:

- establish the NTC which has a national role in the reform of transport regulation and operations in the sectors of road, rail and intermodal transport, and
- provide a mechanism for the making of regulations, including model legislation and other legislative instruments for these national transport sectors.

Part 2—Establishment, functions and powers of Commission

Clause 5 establishes the National Transport Commission (NTC) as a statutory body corporate.

Clause 6 specifies the functions and powers of the NTC. The activities of the NTC are largely specified in the Agreement between the Commonwealth, the States, the Australian Capital Territory and the Northern Territory. The NTC will also implement other functions that are conferred on it by the Minister, subject to the prior consent of the Australian Transport Council (ATC). [The ATC is the Ministerial Council of Commonwealth, New Zealand, State and Territory Ministers responsible for transport matters].

Clause 7 empowers the NTC to prepare model legislation by way of regulations relating to road, rail and intermodal transport. These regulations are exempted from disallowance by Parliament as their sole purpose is to provide a model for the States and Territories and they will not, in themselves, have application as a subordinate law of the Commonwealth.

Clause 8 obligates the NTC to report to the ATC on the performance of its functions.

Part 3—Constitution of the Commission

Clause 11 specifies that the NTC will comprise of a CEO and 5 ordinary members. An ordinary member is appointed by the Minister on the nomination of the ATC (**Clause 12**). The Chair and Deputy Chair are appointed from ordinary members by the Minister on the nomination of the ATC (**Clause 13**). The ordinary members are part-time office-holders whose appointment is not to exceed 3 years (**Clause 14** and **Clause 15**, respectively).

It is noted that **Clause 17** enables the ATC to provide benefits additional to any specified remuneration allowance to an ordinary member to help that member carry out the performance of his or her functions.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Part 4—Operations of the Commission

Clauses 23 to 25 require the NTC to prepare 3 year draft strategic plans and to consult with the National Environment Protection Council in the preparation of the draft plans. The draft plans are then presented to the ATC for consideration for approval or non-approval and direction by the ATC as to any necessary alterations.

Clauses 26 to 31 deal with the convening of meetings and the procedures and voting for meetings of the NTC, including the disclosure of interests by members.

Clause 32 empowers the NTC to constitute committees to assist the NTC in the performance of its functions.

Part 5—Finance

The NTC will be funded by the Commonwealth, States and Territories with the Commonwealth contributing 35% for the costs of establishing and running the NTC. The projected budget for the NTC for the financial year 2003–04 is \$7 million. The Commonwealth's share of the costs is \$2.45 million.⁸

Clauses 33 to 37 specify that the NTC is funded by the Australian governments who are parties to the Agreement. The money received by the NTC must be applied to the costs incurred by the NTC in accordance with the applicable strategic plan and applicable work program. Estimates for each financial year are submitted to the ATC.

Clause 38 exempts the NTC from the *Commonwealth Authorities and Companies Act 1997* except for the following obligations:

- the preparation of an annual report and financial statements
- all moneys received by the NTC must be paid into a bank and any surplus money may be invested in specified securities, and
- the NTC must keep accounting records that properly record and explain its transactions and financial position.

A copy of the annual report of the NTC given to the Commonwealth Minister must be tabled in Parliament and given to the members of the ATC as soon as practicable.

Part 6—Chief Executive Officer, staff and consultants

Clauses 39 to 43 provide the NTC with the authority to appoint the CEO. The CEO is appointed by the Chair on the recommendation of the NTC members (other than the CEO).

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

The proposed legislation is silent (other than a general provision at **Clause 43**) on the express mechanisms for:

- the resignation of the CEO
- disclosure of interests by the CEO
- whether outside employment is permitted
- the grounds for termination of the appointment of the CEO, and
- appointing an acting CEO.

Clauses 44 to 47 deal with the staffing resources of the NTC which may employ both non-Public Service staff and staff engaged under the *Public Service Act 1999*. The NTC may also utilise State and Territory staff or employees and engage consultants on terms and conditions determined by the NTC.

Part 7—Miscellaneous

Clauses 48 and **49** provide the power for delegation by the NTC and the ATC, respectively.

Clause 51 obligates the ATC to conduct a review of the NTC no later than the sixth anniversary after the commencement of the Act, and subsequently for each six year anniversary after that first review. The report of the review is given to each of the Heads of Government. The report will include a recommendation on the continuation or otherwise of the NTC.

Concluding Comments

Taken overall, the legislation promotes a timely response to the expected increase in transportation demand in Australia. A uniform national approach to addressing more efficient interaction of road and rail is important.

The provisions dealing with the appointment of the CEO in this Bill follow closely the previous provisions in the *NRTC Act 1991*. To that extent, this Bill is faithful to the approach taken in the legislation it replaces. There may have been scope, however, to expand on those provisions to deal with matters such as an acting appointment, resignation or termination of appointment of the CEO.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Endnotes

- 1 Hon Wilson Tuckey MP, 'Second Reading Speech', National Transport Commission Bill 1993, House of Representatives, *Debates*, 4 June 2003, p. 15292.
- 2 Senator Kerry O'Brien, Question on Notice (Question No. 139), *National Road Transport Commission*, Senate, *Hansard*, 14 May 2002, p. 1471. The *Terms of Reference* were:
 1. In this context the NRTCA Review should:
 - (a) Consider and report on how well the NRTCA and associated processes have functioned and on any ways in which those processes might be significantly improved, including how the preparation of regulatory impact statements might be improved.
 - (b) Make recommendations on whether the NRTCA should cease to be in force (and if so what alternative structures should be put in place) or be re-enacted (including in a modified form). If the latter, the recommendations should include any revisions or clarifications that need to be made to the NRTC Act and the Heavy and Light Vehicle Agreements, to make them function more effectively.
 - (c) Having regard to the broad aims set out earlier in these Terms of Reference, consider the breadth of, and priorities for, future road transport reform needs including consideration of alternative approaches to regulatory arrangements (for example, accreditation and co-regulation):

The issues considered in any future regulatory reform arrangements should include pricing, charges, cost neutrality and the externalities associated with choices of transport mode.
 - (d) In addressing future institutional arrangements for transport regulatory reform, explicitly consider whether those arrangements should apply only to road transport or be extended to any aspects of other modes and to cross-modal issues.
 - (e) Consider also the degree to which any change in institutional arrangements should encompass issues beyond regulatory reform. In this context the Review should also address the role of the National Transport Secretariat and its place in any recommended future institutional arrangements.
 - (f) If recommendations are made to broaden the current regulatory policy framework (for example by replacing the NRTC by a Land Transport Commission) the Review should specifically address what steps and arrangements are necessary in order to ensure that this does not result in a lessening of attention to ongoing road transport reform. This should include, but not be limited to, how best to:

Ensure that previous reforms are kept up to date and maintain their relevance in a changing economy and transport environment;

Complete work on outstanding reforms;

Develop a new agenda for reform and implementing change projects.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

- (g) Consider an appropriate level of funding for the recommended institutional arrangements and the ongoing funding arrangements that should apply.
2. The Review may also make recommendations to address any other limitations or shortfalls identified in the course of the review.
- 3 Mark Lawson, 'Road and Rail to work together', *Australian Financial Review*, 11 March 2003, p. 13.
- 4 *ibid*
- 5 *Explanatory Memorandum*, National Transport Commission Bill 2003, p. 1.
- 6 The Hon John Anderson MP, Minister for Transport and Regional Services, 'Australian Railway Association Convention', Speech to the Australian Railway Association Convention, 31 October 2002.
- 7 Mr Martin Ferguson MP, Shadow Minister for Transport and Infrastructure, 'Transport Priorities and Challenges', Speech to the Australian Trucking Association Annual Conference, Hobart, 3 May 2003, pp. 9–10.
- 8 *Explanatory Memorandum*, National Transport Commission Bill 2003, p. 3.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.