



NATIONAL ROAD TRANSPORT ASSOCIATION

**Submission to the Department of Infrastructure and Regional  
Development**

***Independent price regulation of heavy vehicle charges***

July 2017

## **Introduction**

1. The National Road Transport Association (NatRoad) is pleased to make comments on the discussion paper released in May 2017 by the Department of Infrastructure and Regional Development (DIRD) on establishing independent price regulation for heavy vehicle charges.
2. NatRoad is Australia's largest national representative road freight transport operators' association. NatRoad represents road freight operators, from owner-drivers to large fleet operators, general freight, road trains, livestock, tippers, express car carriers, as well as tankers and refrigerated freight operators.
3. NatRoad believes that independent price regulation for heavy vehicles is long overdue and is essential for maintaining the long term viability and productivity of the road freight transport industry. Independent price regulation should aim to directly link the needs of heavy vehicle users with the level of service they receive, the charges they pay and the investment of those charges back into road services.
4. NatRoad notes that the focus of the DIRD's discussion paper is on the establishment of an independent price regulator and that consideration of a forward looking cost base (FLCB) for heavy vehicle charges is being undertaken through a separate, parallel process. The structure and operation of an independent price regulator depends on the pricing model that is adopted, which makes it difficult to provide a conclusive position on some of the issues raised in the discussion paper.

## **Transition**

5. NatRoad supports the ultimate goal of moving to a system where heavy vehicle infrastructure is provided as an economic service with an integrated charging system. We recognise that establishing full economic regulation will be complex and take time to implement.
6. Adopting independent price regulation now with a view to transitioning to economic regulation at a future date is likely to be a more realistic approach. NatRoad agrees that the National Transport Commission (NTC) would need to be actively involved in any transition arrangements, regardless of which entity becomes the independent price regulator.
7. As a priority, governments must address the current overcharging of heavy vehicle operators, which will continue beyond 2017-18 despite the current freeze on road user and registration fees.

## **Level of independence**

8. It is essential that the independent price regulator does not face:
  - the political and or fiscal pressures that exist under current arrangements; and
  - conflicting responsibilities such as maximising revenue versus setting a fair and efficient price.
9. On this basis, it would be inappropriate to allocate the function of price setting and regulation to a body such as the National Heavy Vehicle Regulator (NHVR).
10. An independent pricing system would need to have the following characteristics:

- Governments would agree on the pricing rules to be used and the overall approach for the regulator to follow.
- Once the rules are established, the regulator would make and apply its pricing decisions. Its decisions would not be subject to ministerial approval or parliamentary disallowance.
- There could be a merits review process, particularly if the legislation included an early transition to full economic regulation.

### **Review and appeals process**

11. NatRoad's views on this issue are consistent with those expressed by the Australian Trucking Association (ATA) in their response to Question 3 of the discussion paper. NatRoad agrees that in the short term, user concerns could be addressed through regulatory rules (maximum permissible charge increases etc.), rather than an appeals process.
12. Once the role of the regulator is expanded beyond price regulation, pricing decisions should be appealable to the Australian Competition Tribunal.
13. NatRoad supports a limited merits review system where:
  - Applicants seeking leave to apply for a review of a decision should be required to justify the application on the basis that correcting the relevant error of fact or discretion would be likely to lead to a materially better decision.
  - Associations representing road users should specifically be listed as parties that can apply for merits review.
  - The legislation should specifically exempt road user associations from cost orders, unless the tribunal considers that the association has made the application without regard for the cost and time that would be involved in considering the application.
  - The cost of capital used in the building block model should not be subject to merits review.

### **National or state-based regulator**

14. Given the cross-border, national nature of the road network and road freight task, it is essential that a national approach to heavy vehicle price regulation be implemented. The uniform charges and operating conditions for heavy vehicles provided through the Federal Interstate Registration Scheme is an example of such an approach.
15. NatRoad continues to advocate strongly for national consistency in laws relating to heavy vehicles and price regulation is no exception.

### **'Purpose built' or 'multi-industry' regulator**

16. NatRoad supports the proposal to use an established economic regulator such as the Australian Competition and Consumer Commission (ACCC) and leverage its existing regulatory powers and experience from its current rail, telecommunications and aviation regulatory functions into the heavy vehicle sector.
17. Although capacity in both economic regulation and industry specific expertise within an independent price regulator for heavy vehicles would be ideal, this is unlikely in the short term.
18. The discussion paper sets out the following three options for establishing an independent price regulator:

- Option 1: The ACCC would undertake price regulation of heavy vehicle charges, with responsibility for developing binding charge determinations
  - Option 2: The NTC's price determinations would be automatically implemented by governments, provided certain criteria are met
  - Option 3: State and Territory based economic regulators would undertake the independent price regulation function by reviewing the pricing determined by a body such as the NTC.
19. NatRoad prefers the proposal for the ACCC to undertake independent price regulation of heavy vehicle charges (Option 1) as it paves the way for full economic regulation of heavy vehicles, and of light vehicles in the long term.
20. The NTC could take on the role of an independent price regulator as an interim measure. Although Option 2 can be implemented quickly, NatRoad is sceptical about all governments' willingness to automatically adopt the NTC's price determinations. The NTC also does not have the expertise to transition to an economic regulator.
21. NatRoad does not support Option 3 because it would lead to inconsistent heavy vehicle charging and is unlikely to significantly change the current approach.

#### **Separation of price development and price regulation functions**

22. The discussion paper notes that in some regulated infrastructure sectors, there is a separation of functions between the regulator responsible for setting prices, and the agency or organisation responsible for making a pricing application. In relation to roads, the price development task could be carried out by:
- the independent pricing regulator (with no split)
  - state and territory road management agencies, or
  - the NTC.
23. The discussion paper also notes that the independent price regulator's decisions would be influenced by inputs provided by state and territory governments. These inputs would underpin the workings of a forward looking cost base. NatRoad believes that these inputs should be provided directly to the independent price regulator. We do not support state and territory road managers undertaking price development.

#### **Functions of an economic regulator**

24. In establishing a FLCB, the independent price regulator must have the ability to scrutinise the asset, expenditure and road usage data inputs to a forward-looking model and address any discrepancies between forecast and actual data.
25. NatRoad submits that an independent pricing regulator should transition to a broader regulatory role that includes light vehicle charging. It should also regulate and monitor toll fees, given the current lack of transparency and fairness in setting tolls for heavy vehicles.
26. Private sector investment in road networks and privatisation of key infrastructure assets is likely to increase. Transurban currently has ownership of 13 out of 15 toll roads across Melbourne, Sydney and Brisbane. Transurban negotiates network enhancements with the relevant state governments through adjustments to tolling levels and extensions to concession agreements.
27. Heavy vehicle operators have recently raised concerns about Transurban increasing the toll for heavy vehicles using the CityLink in Melbourne by up to 125% to fund an upgrade not

due for completion until 2018, and increases on an existing tolled road in Brisbane to fund upgrades to an un-tolled road.

28. Transurban applies a 'large vehicle multiplier' of three times the car toll, stating that the higher toll for heavy vehicles reflects the greater value they derive from the time savings provided by the tolled network and the greater impact they have on the road infrastructure.<sup>1</sup> However, the 'large vehicle multiplier' applied by Transurban fails to acknowledge that heavy vehicles already pay additional fuel taxes and significantly higher registration charges than cars and other light vehicles.
29. There is no published methodology or information which explains why toll increases are necessary on a quarterly basis, why some increases above the rate of inflation are justified, nor why the rates at which tolls increase differ across the various concession agreements.
30. Similar concerns have been raised by road freight operators regarding recent 'infrastructure surcharges' imposed by stevedores DP World and Patrick. An independent price regulator is needed to provide greater transparency and scrutiny in relation to the setting of landside port charges in addition to tolls, and consider these charges in conjunction with other road user charges.
31. The proposed economic regulator should take into account the evaluations of infrastructure projects by Infrastructure Australia or similar infrastructure advisory bodies in jurisdictions to ensure that only expenditure prioritised by those agencies flows through to user charges.
32. A function of an economic regulator includes developing and setting service levels for the road network. Service levels should be designed to facilitate high productivity vehicle access, future vehicle automation and facilities for heavy vehicles such as rest stops.

#### **Appropriate regulatory and governance mechanisms**

33. It would be pointless to establish an independent price regulator if Commonwealth, state and territory governments are not bound by its pricing decisions.
34. NatRoad agrees that states and territories will have to pass legislation conferring powers on the regulator. Although model legislation is an efficient method of bringing all states and territories under a single pricing regime, there needs to be a will for governments to do so.
35. For example, Western Australia and Victoria have not adopted the model Work Health and Safety Laws despite all governments signing an Intergovernmental Agreement to do so. The Heavy Vehicle National Laws have also not been adopted fully across Australia.
36. To increase transparency around road funding decisions, governments should set up road funds separate from their general budgets for both heavy and light vehicle revenues.

#### **Conclusion**

37. NatRoad supports the establishment of an independent price regulator as part of the broader heavy vehicle road reforms. Independent price setting would benefit the heavy vehicle industry by:
  - separating the price setting process from government budget considerations
  - delivering more predictable and stable charges for transport operators

---

<sup>1</sup> <https://www.parliament.nsw.gov.au/committees/DBAssets/InquirySubmission/Body/57330/0100%20Transurban.pdf>

- improving transparency by providing clear guidance on how charges are set, including for toll roads and landside port charges, and
- improving national cohesion in road supply and funding decisions.

38. Further consultation with the heavy vehicle industry on implementation issues will be necessary in establishing an independent price regulator. It is essential that costs to heavy vehicle operators be minimised until they are expected to start reaping the benefits of the reforms.