



Submission in response to the discussion paper:

**Land Transport Market Reform
Independent price regulation of heavy vehicle
charges**

July 2017



This document has been prepared by the Freight on Rail Group (FORG). FORG is a rail freight focussed industry group established to engage with Government and key stakeholders on major public policy issues. It consists of the seven major rail freight businesses in Australia:

Aurizon

Aurizon has rail and road-based freight and infrastructure operations across Australia. Aurizon operates above-rail freight services from Cairns through to Perth, and manages the Central Queensland Coal Network made up of approximately 2,670km of heavy haul rail infrastructure.



Australian Rail Track Corporation (ARTC)

ARTC has responsibility for the management of over 8,500 route kilometres of standard gauge interstate track across Australia. ARTC also manages the Hunter Valley coal rail network, and other regional rail links.



Arc Infrastructure

Arc Infrastructure (formerly Brookfield Rail) manages and operates a 5,500 kilometre open access, multi-user rail freight network extending throughout the southern half of Western Australia, providing access for intermodal, iron ore, grain, alumina and various other bulk commodities.



Genesee & Wyoming

G&W is a global vertically integrated rail freight company with a large Australian presence in SA, NT, Victoria and NSW. G&W owns nearly 5,000 kilometres of track in SA and NT, including the 2,200-km Tarcoola-to-Darwin railway.



Pacific National

Pacific National is one of the largest providers of rail freight services in Australia, providing intermodal, coal and bulk rail haulage services throughout Australia.



Qube

Qube is Australia's largest integrated provider of import and export logistics services. It offers a broad range of logistics services with a national footprint and a primary focus on markets involved in international trade in both the bulk and container markets.



SCT Logistics

SCT is a national, multi-modal transport and logistics company. It operates its own intermodal rail services from the eastern States to Perth, while also providing bulk rail haulage services. It has facilities in Brisbane, Sydney, Parkes, Melbourne, Adelaide and Perth.



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1. Executive Summary

The Freight on Rail Group (FORG) welcomes the Commonwealth's consideration of options for the independent price regulation of heavy vehicles which will in turn be an important component of land transport market reform. We appreciate the opportunity to make this submission in response to the *Land Transport Market Reform: Independent price regulation of heavy vehicle charges* Discussion Paper.

The freight rail industry position on heavy vehicle road user charges is that the different infrastructure pricing frameworks that apply to heavy road vehicles when compared to rail freight operators carrying the same or similar intermodal and general freight impacts on the efficiency of the land freight transport network.

Under current infrastructure pricing frameworks rail freight operators are directly charged for access to rail infrastructure, with prices generally determined using a building block regulatory model.

In contrast, heavy road vehicles are charged for road access through fuel excise and registration charges using an historical cash accounting cost base.

FORG supports reform of land transport infrastructure provision by moving heavy vehicle access to independent economic regulation.

Reforming heavy vehicle pricing and investment in infrastructure should be focused on introducing direct user charges that are based on clear economic principles and properly reflect the use of road infrastructure by each heavy vehicle and the costs that they impose.

These costs include the provision of the infrastructure (recognising this should be apportioned between heavy and light vehicles), the maintenance of roads and the provision of supporting services. The current indirect charges for heavy vehicles results in significant economic distortions that impede the productivity of land freight transport.

FORG also believes that it is important to ensure consistency across land transport modes and therefore heavy vehicle road user charges should be determined in a manner consistent with the freight rail user charges. FORG proposes that the pricing reform for heavy vehicles should involve the implementation of direct user charges, with prices determined using a building block model (being the model generally used for rail access regulation). This model would be implemented and overseen by an independent expert economic regulator.

Reforming heavy vehicle pricing through direct user-charging and introducing consistency with rail freight would deliver significant economic benefits. In particular, the implementation of this reform would:

- Increase land transport productivity from more efficient road infrastructure provision and use;
- Improve the productivity of land transport and logistics supply chains by introducing a pricing framework that is cost-reflective across those networks; and
- Enabling competitive neutrality in relation to the pricing of infrastructure access for the road and rail freight industries carrying intermodal and general freight, consistent with competition policy principles.

Improving the productivity of land freight transport and logistics services would benefit freight customers across a wide range of industries.

A key step to achieving these outcomes is for the same body to regulate infrastructure pricing.

The Australian Competition and Consumer Commission (ACCC) currently regulates infrastructure access pricing for freight rail on the interstate rail network. Consistent with the arrangement for rail freight, FORG supports the ACCC becoming the independent price regulator for heavy vehicle charges.

A single regulator, such as the ACCC, will help to realise the economic benefits listed above.

Given the significance of its role, the regulator needs to be held accountable for its performance in terms of outcomes. The regulator should be provided with as much clarity as possible about its role,

and the framework should include appropriate mechanisms to evaluate the performance of the regulator.

It will also be important that the transition to independent price regulation should avoid large price changes in the short term.

FORG also notes that DIRD has previously expressed a strong desire to develop a market based road transport system by building on existing experience and practice rather than creating an approach that is unique to roads.

FORG believes that most issues in economic regulation have precedents in other industries that can be applied to roads generally and, heavy vehicles specifically, and encourages DIRD to borrow from existing practice as much as possible.

The independent economic regulation of heavy vehicles will also help to inform wider land transport market reform for light vehicles. Therefore, another reason for the introduction of independent price regulation is to enable initial work being undertaken on wider reforms to benefit from heavy vehicle reform.

Finally, moving to independent economic regulation raises a large range of scheme design issues. The discussion paper refers to some of these issues and implies possible directions that may be taken. This submission has not attempted to address these detailed questions. It is understood that there will be future opportunities to comment on scheme design and this submission should not be taken to accept or endorse the detailed aspects of a future heavy vehicle economic regulation scheme.

2. Comments on the Discussion Paper

2.1 General Comments

The Discussion Paper (page 4) makes numerous observations about the heavy vehicle road charging process, including:

- The current system “is not working well” and results in a “price agreed through political negotiation”;
- An independent price regulator would be a fairer and more transparent way to set prices which recover the costs of roads and is “an important element of a better system to set and collect the heavy vehicle user charge”.

FORG agrees with observations about the current system and the need for an independent regulator.

The Discussion Paper (page 5) notes that in the short term, heavy vehicle charges would continue to be collected through the existing mechanisms (road user charge based on the fuel tax and registration charges) and the new regulator would have responsibility for setting the level of these charges. FORG is concerned that this does not address the root cause of the road user charge issue in that the cost base and pricing mechanisms are not consistent with good economic principles.

Reform of the detailed pricing framework is needed as well as reform of regulatory administration and FORG encourages the broader reform of heavy vehicle road access pricing to be progressed as quickly as is practically possible.

FORG recognises that there is a case for a transition to pricing reform based on a building block regulatory model to assist with the adjustment to a new system by the industry. FORG proposes that a transition pricing framework should be subject to a clear timeframe and combined with an objective to support the eventual introduction of pricing consistent with other industries that rely on access to and the use of infrastructure, particularly the rail freight transport industry.

2.2 Scheme design

The discussion paper alludes to and implies possible approaches to design of the future regulatory scheme. The details of a future economic regulation scheme for heavy vehicles specifically, or roads generally, will raise a large number of detailed questions which will potentially have a major impact on

the ultimate outcomes. This submission has not attempted to address these scheme design questions.

It is understood that there will be future opportunities to comment on scheme design and this submission should not be taken to accept or endorse detailed aspects of a future heavy vehicle economic regulation scheme.

The detailed framework that is developed will be pivotal to meeting the aims of wider pricing and investment reform, including the more efficient provision and improvement of land transport infrastructure and increased productivity in freight transport and logistics services.

2.3 Independent price regulator

The Discussion Paper (pages 8-9) recognises that an independent price regulator should, ideally, have the capacity to regulate across substitutable transport modes. This position is supported by FORG.

3. Issues for Consideration Raised in the Discussion Paper

The questions contained in the “Issues for Consideration” section of the Discussion Paper are addressed below.

Transition

Do you have any comments, concerns or observations in relation to the transition from the current process to independent price regulation?

FORG would support a quick transition from the current arrangements involving non-binding recommendations made by the National Transport Commission (NTC), to the new independent regulator. We note that the NTC is not a regulator and is not independent.

For the reasons outlined in this submission, we believe the independent price regulator for heavy vehicles should be the ACCC. A transition to an existing independent regulator with resources and proven competency should minimise the need for any extended transition period. Ideally the transition could commence in advance of legislation, with, if necessary, the ACCC substituting for the NTC under existing arrangements. This would also allow the ACCC to build up its sector specific knowledge in advance of the new arrangements fully taking effect.

FORG recognises that the transition to independent price regulation should avoid large price changes in the short term.

Furthermore, the regulator needs to be held accountable for its performance in terms of outcomes. The framework for independent price regulation should include appropriate mechanisms to evaluate the performance of the regulator.

Level of independence

What do you understand independent to mean? Do the options presented in the paper accord with that understanding?

An independent regulator should be free from political influence and independent from various government departmental decisions relating to broader transport and infrastructure policy. To the extent that the Discussion Paper appears to be suggesting that government might agree the pricing principles, this would appear to be inconsistent with the regulator being independent.

An independent regulator should be restricted to decisions relating to price regulation and economic regulation. Issues such as safety, licencing of vehicles and drivers etc. should be managed by other regulators and/or government bodies.

At the same time, the independent regulator should be provided with as much clarity as possible about its role. The focus of the regulator should be on the development and the application of clear principles and rules.

Review and appeals process

In the short term, while the price regulator would only be regulating prices for heavy vehicle charges, could user concerns be adequately addressed through regulatory rules or is an appeal process needed?

In relation to appeal processes, FORG believes that administrative appeals are likely to be sufficient where the road agencies remain government owned and the regulator has limited discretion with regard to its role and decisions.

National or state-based regulator

How important is a nationally consistent approach to the regulation of heavy vehicle charges?

FORG supports a national approach to enable improved productivity of the land freight transport network and the transport and logistics services it enables, and to ensure consistency and efficiency across supply chains.

In 2013, the Federal and State Governments agreed to a National Land Freight Strategy. This strategy emphasises the delivery of a “streamlined, integrated and multi-modal” land transport and logistics system. The objective of the strategy is to “improve the efficiency of freight movements across infrastructure networks, minimise the negative impacts associated with such freight movements and influence policy making relevant to the movement of freight”.¹ Furthermore, the strategy’s long term outcomes include:²

“an efficient, productive and competitive national land freight system”; and

Ensuring that “policies affecting land freight are aligned and coherent across governments”.

FORG endorses these objectives and regards a national approach to independent price regulation as contributing to their achievement.

‘Purpose built’ or ‘multi-industry’ regulator

What do you consider more important for establishing an independent price regulator for heavy vehicle charges, organisational capacity in economic regulation or industry specific expertise?

FORG believes that organisational expertise and capacity in economic regulation and industry specific expertise are not mutually exclusive and ideally an independent regulator should have both. For example, the ACCC is a multi-industry regulator that has developed expertise in the specific industries it regulates.

In relation to heavy vehicle road pricing, industry expertise is important but FORG believes that depth in the ability to apply complex economic concepts in a practical manner will underpin the success of reform. There will be many organisations involved in the process that will be able to identify areas where proposed approaches do not sit well with the practicalities of the road freight sector, but it is vital that the independent regulator has the capability to consistently focus on and engage in the application of economic principles.

What would be your preferred option for establishing an independent price regulator for heavy vehicle charges?

FORG’s preferred option is for a national independent price regulator with organisational capacity in economic regulation. FORG does not support the ongoing involvement of the NTC in road pricing regulation following the transition period because the NTC is not an independent regulator.

Separation of price development and price regulation functions

Does there need to be a structural separation in the roles of price development and price regulation?

The process of price development and price or economic regulation is a very important element of the overall design of the scheme. FORG believes that it is difficult to comment on this element of scheme design in the absence of greater detail on the overall proposal, in particular the development of overarching principles.

¹ *National Land Freight Strategy: A place for freight*, Standing Council on Transport and Infrastructure, 2013, p.1.

² *National Land Freight Strategy: A place for freight*, Standing Council on Transport and Infrastructure, 2013, p.1.

As discussed above, we have taken the approach in this paper of not seeking to comment on detailed aspects of scheme design. We look forward to being able to offer comments on this issue as the land transport market reform process progresses.

Functions of an economic regulator

Are the functions of the economic regulator, as discussed in this paper at Table 1, appropriate in the heavy vehicle sector? What should/shouldn't an economic regulator do?

The functions of an economic regulator, as outlined in Table 1 of the Discussion Paper (page 5) are generally appropriate.

Appropriate regulatory and governance mechanisms

Is a model law the best approach for bringing governments under the same regulatory model?

FORG understands that the model legislation approach is sometimes used in the regulation of infrastructure, however FORG prefers a “national applied law legislation” approach similar to the Heavy Vehicle National Law. FORG has concerns that the model legislation approach allows for variation between states and such variation could impede the aims improved consistency and productivity across all land freight transport supply chains.

4. Options for Establishing an Independent Price Regulator

The Discussion paper (pages 14-16) proposes several options for the independent price regulator, including:

- the ACCC;
- the NTC; and
- State based regulators.

Of these three options FORG supports the ACCC becoming the independent price regulator for heavy vehicles. This allows for an independent and nationally consistent approach to land transport infrastructure regulation and for the ACCC to utilise its experience in economic regulation. FORG believes that the ACCC could quickly acquire specialised expertise in the heavy vehicle and roads sector while providing the basis for achieving a consistent pricing framework between heavy vehicles and the interstate rail freight network in the future.

The ACCC also has greater capabilities and experience in undertaking the detailed application of independent regulation so as to achieve price regulation and investment reform objectives for heavy vehicles.

Furthermore, the ACCC is well placed to ensure that its role appropriately adapts as the pricing model develops, including through the increased utilisation of technology.

The Office of Rail and Road in the UK represents an example of an industry regulator with both organisational capability in economic regulation and industry expertise, and a potential model for the ACCC. A model such as the UK Office and Road and Rail will be useful as a way to ensure that the Australian regulator has the expertise available to effectively provide price regulation for both road and rail infrastructure used by heavy vehicles and intermodal and general freight train operators in Australia.

FORG has concerns with the option of the NTC given that it does not have experience or capabilities in economic regulation.

FORG also has concerns with using state based regulators as pricing and economic regulators in relation to heavy vehicle road pricing due to the potential for inconsistency across jurisdictions.

5. The experience of other infrastructure industries and lessons learned

The introduction of independent price regulation and other aspects of land transport market reform can benefit from the experience and lessons learned from other industries that rely on major infrastructure provision and access and use of that infrastructure.

An important aspect of the proposed reform should be to enable the infrastructure provider and users to develop arrangements that reflect those between providers and customers, with infrastructure provision designed to meet the current and future requirements of freight customers.

FORG suggests that consideration of the following two questions would be helpful to the successful implementation of land transport market reform.

Are there lessons from the pricing frameworks for infrastructure access in the rail freight industry regarding consultation with the intermodal and general freight users of infrastructure and the effectiveness of those arrangements?

FORG believes that a transparent and robust consultation process is an important component of any system of economic regulation of infrastructure. Commonwealth and State economic regulators of infrastructure (e.g. the ACCC) all have stakeholder consultation processes which allow users of infrastructure and other relevant stakeholders to have input into the regulatory process.

In particular, section 44ZZBD of the *Competition and Consumer Act* relates to the ACCC consultation processes. In addition to the formal processes, stakeholders (including the infrastructure owner/operator) are able to contact the regulator, raise issues and ask that the regulator consider and respond to them at any time.

The economic regulatory processes which relate to rail networks subject to access regulation under certified state or Commonwealth access regimes typically include consultation processes. Under these processes, stakeholders are often active contributors to the regulatory process. Overall FORG believes that current consultation processes as outlined are generally appropriate but there is always room for improvement.

In relation to future consultation for heavy vehicle price regulation, FORG believes that the current consultation approach used for rail networks such as the ARTC is generally appropriate for road infrastructure, but FORG recognises that such a consultation system could be expected to be developed over time in response to industry circumstances.

Are there any lessons to be learned from modal shifts between gas and electricity as a result of improvements in the consistency of pricing frameworks between those industries?

The issue of road and rail infrastructure pricing raises the issue of potential modal shift between road and rail. While road and rail are substitutes for some transport tasks they are complementary parts of the logistics chain in other transport tasks. Therefore, the issue cannot be reduced to a simple road vs rail equation but instead the issue is more nuanced as road and rail are both competitors and complementary depending on the specific transport task.

Given this complex relationship between the two transport modes, FORG believes that the economic regulation which applies to the two modes should be consistent in order to minimise the potential for allocative or productive inefficiencies arising from misaligned regulation providing perverse incentives for transport users to use the less efficient mode.

To some extent there are parallels with gas and electricity infrastructure regulation where the infrastructure is competing in some markets (for example provision of heating energy to domestic residences) but are complementary in other markets (for example the provision of gas to gas fired power stations).

In order to minimise the potential for allocative or productive inefficiencies in these markets FORG notes that the National Electricity Law and the National Gas Law are very similar and the two industries are regulated by the same regulator (the AER). FORG believes that this is a helpful precedent, and that a similar approach should be taken to road and rail infrastructure regulation with consistent regulation across the two infrastructure types and, ideally, a single regulator which regulates infrastructure access pricing for both transport modes.

Furthermore, the AER has developed tools in acquiring information from regulated utilities in a consistent manner relevant to achieving the regulatory objectives. Similar mechanisms should be developed in consultation with road agencies to ensure the consistency and relevance of information provided to the regulator.

6. Conclusion

Substantial productivity gains could be available to the land freight transport sector if heavy vehicle pricing and investment reform is further developed and implemented. In part, this is because the introduction of a consistent pricing and infrastructure investment framework for freight carried by heavy vehicles or by intermodal and general freight rail operations would allow the respective strengths and benefits of each transport mode to be better utilised.

Improving the productivity of the land freight transport network would benefit freight customers across a wide range of industries.

FORG supports the introduction of independent economic regulation for heavy vehicles.

For the reasons outlined in this submission, FORG proposes that an established economic regulator should be given responsibility for independent price regulation of heavy vehicle charges, consistent with the regulation of interstate and long-haul rail. This would provide the basis for a consistent land transport pricing framework applying to both heavy vehicles and intermodal and general rail freight.

FORG therefore supports the ACCC becoming the independent price regulator for heavy vehicles.

This would also enable Governments to meet the timeline for the transition to the independent price regulation of heavy vehicle charges by 2017-18, as agreed by the Council of Australian Governments.

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