# Austral obscura: a national rail policy?

*In 2015 Australia’s transport Ministers joined together to develop a national rail policy ‘agenda’. That this has gone unnoticed is unsurprising and appropriate.*

*A national rail policy, faithful to the nature and history of federal Australia is needed. It is a simple task. The critical and first step is removal of the obstacle that stops progress in national transport matters; the Commonwealth-State Transport and Infrastructure Council.*

**Introduction**

Australia’s peak transport body is the Transport and Infrastructure Council. It comprises Commonwealth and State Ministers and is served by a Commonwealth Department secretariat and various officials committees.[[1]](#endnote-1)

In 2015 it decided there is to be a national rail policy ‘agenda’. The result, more than 12 months later, is a ‘vision’ statement and ‘work program’: <http://transportinfrastructurecouncil.gov.au/publications/files/National_rail_vision_and_work_program.pdf>.

**The offering**

At 6 pages long, presumably conforming to bureaucratic templates and ostensibly agreed by all Ministers, some might consider the ‘vision’ etc. to be an achievement.[[2]](#endnote-2)

Consider:

*‘Through collaboration between governments and industry, rail reform will support the Directions of the Transport and Infrastructure Council by enhancing productivity, competitiveness and liveability by:*

*• Integrating rail with other transport modes to enhance the functionality of the transport network,*

*• improving rail’s efficiency, capacity and environmental performance;*

*• accessing sustainable funding and delivery models;*

*• capitalising on new technologies; and*

*• improving rail safety.’ [[3]](#endnote-3)*

Who could object to such lofty sentiments? I could and do. It reflects much that is wrong with national transport policy. It threatens to set rail back years.

It comprises meaningless platitudes. The ‘vision’ offers nothing to see; nobody could discern what Australia’s railways should look like. Of course rail customers and the public are not mentioned. The ‘work program’ is almost entirely useless.[[4]](#endnote-4)

If they were like me, the public who ultimately determine the success of policy – and pay the bills of the Council and its caravan - would recoil if they saw such uninspiring, formulaic, opaque drivel.

It would have brought the Council into disrepute if it was noticed. Fortunately it was ignored. To paraphrase: ‘the media stayed away in droves’. And like most ‘outputs’ of the Council it will soon be forgotten by all.[[5]](#endnote-5)

**What the policy should be**

The aims of a rail policy should be for society to enjoy:

* The right amount of rail services;
* The right type of rail services.[[6]](#endnote-6)

A national rail policy requires an overlay to deal with essential national characteristics. For Australia the outstanding characteristic is the notorious difference in gauge of the railways that should link settlements. Resolution of this was among the motives for, and actions expected of the Commonwealth after, federation. Australia’s national aim for railway types should be: interoperability of a linking railway.[[7]](#endnote-7)

Turning to the question of the amount of rail services; the right amount would reflect a situation of rail service beneficiaries bearing all relevant costs while beneficiaries of competing services, such as road transport, also bearing the costs they cause.[[8]](#endnote-8)

There is neither road nor rail cost reflectivity at present, and the scant prospect of this changing is being further minimised by activities under the Council such as attempts to advance universal road pricing and denial of the fact of enormous congestion-causing subsidies to east coast highways. Happily, for the purposes of moving towards the right amount of rail services, these can be ignored.[[9]](#endnote-9)

It is possible to estimate the right amount of rail services *as if* there was cost reflectivity in transport. Moreover, to the extent relevant at present i.e. to satisfy the public about bona fides, it is simple.[[10]](#endnote-10)

The issue, rail or road (or air etc.), arises only where there is a (possible) railway. It is a question about the costs of road use etc. for the very few routes where a rail-road comparison makes sense.

It is not necessary to understand every road in Australia. Attempts to do so are silly and hardly inspire confidence; one could be forgiven for surmising that facts about the few relevant roads are being covered-up by claims it is too difficult to calculate the use and costs of each and every road.[[11]](#endnote-11)

Similarly, there is little point in attempting to map, model or meddle in travel, logistics or commodity supply chains. Observations about vehicles, rather than their contents, are all that are needed.[[12]](#endnote-12)

An example shows how simple it is. The main intercapital route in Australia is between Melbourne and Sydney. Rail costs and use are known. The necessary information is: truck use of the Hume Highway; costs of the Hume Highway including ‘sunk’ capital. This information is known: there are weighbridges; all engineering works have been funded from the public purse. Yet it is not readily available and the bureaucracies who support the Council sit on the essential data.[[13]](#endnote-13)

The general (road-rail) and specific (Hume Highway) issues have been known for, yet have not started to be addressed after, at least a quarter of a century of Council’s existence. Governments know; since the early 2000s they implicitly acknowledged the problem by attempting to shore up the rail industry via further taxpayer funded spending to offset the predictable impact of the vast amounts of public monies spent on (competing) roads.

The Transport and Infrastructure Council, by its ‘work program’ continuing its practice of ignoring this singularly critical issue – not to mention topical matters such as higher speed rail, the idea of rail plans for each capital city, rural branchlines, skills, value capture etc. – and preferring to reconsider matters addressed years ago (which even then were often red-herrings), virtually announced it stands in the way of progress. [[14]](#endnote-14)

If the Melbourne-Sydney case, the Hume Highway, can’t be done what can? An unwillingness to advance a highway-rail analysis will destroy any chance for a national rail policy and the credibility of those in government who argue for ‘reform’. Until the Hume Highway analysis is published there should be no talk of ‘reform’ of any type be it road, rail, freight or transport.

**Why has it gone astray**

The issue at hand points to flaws with the Transport and Infrastructure Council.

The kindest interpretation is that Council is confusing others because it is itself confused.

Its desire for a rail policy is logically inconsistent with interest in a freight policy.[[15]](#endnote-15)

Its interest in ‘regulatory reform’ is addled by the fact while all road use is regulated – any road ‘reform’, including for charging, must be regulatory – this is not the case for rail, shipping or aviation. Its view of ‘rail reform’ is unable to advance the national consistency expected by the public and indeed history.[[16]](#endnote-16)

It does not display adequate comprehension about many matters it promulgates such as pricing or the matters in the rail work program.[[17]](#endnote-17)

It continues to ignore ports and directions regarding a national ports strategy from its boss – the Council of Australian Governments.[[18]](#endnote-18)

It has proven incapable of maintaining a consistent or coherent approach to national policy development.[[19]](#endnote-19)

Not only has it been unable to define or explain what any national policy might comprise, ignoring the one cogent exposition it adopted in the early 2000s, but it frequently drops without explanation – forgets - what has already been done.[[20]](#endnote-20)

Other matters disappear without trace. The more striking recent examples involve an organisation it created; the National Transport Commission. It seems key parts of the national transport field periodically become terra incognita.[[21]](#endnote-21)

Many of the Council’s activities appear to be ‘make work’ ideas.[[22]](#endnote-22)

It seems to resist independent advice – counsel from outside the established self-interested bureaucracies. The infrequent independent advice it is given includes cries of frustration over obvious issues Council ignores. Indeed the case of a national rail policy arose out of such a call in one (of too-many) review of the National Transport Commission.[[23]](#endnote-23)

The Council has not apparently considered the implications of the William’s decisions which should have fundamentally altered its character and operation. Those decisions rejected the (previous) assumption that the Federal Government automatically speaks for the Commonwealth; instead the High Court insisted that authority lies with the Parliament. Consequently Commonwealth representation and support arrangements for the Council should have changed and the Parliament should have been much better informed about the Council’s activities. Nothing happened.[[24]](#endnote-24)

This attempt at a national rail policy should signal the end of the Council. Luckily for the Council nobody important is paying attention.

However, even if nobody cares what it does, it is important for advisers to know the Council creates images that are indistinct and sometimes reversed and inverted.

The result is delay or prevention of reform necessary to progress the Council’s professed goals. No wonder interest groups sometimes write their own versions of national transport policy or seek new advisory organisations, even if their hope of the Council picking out the diamonds is in vain.[[25]](#endnote-25)

The problems with the Council are structural; governance related. That they are not party political, personal or procedural is demonstrated by their persistence while there have been many changes in: Commonwealth and State Governments; Ministers, Departments, officials and advisers; nominal agenda. It is most unlikely that further changes in these will remove the blockage.

It is time for the Council to be abolished; for Australia to drop the austral obscura and look at reality.[[26]](#endnote-26)

Without the Council there would be an opportunity for real national progress on rail and other transport matters. A revival of the Constitution’s Interstate Commission might assist.

J Austen

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1. Transport and Infrastructure Council website at: <http://transportinfrastructurecouncil.gov.au/>. It was established in 2013 by the Council of Australian Governments as successor to previous transport Ministerial Councils. Its terms of reference, dated 2017(!) are at: <http://transportinfrastructurecouncil.gov.au/about/files/2017_Transport_and_Infrastructure_Council_Terms_of_Reference.pdf>.

The terms of reference do not refer the Williams decisions (note xxiv below) and add to pre-existing questions about governance of (and assumed by) the Council; see for example *Governance* at <http://www.thejadebeagle.com/governance.html>; *Commonwealth Urban Transport?* at <http://www.thejadebeagle.com/commonwealth-urban-transport.html>; *the Urbane Transport* series at <http://johnmenadue.com/blog/?s=urbane>.

There are other Ministerial Councils, also chaired by the Commonwealth such as the Energy Council. [↑](#endnote-ref-1)
2. It appears that a ‘vision’, like a ‘strategy’, has become a bureaucratic term of art exposited via a document in a prescribed format; for example see p11 in: <http://transportinfrastructurecouncil.gov.au/publications/files/National_Land_Freight_Strategy_Compressed>.

Achievement is preparation and publication, after ‘agreement’, of the document.

The public ‘outputs’ of the Transport and Infrastructure Council are communiques (one from each half yearly meeting) and a very limited range of publications. The communiques tersely advise of decisions but do not present decisions, reasons or discussions. If any Minister dissents or issues a caution or clarification this is not noted. There is little or no explanatory or supporting material; for example there is no indication of proposed content or progress with the value capture framework of note xiv (below). [↑](#endnote-ref-2)
3. <http://transportinfrastructurecouncil.gov.au/publications/files/National_rail_vision_and_work_program.pdf>. [↑](#endnote-ref-3)
4. The work program activities are in the left hand column. My comments on activities are in the other column. [↑](#endnote-ref-4)
5. |  |  |
| --- | --- |
| **Activity** | **Comment** |
| 2016‐17 *working with the road  vehicle reform TISOC subgroup where appropriate, undertake a review of the different rail access regimes and charges calculation  methods by the end  of 2016*  *Review the costs and benefits of having multiple access regimes for rail operators and  customers by  early 2017* *Development of possible options for a national/ harmonised rail access regime by the end of 2017 including assessment of approached against  mechanisms proposed for road  pricing and against**national competition policy*  2017‐2019*Jurisdictions to work closely with Rail Infrastructure  Managers (RIMS) to  inform infrastructure investment, improve information sharing, promote adoption of**common standards, and better slot management to  improve outcomes for customers* | There appears to be no purpose to such a review. The question of appropriateness of regimes should be left to competition authorities as per the competition principles agreements. The dominant access regime questions since the advent of national competition policy concern minerals railways; north West Australian vertically integrated iron ore, Hunter vertically separated coal with multi-use track and port node, Queensland part vertically integrated coal.This reflects the fact that access regimes are relevant only where rail profits are possible. Where profits are not possible there is no need for a regime.Competition for subsidies, e.g. serially contestable urban franchises, raise special issues regarding surety of infrastructure condition and non-competing use, but these are not access issues.Inappropriately narrow; compare with the issue raised by Asciano and the comments of the Harper review panel: <http://competitionpolicyreview.gov.au/files/2015/03/Competition-policy-review-report_online.pdf>If there was concern about multiple above and below rail commercial interfaces, the review should cover ownership of infrastructure. The nature of rail infrastructure and changes in traffic densities along a route imply that access rights, if not regimes, should vary on most multi-territory journeys.In any event, the interests of infrastructure owners should be considered. The concept for a nationally uniform access regime was considered, and implicitly rejected, by the National Competition Council in the mid 1990s. This item may be based on a misunderstanding about the differences between an access regime, an undertaking and commercial contracts. A harmonised or national regime would be so vague as to be meaningless; it would need to cover different contracts.Legality is unclear; infrastructure owners are bound by statutes and in some cases the corporations law. It is unclear how officials can lawfully ‘inform’ investment; there is a risk they will be deemed to be directors of the infrastructure company. The purpose of the converse, infrastructure owners giving advice to officials over and above that given to customers, shareholders or markets is both unclear and raises other issues. Common standards need to be backed by funding eg. of changes to infrastructure, and/or officials will need to be accredited under safety legislation. ‘Slot management’ (known in most States as daily and real time path allocation) is a highly technical matter for the industry and it is inappropriate for governments or officials to be involved in this; examples of the issues include the 4 paths per hour yielding 2 standard freight trains per hour at Cowan (NSW) and attribution of delays for decision factors matrices as per Independent Transport Safety and Reliability Regulator’s report on freight delays. See for example: <https://www.artc.com.au/customers/access-interstate/network-management-principles/library/Network%20Management%20Principles.pdf>. |
| 2017‐2018:*Work with RIMS to identify rail network control* *systems being introduced and where possible and desirable insure interoperability and compatibility*  2016‐2019: *Cross-modal safety regulatory standards should be developed in new areas of technology, such as**automated vehicles and at level crossings.* 2017-2018: *Develop frameworks where RIMs responsible for**interfacing networks collaborate and coordinate on**infrastructure investment and operational policy**decisions* | Too vague and slow. Network control systems should be and probably already are known eg. ERTMS/ETCS and ATMS on the interstate network. For a connected network they should be interoperable. ‘insure’?? The problem has been known for at least a decade; how is it to be fixed? Unclear.What is meant by ‘regulatory standard’; ALARP or a technology or engineering standard eg. axle load and train speed, or construction standard eg. rail weight and number/type of sleepers per km? Automated vehicles already are used in rail hence this could impact and impose new costs on existing accredited operations.A level crossing is more properly characterised as an interfacing issue, already within the rail operator’s accreditation rather than an (unallocated) ‘cross modal’ matter.Unclear. What is the intended effect of the framework; a mandatory requirement eg. access undertaking? What are the interfacing networks? What is ‘operational policy’? See the comments re investment and slot management (above). It is difficult to believe lack of integration of investment or operations is a real problem, apart from the new network control systems matter.Perhaps there is insufficient investment but if governments feel this is the case, they also hold the answer. Any such framework may require several regulatory approvals.The much more significant matter, ignored in the work program, is integration, or minimising conflict, between road and rail infrastructure investment. That is there are problems of governments:. overspending for line haul infrastructure (parallel roads and railways for line haul tasks the Hume, Pacific and Newell Highways with north-south corridor modernisation and the inland rail route) . while complementary infrastructure is in poor condition or lacks capacity, for example roads to Chullora. This is a critical issue for agricultural regions and local governments.  |
| 2016‐2019:  *Investigate opportunities for the next wave of**National Rail Safety Regulation Reform, including the**possible benefits to industry and jurisdictions of**making some rail infrastructure standards mandatory.*  *Review opportunities to minimise state based**derogations to the National Rail  Safety Law where**cost effective.* 2018: *Fatigue, drug & alcohol and other medical**standards in the rail industry should be harmonised*. | Misplaced.The matter of harmonisation should be explored but outside the safety regulation context; see note xxiii (below) re Taig. Benefits to jurisdictions?? What about benefits to safety or the public?Depending on the nature of standards eg. standard technique, standard parameter or standard gauge this could substantially change the nature of rail safety regulation; see note xxiii (below) track access and rail safety. This item may relate to the Rail Industry Safety and Standards Board, which arose out of reluctance by governments to ‘assume liability’ for mandatory standards were harmonisation on a defined network to be sought by regulation; if so it is a radical change of direction by governments.Such changes would give rise to industry costs which are more important than ‘benefits’; see note xxii (below) National Transport Commission and Auslink.Ambiguous. How does cost effectiveness come into it? Is this to be an assessment of the cost effectiveness of derogations? Or a review of only those derogations which are not cost effective? Why and how are these ‘standards’? A better explanation is needed. If rail operates to ALARP it is conceivable that different operations and tasks may have different optimal medical standards etc. However, the matter arose in the Special Commission of Inquiry into the Waterfall Rail Accident where there was criticism of then medical etc. standards and results.However, even then there are claims there is a national standard; see for example: <https://academic.oup.com/occmed/article/62/8/642/1441603/The-Australian-National-Standard-for-rail-workers>. |
| 2020:*Implement common and complementary approaches**to environmental regulation for the rail sector,**including for noise, dust and other emissions, and**noxious weed control  where it will promote value for**money.*  | Where it promotes value for money??? This is too vague and open ended for comment, other than to note that other government departments may have very different views,Occupational health and safety? Fire? Vegetation management (is more than noxious weeds).The more important issue is common and complementary approaches for road and rail on those roads which compete with railways.The most important issue, however, is a proper balance of environmental protection and industrial use at ports, approaching channels and road and rail access. |
| 2017: *National approach to update passenger rolling stock,**including harmonisation of standards to increase**opportunities for the Australian manufacturing sector.*  | Update rolling stock? Presumably this refers to rolling stock procurement and refurbishment paid for by the public sector. This might be done whether or not it promotes opportunities for manufacturing. If opportunities for manufacturing are desired, there are probably more important and easier process matters than harmonisation of standards eg. a national procurement schedule. |
| 2017: *Endorsement of a national freight strategy by Council.  Incorporating Rail* *National intermodal strategy including operation and design to meet long term needs supported by a freight rail research program.* *Development of freight policies for the greater use of**short haul to ports.* *Merits and opportunities of double stacking and**increased train length on the interstate network*. | According to communiques the Council has already endorsed a national freight strategy. Did that did not include rail???Inappropriate. The intermodal terminal issue for state (and maybe Commonwealth) governments relates to major urban areas; not what is currently in the officials’ freight strategy. It needs to address the location /zoning of terminals (given scarcity of relevant land) and high productivity road access to them (see Infrastructure Australia’s land freight strategy update). Marshalling yards, staging/assembly and provisioning of trains eg. Enfield, Hexham is something that could usefully be explored, especially in States where terminals may need to move or there are port access constraints eg. Brisbane, Perth.Operation and design of terminals should not be tackled by governments unless they wish to do so for every existing intermodal terminal including at the ports. This is a major competitive neutrality and monopoly power issue, which presumably underpinned government approaches to inclusion of terminal assets in rail freight business sales.A freight rail research program is unlikely to be a good idea; a freight research program, tied to the US and EU/UK programs may be a good idea.Presumably this relates to containers. Short haul to ports has been the subject of policy exploration for at least 25 years. It is unclear what is meant by ‘short haul’. While Council may have short distances in mind, the underlying economics need to be considered; see Affleck’s analysis of Western Australia grain and silos for example, and current analysis in Long Beach USA. In the US and Canada, short haul can refer to operators at below the mainline class 1 level, with tasks frequently long distance, and based on cycle times; this may be more relevant to Australia eg. Newcastle and even Ettamogah as ‘staging posts’ much like distribution centres for road freight eg. Somersby, Goulburn, Wodonga. These matters has been explored on a number of occasions since the early 1990s. Reports are available. |

The work program could easily be interpreted as an unanalysed log of claims from various parties excluding track and terminal owners that steps outside the commercial framework for the industry. The list does not distinguish between railways; vertically integrated or separated? Standard or other gauge? Single or multi use? Separated or networked? Financially profitable or supported by public funds? To illustrate: is it intended to be applied to the North West Australian iron ore railways as well as the Sydney-Melbourne lines. The program also omits some matters mentioned in the Council’s strategic priorities such as land value capture.

 Like most Transport and Infrastructure Council decisions, the decision to establish a national rail vision/policy agenda was not reported by major metropolitan newspapers or media and remains unmentioned on mainstream media websites. This is despite it being of great interest including for matters such as: Commonwealth-State relations; ‘city deals’; challenges faced by urban systems; railways to airports; the Commonwealth’s announcement that it wants rail plans for each major city; high speed rail; road charging. Of course there is also the matter of Australian history and gauge standardisation. [↑](#endnote-ref-5)
6. It is possible to propose more complicated formulations, however each resolves into the right amount and type of rail services. Many complicated formulations, such as in the Council’s rail ‘vision’ contain contentious assertions which do not show an appreciation of the structure, conduct and performance of the industry. For example, the wish for improved rail safety could imply a reduction in services (within a given resource envelope) if safety is defined as reduction in risk arising from the conduct of activities. However, a reduction in rail services may increase risk in society overall if railway customers switch allegiance to activities with higher risks, for example car use. More significantly, it arguably runs counter to the concept of independent rail safety regulation already legislated in Australia. [↑](#endnote-ref-6)
7. For these purposes, interoperability may be defined as the ability to operate a vehicle or train across infrastructure.

In Australia’s case, the pre-Federation interoperability issue was the different track gauges (distance between rails) used by the colonies; the break of gauge that linked settlements.

 While post Federation there has been significant track gauge standardisation, for example to link the major mainland cities, there remain substantial track gauge differences on linking railways eg. narrow gauge on Queensland’s coast, broad gauge in Victoria which vary from the NSW and national network standard gauge. This is briefly discussed in *Governance* (note i above). Note this only applies to linking railways and not, for example, the vertically integrated and horizontally separated iron ore railways of north Western Australia.

There are other impediments to interoperability including train control systems and loading gauge (to cater for dimensions and weights of vehicles). These impediments may be increasing. For example it is not clear whether the ‘next generation’ train control systems of ATMS (satellite based intended for the Commonwealth’s Australian Rail Track Corporation network) and ERTMS/ETCS (balise or track based, possibly intended for standard gauge urban systems, including those that interface with that of the Corporation) will enable full interoperability. This is despite that for at least a decade both types of systems have been on the drawing board and that the interoperability problem has been common knowledge. See: [www.railcrc.net.au/object/PDF/get/download/id/r3113\_final\_report\_updated](http://www.railcrc.net.au/object/PDF/get/download/id/r3113_final_report_updated).

Similarly the proposed re-location of Queensland interstate terminal facilities towards the NSW border implies an effective reduction in interoperability nationally; an approach to increase interoperability would have been re-location interstate terminal facilities to the north of Brisbane and thereby extend the reach of standard gauge into Queensland. Compare [www.tmr.qld.gov.au/-/media/Projects/M/Mt.../Pdf\_MtL\_Beaud\_partc\_ch11.pdf](http://www.tmr.qld.gov.au/-/media/Projects/M/Mt.../Pdf_MtL_Beaud_partc_ch11.pdf)? with <http://infrastructureaustralia.gov.au/policy-publications/publications/files/NLFS_220211.pdf>.

The issue is not merely one for the States. Some Commonwealth extensions of the standard gauge have not fully addressed interoperability; the Alice Springs to Darwin line did not meet axle load and train speed parameters then in general use for the interstate network due to rail weights and sleeper spacing; see for example: <https://infrastructure.gov.au/rail/inland/submissions/files/Assoc_Prof_Philip_Laird.pdf>.

Of greater concern is the NSW government’s reported approach to metro which introduces a loading gauge incompatible with the existing Sydney urban fleet. See: the ‘*Toucheth not the monorail’* series <http://www.thejadebeagle.com/toucheth-not-the-monorail-western-sydney-rail.html> etc.

It therefore is surprising, to say the least, that transport ministers have signed-up to a ‘vision’ that purportedly seeks to increase interoperability when:

The ‘vision’s’ work program only vaguely, weakly and passively refers to train control*: ‘identify rail network control systems being introduced and where possible and desirable insure* (sic?) *interoperability and compatibility’* and doesn’t recognise that the rollout of one system has commenced <https://atms.artc.com.au/>;

The ‘work program’ appears ignorant of the other examples mentioned above;

At times, and in line with historic and commercial factors, the behaviour of governments and their rail authorities has been to resist such an approach or do the opposite.

Interoperability is easy to measure and present; a basic statistic would be the percentage of standard gauge in all track gauge. More sophisticated statistics could include standardised train dimensions and speeds etc. [↑](#endnote-ref-7)
8. This draws on a standard economic formulation for efficiency; beneficiaries not merely users should bear costs. It is similar to the formulation used for determination of rail fares in Sydney by the Independent Pricing and Regulatory Tribunal during the early 2000s; see: <https://www.ipart.nsw.gov.au/Home/Industries/Transport/Reviews/Public-Transport-Fares/Review-of-CityRail-fares-from-2009-and-regulatory-framework?qDh=2>

While the relevant comparator for railways will normally be roads some cases may involve aviation eg. intercapital east coast high speed rail, or sea shipping eg. landbridging between ports such as the original concept of the ‘inland rail route; see for example: <http://www.aph.gov.au/binaries/hansard/reps/commttee/r9535.pdf>.

Costs include financial costs and externalities such as congestion, emissions, loss of amenity, risk.

At present neither costs nor benefits of rail, road etc. are so assessed or presented. Hence it is unknown whether Australia has too much or too little rail transport, or road, aviation or coastal shipping transport for that matter. Infrastructure Australia’s 2015 audit was incorrect in this respect, see: <http://www.thejadebeagle.com/audit.html>, and <http://www.thejadebeagle.com/australian-infrastructure-plan.html>.

Given the extraordinary level of financial subsidisation of Australia’s roads, and extreme under-recovery of other economic costs of roads particularly in urban areas, it is virtually certain that Australia suffers from having too many roads and consequent over-use of roads.

The case of rail is not so clear even with present financial subsidies, especially since one purpose of rail is to mitigate the adverse effects of over-spending on roads and (unlike roads) contribute to major agglomerations. However, road and rail subsidies together suggest there is both overprovision and overuse of transport in Australia. [↑](#endnote-ref-8)
9. The difficulties caused by/ facing debates about universal road charging are documented at: *Road Reform* <http://www.thejadebeagle.com/road-reform.html> and *Road pricing* at <http://www.thejadebeagle.com/road-pricing.html>.

The problems could explain the results of the Council of Australian Governments ‘road reform plan’ etc. led by the Transport and Infrastructure Council as well as failure to progress towards efficient or effective road charging for any vehicle type or almost any road since the mid 1990s.

It is surprising that these problems, or their implications, were not identified or apparently understood by the Council. Dr Michael Keating AC, Luke Fraser and myself have written several articles on road fiscal deficits using data published by the Bureau of Infrastructure, Transport and Regional Economics. While some may have expected the situation to significantly improve in recent years due to an expected post Global Financial Crisis recovery of road traffic this has not proven to be the case and substantial financial deficits persist see: <http://www.thejadebeagle.com/roads---another-deficit-year.html>. [↑](#endnote-ref-9)
10. It is possible, as Infrastructure Australia recommended some years ago, to assess transport requirements ‘as if there was road pricing’. See: <http://infrastructureaustralia.gov.au/policy-publications/publications/Infrastructure-Australias-Urban-Transport-Strategy-December-2013.aspx>.

It has been done in the UK, however, nothing has been done in Australia.

The obvious public policy benefits of the ‘as if’ approach include assurance that infrastructure does not become ‘stranded’ if road pricing or other forms of road cost recovery are introduced.

Among other public policy benefits are:

Putting road pricing theories to the test; it will be necessary for proponents of ‘road pricing’ to say what they mean in practice rather than regurgitate theory. The potential gap between theory and practice appears to be a motive for the careful position of the Commonwealth Minister for Urban Infrastructure on road pricing, a very sensible approach:

Eliminating a practical road block to road reform; the prospect that road pricing might make recent infrastructure projects white elephants and cause substantial embarrassment is likely to be used as a reason to stall or avoid road pricing. [↑](#endnote-ref-10)
11. The length of the Council led road ‘reform’, at 11 years to date while a saga not quite up to the standard of the quarter century of ‘rail regulation reform’, may be attributable to attempts at universal road charging. Yet the fact that it is not necessary, or even desirable, to introduce pricing or charging to every road (let alone every road user) is widely known and has been explained in detail on a number of occasions, including by Infrastructure Australia in advice to the Council of Australian Governments; see for example note viii (above) and <http://infrastructureaustralia.gov.au/policy-publications/publications/Economic-reform-of-Australias-road-sector-February-2012.aspx>.

A similar issue arises with respect to road access and was a likely reason for the delay and probable lack of early satisfaction with the national heavy vehicle regulator. Contrary to suggestions by some organisations, truck access restrictions can reflect amenity as well as financial matters; amenity is a matter for the political system irrespective of how road improvements might be funded. States would never cede power of determining access to every road to an independent organisation or to the Commonwealth, irrespective of funding offers. The obvious answer, not publicly progressed, was for independent access determinations for only some roads nominated by the States with encouragement by the Commonwealth for nomination. A faint image of this is seen by the achievement of a national freight network ‘now’ set up for B-Doubles.

The certainty of failure of the ‘all roads or nothing’ approach to heavy vehicle charging and access appears to have been a key motivation for Infrastructure Australia recommending a national freight network, a call which if not misunderstood in principle has not been taken up in practice; compare for example: recommendations 3, 4 and 5d in <http://infrastructureaustralia.gov.au/policy-publications/publications/files/National_Land_Freight_Strategy_Update_2012.pdf> with the Council’s views <http://transportinfrastructurecouncil.gov.au/publications/files/National_Land_Freight_Strategy_Compressed.pdf>.

Nonetheless, the Council has made some recent progress in outlining expenditure intentions for important roads even if prior spending and relevant traffic information is not available; see: <http://transportinfrastructurecouncil.gov.au/publications/heavy_vehicle_road_reform.aspx>.

Given this, the persistence of various official ‘reform’ proposals to posit universal all-roads, all-road-user charging, pricing, funding (or indeed all road ‘access’) is perplexing, especially given the claims in almost every report over the last 10 years that ‘the technology has just become available’ (if it had just become available 10 years ago why is it claimed to be available just now??, the claim appears to be an argument that policy should be subordinate to technology). The proposals distract from feasible reform options.

The effect of making unacceptable road reform proposals is reinforced by the failure to consider the question of what (where) rail services would be desirable if there was efficient charging on the few roads that competed with railways. The pivotal nature of this question was identified in the early 1990s in the national rail initiative, yet there remains no public evidence of attempts to address it since. Indeed, the available evidence is consistent with attempts to ignore or deny the importance of the question, by raising the ‘all-roads’ red-herring. For example, the Productivity Commission made a fatuous and famous claim that ‘*on average’* road transport subsidies do not impact rail freight; fatuous because it apparently ignored costs of capital, treated expenditures as costs (whereas they may be far below costs due to eg. maintenance deficits and non-financial costs such as externalities) and stated there was a ‘*lack of expenditure and traffic flow data*’ for relevant corridors (where roads compete with rail). Correcting for these matters, it is possible – Infrastructure Australia thought likely - the results would be reversed. See: <http://www.pc.gov.au/inquiries/completed/freight/report/freight.pdf> at section 8.3.

The Productivity Commission was later distracted into similar errors claiming that ‘arguably’ road revenues cover spending (despite official data showing the contrary) and that the national access regime does not apply to all roads (ignoring the express provisions of the relevant legislation).

The point is that relevant questions are: whether costs are covered for major individual roads; whether the regime covers any, not every, road. Application of the national access regime would assure the former. Introduction of direct charging would activate the regime. However the regime covers only nationally significant infrastructure, not all infrastructure in Australia. It is a question about a few roads, not every road; see notes 2 and 4 in <http://www.thejadebeagle.com/roads-1-tar-baby.html>.

Further ‘all roads, all road users’ mistakes arose in the Council of Australian Governments road reform plan etc. to underpin proposals that costs not include ‘sunk’ capital and that road locations should in fact be road classes; see: [https://www.ntc.gov.au/Media/Reports/(9692BE6E-405C-4471-8C87-268F9FC2BE69).pdf](https://www.ntc.gov.au/Media/Reports/%289692BE6E-405C-4471-8C87-268F9FC2BE69%29.pdf) and [https://www.ntc.gov.au/Media/Reports/(CB4BE14B-461C-47E2-AD20-5D36F3B5D8BE).pdf](https://www.ntc.gov.au/Media/Reports/%28CB4BE14B-461C-47E2-AD20-5D36F3B5D8BE%29.pdf). These type of ideas have been specifically rejected by Australia’s economic regulators, including for railways; see for example: <https://www.accc.gov.au/regulated-infrastructure/rail/artc-hunter-valley-access-undertaking>.

The latter, the use of the word ‘location’ to denote road classes, was plainly misleading. It allows cross subsidisation to those roads that compete with railways. Any such occurrence would be of considerable significance for road reform were an ‘effects test’ introduced into competition law. Organisations would be liable to prosecution for predatory pricing if the effects of cross subsidies were to reduce competition; exactly the charge made by the rail industry about government funding of competing highways. See: <http://www.thejadebeagle.com/roads-2-cause-and-consequence-june-2015.html>

The ‘all-roads’ mistake was reiterated in the Harper Review of competition policy, this time again because the technology is now (!) available; <http://competitionpolicyreview.gov.au/files/2015/03/Part2_final-report_online.pdf>

The failure of the rail work program to identify a test of road charging completes the picture. [↑](#endnote-ref-11)
12. Recent proposals for freight policies include mapping of supply chains and logistics; see for example Australian Infrastructure Plan <http://infrastructureaustralia.gov.au/policy-publications/publications/Australian-Infrastructure-Plan.aspx>.

Most of these detailed supply chain activities by governments and their advisers are unnecessary and some are possibly inappropriate. The reasons are: road costs, including financial costs such as road wear and external costs such as emissions, are created and observable with respect to vehicles rather than vehicle contents; at some level each supply chain will concern an individual firm, and at this level analysis will be of the firm’s internal workings – noting that this level can appear large eg. location of supermarkets and distribution centres the strategy for which can vary between firms, coal and iron ore export chains, location and servicing of local community grain silos as distinct from grain traders ‘super sites’.

Commodity analysis can be useful if there is to be differential (eg. ‘Ramsay’) pricing, whereby different commodities attract different charges with reference to their demand elasticity.

In some cases commodities can be inferred from observations of vehicles eg. fuel tankers, refrigerated containers, bulk ore carriers.

Hence government freight policies should concern (large) vehicles rather than commodities. High value low volume ‘freight’, such as household shopping, will be in vehicles indistinguishable from general traffic and thus have indistinguishable costs that are amenable only to general traffic policies; such as congestion charging.

The practical aspects of this issue arose in initial proposals for Australian rail access pricing where track owners sought information on the content of containers for the purpose of differential pricing, annoying freight owners. From a public policy perspective it was suspect; it would increase the market power of the monopoly infrastructure owner. It was soon determined that train path ‘auctioning’ would yield commercially and economically superior results than track owner analysis of commodities. Two part prices were established; a standard tonne-kilometre rate associated with wear and tear on infrastructure (which is largely associated with tonnage); a path rate for typical train types eg. train lengths which is associated with the cost of capital, and provides incentives to alter (pathing) capacity in *anticipation* of end market demand eg. whether there should be more or longer crossing loops. This has gained the cooperation of the freight industry, and has been accepted by economic and competition regulators; see: <https://www.accc.gov.au/regulated-infrastructure/rail/artc-interstate-rail-access-undertaking>.

As transport is a derived demand substantial changes to rail pathing demand arise out of changes in land use eg. the opening of a new mine or a rail terminal. Relevant information is obtainable from the (land) planning system, and there is no need to – and it would be unwise to – seek to map current commodity flows except at the most aggregate level or seek involvement in logistics issues.

The fact that this has been unremarked, or ignored, in data gathering proposals which seek to establish lots of transport facts by organisations under the Council should be a concern; see: <https://www.ntc.gov.au/current-projects/who-moves-what-where/>. [↑](#endnote-ref-12)
13. The Hume Highway case was noted by Infrastructure Australia which in 2012 proposed a trial of high productivity vehicles on that road. There is no information on progress with this, although personal observations suggest a trial has not commenced.

Published data is: NSW road freight use 35,000 kilotonnes and spending of $97m for the 4 years from 2014-15; Victoria road use not available and spending of $73 m for the 4 years from 2014-15. [http://transportinfrastructurecouncil.gov.au/publications/heavy\_vehicle\_road\_reform.aspx#](http://transportinfrastructurecouncil.gov.au/publications/heavy_vehicle_road_reform.aspx).

The information is of no practical use to policy makers or advisers; relevant information would include historic spending for the last 25 years, total vehicle counts and forecasts for the next 10 years for passenger car units and equivalent standard axles for heavy and light vehicles.

It is also notable that the Highway is divided by state rather than presented as a whole; the approach appears to be national information by collation. [↑](#endnote-ref-13)
14. For examples see above notes.

Value capture is mentioned in the Council’s ‘strategic work programme’ As follows:

‘***Reform Priority 1: Sustainable Funding for Transport and Infrastructure***

*…. Council is committed to the development of sustainable, efficient funding and delivery models for new and existing infrastructure….. Key initiatives will include exploring … value capture and sharing, and establishing the right mechanisms to facilitate private sector investment, including co-investment.’….*



The above table is ambiguously expressed in the past tense. Although a value capture framework was to be endorsed by Council in November 2016, the relevant communique does not mention it. See: <http://transportinfrastructurecouncil.gov.au/publications/files/Council_Strategic_Work_Programme.pdf>

and <http://transportinfrastructurecouncil.gov.au/communique/index.aspx>.

 [↑](#endnote-ref-14)
15. A rail policy takes a vertical or modal view of activity in comparison with the horizontal or market view such as of freight. A rail policy should be accompanied by road, shipping, aviation, terminal etc. policies. A freight policy should logically be complemented by a ‘moving people’ policy.

Surprisingly, the Council itself accepted this point citing Infrastructure Australia’s preference for market rather than mode based transport and infrastructure policies:

*‘Rail and road freight infrastructure planning and investment can no longer be undertaken in isolation from each other, or worse, in competition with each other..’*

<http://transportinfrastructurecouncil.gov.au/publications/files/National_Land_Freight_Strategy_Compressed.pdf>.

The central question for the Council in development of national transport policies arises out of the Constitutional division of powers between the Commonwealth and States. The Williams decisions confirmed nationally significant matters do not give rise to Commonwealth power, least of all Commonwealth *Government* power; see note xxiv (below). Constitutional arrangements do not provide the Commonwealth with powers over specific modes, markets or locations such as urban or regional areas. It does confer Commonwealth power over railways with the agreement of States; no such provisions are made in relation to roads.

The Constitution allocates the Commonwealth power over international and interstate trade and commerce and navigation, rather than over freight or all passenger tasks. The test for whether a matter is incidental to such trade and commerce is a physical rather than economic (eg. efficient, competitive, profitable) connection: <http://www.austlii.edu.au/au/cases/cth/HCA/1976/66.html>

The fact that a state does not take action on a particular issue does not create a power for the Commonwealth, or Council, to fill the void.

A ‘national policy’ is not necessarily the sine qua non for a forum that comprises Commonwealth and State representatives, such as the Council. Alternatives to a forum that seeks completeness of policy via complementarities among tiers of government are forums that attempt:

To resolve inconsistency in intersecting Commonwealth and state policies; or

To affect the policies of various States; seek consistency in state policies where there is no (intersection with) Commonwealth power.

Neither of these alternatives mean that every area of national significance will be addressed by the forum or indeed by any government. The latter, consistency among States, may not benefit from Commonwealth participation and a Commonwealth Government would be open to charges of conflict of interest or politicisation of process if it sought to conduct a review of state activities via the forum; in any event Commonwealth involvement would seem better at Parliamentary rather than Government level.

By proposing a rail policy while advancing a freight policy the Council is taking neither the complete modal nor market view of transport needed to ensure coherence. Perhaps it could focus on particular aspects of rail freight, but to do so it would immediately face the highway versus rail issue of notes x and xi (above).

Moreover, the Council’s activities implicitly endorse inconsistencies in the scope of Commonwealth Government policies; the Commonwealth asserts powers in relation to airports that serve interstate or international trade and commerce but both the Government and the Council ignore seaports.

The Commonwealth’s recent announcement of a ‘freight and logistics inquiry’ shows how muddled the field has become; see <http://minister.infrastructure.gov.au/chester/releases/2017/march/dc049_2017.aspx>.

The announcement referred to a recommendation by Infrastructure Australia which did not indicate what of the myriad (private sector) aspects of logistics need attention, nor which of the multitude of supply chains should be the focus; in Infrastructure Australia parlance it was short on ‘problem identification’. It is unclear who will be informed by the inquiry – the Ministerial Council was mentioned and although it has not apparently agreed to the inquiry there may be some expectation for it or the States to be involved. The Commonwealth Government was also mentioned; but did it announce an inquiry by itself to inform itself? Only certain transport and logistics matters fall within the Commonwealth’s scope of power – matters physically (not just economically) related to international and interstate trade and commerce are among them. The terms of reference deal with a number of extraneous matters including supposed justifications for the inquiry, and lists measures preferred by ‘industry’. It is supposedly concerned with ‘priorities’ but refers to ‘strategy’. Most transport and logistics matters are responsibilities of the States. It might be noted that inquiries into issues wider than Commonwealth power should inform the States or the Parliament and thus terms of reference and conduct of the inquiry should be approved by either. It is unclear who is to undertake the inquiry. The terms of reference claim the Government is undertaking the Inquiry but a draft report will be made available to government for comment; https://infrastructure.gov.au/transport/freight/files/Terms\_of\_Reference.pdf. While there is to be a three member industry ‘expert’ panel, it is to ‘assist’ (rather than conduct) the inquiry and is tasked with reviewing some work; it could be surmised that the Commonwealth Department is undertaking the review. Nonetheless the panel will be able to ‘access specialist advice to complete its role’. The odd situation of an inquiry headlined by ‘independent experts’ but actually undertaken by an organisation under Ministerial control echoes the review of the National Transport Commission by departments with some input from former government transport leaders. To the extent this traverses State responsibilities and has not been approved by Parliament or the States it suffers conflict of jurisdictional interest. The panel itself, while having significant experience and expertise in transport and logistics may face also face conflicts. For example members could be conflicted in advising on public policy issues relating to the restrictions on developing a container terminal at Newcastle port – even if the inquiry ignores the matter. The questions here are not with the individuals whose expertise is undoubted and whose advice would be most valuable, it is with the explanation of the establishment of the inquiry. [↑](#endnote-ref-15)
16. The issue was one of the suspect matters discussed in *Governance:* note i (above).Roads are governed by regulation for purposes including provision, safety, amenity, and budget.

This is said to reflect the public goods nature of roads, however, that diagnosis is inaccurate. In fact roads are club goods with some public goods aspects and main roads evolved out of commercially provided thoroughfares. A more accurate analysis would have all roads exhibiting public goods aspects, but some roads - main roads – also overwhelmingly being private goods.

Road reform is largely considered to revolve around changes to regulations eg. easing of heavy vehicle restrictions on particular roads and making of regulations permitting road owners to levy charges. A more accurate picture of desirable road reform options would include changes to industry structure aspects of governance; elimination of some regulation on some roads in addition to changes to regulation.

This clearly points to an option of different treatment for different types of roads; commercialisation of main roads, with rail charging principles applied to roads that compete with railways.

The alternative ‘whole of sector reform’, or commercialisation of every road supported by community or universal service obligations (to make up for financial deficits if asset condition is to be maintained), may be attractive in theory but has proven problematic in practice for other, simpler, transport fields.

Until such industry structure changes are made matters such as national consistency in infrastructure standards, maintenance, provision and use cannot be achieved by regulation. [↑](#endnote-ref-16)
17. Examples of lack of adequate comprehension are in the above notes and note xxii (below); rail regulation, road access, national network, governance. There is no apparent understanding about differences between road charging and road pricing; for an explanation see references in note ix (above). [↑](#endnote-ref-17)
18. There was to be a report on progress with the National Ports Strategy by the National Transport Commission each year. There has not been a public report. Council communiques do not indicate any consideration of port issues since the Council of Australian Governments agreed the national ports strategy. Nonetheless, the Commonwealth Minister’s announcement of an inquiry into freight and logistics mentioned the ports strategy as if it was a success; note xv (above). [↑](#endnote-ref-18)
19. National directions seem to have changed in 2008, 2013, 2014 and 2016. Changes in national directions underline an intention not to maintain consistency. Lack of coherence is demonstrated by Council pursuing different directions for road and rail and, with the exception of a short period around 2008-09, not considering the impact of decisions in one sector on the other; in fact by not taking up the suggestion of a national transport advisory council to conduct this task it has sought to avoid the issue; see note xxii (below). [↑](#endnote-ref-19)
20. Three examples involving the National Transport Commission are: disappearance of the national transport policy framework (see note xxii below); the national ports strategy (see note xviii above); ignoring the conflict of interest considerations of the 2012 review (see note xxii below). Other examples were noted in Infrastructure Australia’s submission to the 2009 review of the Commission (note xxii below):

 *In early 2008 the Australian Transport Council agreed on a national approach to transport policy with an ambitious agenda to deal with then emerging issues. While attention was to be given to ten policy aspects, over time the Council’s agenda progressively narrowed to focus only on operational regulatory reforms and the national regulators.* …

*Some initiatives under the national transport policy framework stalled when implemented ‘in house* …..

*Reporting on progress with the national transport policy framework was limited. The Office of the National Infrastructure Coordinator found it difficult at times to identify progress with the national framework and the thread of argument for policy propositions….*

*The Council of Australian Governments Reform Council has drawn attention to progress on national transport reforms on a number of occasions. The Chairman of the Reform Council suggested there is a need to reassess the agenda in transport and infrastructure and highlighted the desirability of public reporting to enable stakeholders to follow progress.’*

It is no longer possible to easily consider the history of the Council as its website does not include communiques prior to 2011, and records of predecessors to the Council are also not available at the site. However, consideration of the communiques and documents at the site suggest the above concerns remain valid and, given the passage of time, may even be amplified today. [↑](#endnote-ref-20)
21. Among the exercises that could be called ‘make work’ are: the national land freight strategy; redrafting and then description rather than analysis of freight; consideration of data collection; reviews of the National Transport Commission and rail safety administration. [↑](#endnote-ref-21)
22. For these purposes it is worth considering some aspects of the history of national transport policy and the National Transport Commission since 1990.

Unfortunately, documentation regarding the activities of the Ministerial Council prior to 2011 or previous conducted work is not readily available, hence some of the following should be considered preliminary.

**Origin – the road transport problem**

The National Transport Commission is the successor of the National Road Transport Commission. The latter arose from the 1991 Special Premiers Conferences dealing with Commonwealth/State issues and a report by the Constitution’s Interstate Commission recommending such a body.

The problem to be addressed was trucking industry concern about different regulations, including charging regulations, in different States. The new arrangements allowed the Road Commission to develop heavy vehicle policy and recommend heavy vehicles charges to a determining transport Ministerial Council, the predecessor to the current Transport and Infrastructure Council. The heavy vehicle charges were to be uniform across the States; presumably to cure the mischief of jurisdiction shopping for truck registration. See: <http://atrf.info/papers/2002/2002_Moore_McIntyre.pdf>.

**The interstate rail problem**

The National Road Transport Commission initiative was largely concurrent with a national rail freight proposal that led to the formation of a corporation to take over interstate rail freight services from the States (and the Commonwealth – Australian National Railways - in South Australia).

The national rail proposal was in response to rail’s loss of interstate freight market share to highway trucking, largely on the east coast of Australia; the ‘north-south corridor’ Melbourne-Sydney-Brisbane.

Some argued the cause of falling market share to be that railways were public authorities – not ‘fully corporatised’ – or state government ownership and squabbling; hence the proposal was for a National Rail Corporation owned by several government shareholders under the corporations law.

Rail cross subsidies also were involved in the loss of market share. Prior to the Corporation, the Railways of Australia Agreement distributed interstate freight revenue to the various rail authorities by tonne kilometres but costs were borne locally. The result was a cross subsidy from the north-south corridor to the east-west (Melbourne/Sydney to Perth) corridor as the latter: is longer; is much more modern and was largely purpose built; has lower per km track and operating costs; did not face highway competition; did not face the increase in competition resulting from government funded improvements to east coast highways such as the Hume.

The advent of the company, National Rail Corporation, made it clear state ownership of rail authorities and the Railways of Australia Agreement were not the only factors behind the decline in interstate rail. Rather subsidisation of highways, particularly on the east coast such as via the Hume duplication, was a likely culprit; there was a cross modal problem.

**The cross modal problem**

The cross modal problem arose because infrastructure charges and funding for road and rail were (are) independent and not cognisant of each other. The National Road Transport Commission scheme was unable to address this, indeed it introduced new cross subsidies.

The history of the national transport policy since the mid 1990s is largely that of denying or avoiding resolution of the cross modal problem by distraction of the Ministerial Council to other issues, starting with track access.

**Track access and the Australian Rail Track Corporation**

Under the national rail deal the Corporation was to take control of interstate rail assets. This went relatively smoothly with locomotive, wagons and some terminal operating rights progressively transferred from NSW, Victoria and the Commonwealth.

However, instead of transferring its track on the east-west corridor in 1996, the Commonwealth proposed ‘Track Australia’ as an entity separate to the Corporation. The change of Government that year slowed this initiative and the Ministerial Council convened a ‘national rail summit’. Arising from this, after investigation by David Mortimer (TNT), the Commonwealth created its own track company the Australian Rail Track Corporation. Some mainline track was transferred to the Corporation and the Commonwealth, NSW and Victoria privatised their freight services.

As the interstate rail share continued to decline notably on the north-south corridor, these measures confirmed that government ownership and ‘lack of competition’ was not the problem with interstate rail.

**Track access and rail safety**

In the mid 1990s NSW established a rail safety regulator independent of the railways; as was the case throughout Australia the ‘regulatory’ function had been conducted within the government’s rail authority, there the State Rail Authority of NSW.

The creation of a safety regulator was partly in response to an accident at Hawkesbury River between trains operated by State Rail and a tourist operator, a ‘third party’, on State Rail track.

It was also in response to the (then) new national competition policy which envisaged more widespread third party access to - use of - track. The policy also required separation of regulatory functions from organisations involved in business activities such as railways.

Other States followed suit.

Some in industry offered the view that the new rail safety regulation was inhibiting industry growth and differences in practices of the various state regulators was a cause of the decline in interstate rail.

This view implied two different arguments for, objectives of, independent rail safety regulation:

To improve rail safety; or

To remove barriers to competition; to prevent rail authorities from using ‘safety grounds’ to preclude third party track access.

Under the latter, safety regulation would be ‘light handed’ and based on assessment of operating proposals (‘permissioning’) rather than prescriptive as to fleet, infrastructure etc. New entrants could propose novel types of operation which may not have been possible with prescriptive standards. It would complement arrangements in which third party track access, including improvements to track, would be determined on a commercial basis subject to economic regulation (to prevent misuse of monopoly power) eg. via an enforceable undertaking to the Australian Competition and Consumer Commission. As in note iv (above) track access is only in issue when rail profits are available; it should not be relevant to subsidised railways.

In the light of several serious rail incidents it became increasingly obvious that the two rail safety regulation arguments were divergent.

The latter aim, to lower barriers to entry to rail, appears to have been a primary motive for national policy which became concerned with state process consistency and the level of intervention by regulators. This became the rail ‘regulatory reform’ agenda. An echo of this is in the work program where attention is paid to the effects of regulation on industry, rather than the public or on safety; an observation rather than a criticism.

**An aside - observations about transport regulation**

There are two important points about road and rail ‘regulation’.

First there is a vast difference in the scope of road and rail transport regulation***.*** Truck charges and access are controlled by regulation; ‘transport regulatory reform’ for heavy vehicles now primarily concerns truck charging, access to roads and road infrastructure capability.

Since 1991 (the advent of national competition policy) this has not been the case for rail. For rail, only safety is subject to transport regulation; access is a matter for the national competition policy and economic regulators as are trade practices matters. *The rail (transport) regulatory agenda has had nothing to do with charging, access or infrastructure standards and quality.*

Second there is a vast difference in the style of road and rail transport regulation***.*** Road matters are controlled by prescriptive or specific regulation. Rail uses a permission system. Corollaries include:

Changes in road regulation impose net costs on some parties, higher costs but no additional benefits;

*The economic and commercial performance of rail transport cannot be improved by current safety regulation.*

The recent concept of rail transport regulatory reform – focussed on streamlining departmental administrative tasks - has not and will not substantively contribute to better national transport outcomes. The present approach to rail transport regulation cannot begin to advance national consistency in transport; national consistency, harmonisation, requires prescription. In the existing system rail infrastructure owners are able to provide some level of prescription, thus harmonisation can be progressed by bringing more track under one owner; this was a principal motive for the Australian Rail Track Corporation.

**The rail regulatory reform argument**

The above can be confirmed by observing the many orders of magnitude of difference between estimates of economic benefits from heavy vehicle reform (multiple billions) and rail reform (millions). While the rail reform agenda may have dealt with matters that annoyed some industry participants it has failed to make any impression on the basic issues for Australian transport exposed by the national road transport and national rail initiatives of the early 1990s.

Similarly, many arguments put in favour of ‘rail reform’ are discredited. For example, it was argued that rail safety regulation required – caused - Australia to have too many different train radio systems; this is clearly impossible in a permission system. Rather the number of radio systems reflects both legacy and traffic density matters; as does much of the system differences and breaks of gauge noted by an interoperability audit by Maunsell in 1997 and the Australian Rail Track Corporation on later occasions. There are real problems with such arguments; they sow confusion and obfuscate the fundamental problems impacting on rail.

Yet there is an argument for rail regulatory reform; it should be relatively easy because in a permissioning system it does not shift or change substantive costs.

**Land transport commission**

In the late 1990s the impact of government spending on railways being orders of magnitude less than on *competing* highways had become obvious. Several States agitated for a land transport commission which, among other things would complement the ‘regulatory reform’ agenda of the roads commission and advise governments on national land transport investment.

A number of Commonwealth inquiries into rail were instituted: the House of Representatives Standing Committee on Communications, Transport and Microeconomic Reform, *Tracking Australia* (1998) (which recommended a land transport commission) <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Completed_inquiries/1999-02/gst/report/e02>; the Productivity Commission *Progress in Rail Reform* (2000) <http://www.pc.gov.au/inquiries/completed/rail-reform>; House of Representative Committee on Communications, Transport and the Arts *Review of progress on rail reform* (Back on track – which recommended a rail commission in 2001) <http://www.aph.gov.au/parliamentary_business/%20committees/house_of_representatives_committees?url=cita/backontrack_railreform/index.html>. These are summarised in *Commonwealth involvement in reform of the rail freight industry,* Parliament of Australia Research Paper, no. 19 2008–09: See: <http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp0809/09rp19>. Instead of a land transport or national rail transport commission the Council agreed to a National Transport Secretariat, which was tasked by the Council with fairly abstract inquiries. It lasted for 3 years between 2000 and 2003.

**National transport commission and Auslink**

Legislation creating the National Road Transport Commission required a review each 6 years. The 2002 review by Aplin and Affleck led to the creation of the National Transport Commission. Aplin was a former Chief Executive of the organisation; Affleck was a leading figure in freight policy and had been a senior executive of the National Rail Corporation.

Their review recommended that the road commission be replaced by two bodies: a national transport commission to advise on regulation of road and rail; a national transport advisory council to advise on financial impacts of regulatory proposals and aspects of national policy such as pricing of road and rail access.

As road regulation was prescriptive and roads were government funded, changes in road regulation would impact government budgets; for example an increase in permitted truck weights on major highways, such as the Hume, may require more government funding to pay for bridge strengthening.

The Ministerial Council, led by the Commonwealth, agreed to the commission but not to the council. The Commonwealth argued that the Government would create a national policy via a new land transport funding program, Auslink, which was to focus Commonwealth funding on a defined national network of corridors; to do so it formally expanded the scope of the Commonwealth’s land transport funding program to rail. *This expansion in scope was a virtual admission that spending on highways had reduced the competitiveness of parallel railways.*

Auslink was established in 2004. The Commonwealth argued it was a policy (and thus obviated the need for a commission) yet it was merely a funding program. Nonetheless, it was considerably advanced from previous Commonwealth efforts in both involving the States and having specific corridor analysis, albeit maintaining separation between road and rail. See: <http://investment.infrastructure.gov.au/publications/historical/pdf/whitepaper.pdf>.

The National Transport Commission then began to look at, or more accurately at opportunities for, ‘regulatory reform’ in rail. It soon ran into the permissioning roadblock indicated above and other than administrative actions was unable to identify changes. A rail industry safety and standards board was eventually established out of an interstate code management committee; the idea of a code/standards was to reduce barriers to entry and improve safety by greater infrastructure, vehicle and operational harmonisation on a connected network; a repository of knowledge of good practice for a single network. The relationship with safety regulation being that adherence to a complete suite of good practice arrangements would be prima facie evidence that proposed operations should be permitted. However, the board’s scope was wider and initially at least largely documented existing practice; see: <http://transportinfrastructurecouncil.gov.au/publications/files/RISSB_review_report.pdf>

In 2006-07 the Productivity Commission inquired into ‘road and rail freight infrastructure pricing’ arguing, on the basis of averages, there was no cross modal competitive neutrality concern. The fact of the inquiry implied pre-existing concerns over the possibility of road subsidisation damaging rail. This is discussed in note xi (above), and informed the later Council of Australian Governments road reform plan etc.

**2007-2013 overview**

Labor took federal office in 2007 and requested the National Transport Commission to advise on a national transport policy. In 2008 the Commission produced a document ‘*National Transport Policy Framework - A New Beginning*’ which was unanimously endorsed by the Council: [https://www.ntc.gov.au/Media/Reports/(74246EB9-6CE9-67DE-3391-453BF725B534).pdf](https://www.ntc.gov.au/Media/Reports/%2874246EB9-6CE9-67DE-3391-453BF725B534%29.pdf).

The document presented a ‘vision’ for transport, identified six principles to guide policy eg. infrastructure pricing, national markets. It nominated ten priority areas for national action to be led by Ministers from different States and the Commonwealth.

The new Government also established Infrastructure Australia to advise the Council of Australian Governments on national infrastructure priorities and assess project proposals. Most proposals concerned transport; most transport proposals examined were from the States.

Associated with this, the Government created a ‘Building Australia’ fund which it could use to support projects assessed by Infrastructure Australia. In 2009 the Government rebadged ‘Auslink’ as ‘Nation Building’, albeit with more spending on urban projects and rail, including via the Australian Rail Track Corporation. This led to questions as to process and criteria for Commonwealth funding.

Infrastructure Australia proposed seven themes for its work, two of which related to national transport matters; a national rail network, and international gateways <http://infrastructureaustralia.gov.au/policy-publications/publications/Report-to-COAG-2008.aspx>.

On request by the Council of Australian Governments, Infrastructure Australia and the National Transport Commission developed a national ports strategy document in 2008-2010. It was endorsed in 2011.

Infrastructure Australia then produced a land freight discussion paper, covering the issues of a national rail and a national road freight network. Several States suggested a national freight strategy should refer to the Council’s guiding principles for a national transport policy; an update paper, specifically drawing on the principles, was presented to the Council in 2012. Officials drafted another version, not mentioning the principles, which was agreed by the Council. Subsequently the Council has not referred to the principles.

During this period, the Commonwealth reduced its emphasis on a national network, ignoring calls to extend the network to nationally significant places or routes (such as RAAF Williamtown); presumably this was on the frequently stated belief that the Commonwealth’s ‘responsibility’ relates to funding, and funding was no longer limited to a network – a result also sought by States. Of course, any claim that the Commonwealth is responsible for funding anything (other than through an enforceable contract) is preposterous - Commonwealth responsibilities at law, in logic, and in the view of the public relate to fields of activities eg. defence, and results eg. adequate defence.

**Review of the National Transport Commission 2009**

The first review of the National Transport Commission was led by Mr Bruce Wilson AM in 2009. Mr Wilson was a long serving head of the Queensland transport department. The review recommended the Commission focus tightly on national regulation that drives industry performance. Noting views about the national ports strategy it indicated a preference that the Commission only be involved in issues requiring national regulation; <https://infrastructure.gov.au/transport/australia/ntc/files/ntc_review_report.pdf>. It also commented:

*It has proven difficult to achieve a national transport plan. The ATC* (former Ministerial Council) *has articulated its vision but strategic planning and prioritisation at a national level to achieve that vision has been relatively ad hoc. Neither the ATC nor the SCOT* (departmental heads committee) *appears to dedicate time to strategic planning on an ongoing basis. In early 2008, the Chair of the ATC asked the NTC to commence a national planning process. There are mixed views on the success of this initiative to date. Nevertheless, there is a need for strong national transport planning as a foundation for improving system outcomes. In our opinion, governments, perhaps led by the Commonwealth Government, are best placed to drive improved planning. Organisations like the NTC and Infrastructure Australia can inform this process with advice on possible regulatory and/or investment impediments.*

The comment about ‘mixed views’ about the success of an initiative that had been underway for just over a year is surprising given long running sagas such as rail safety, truck access, and the cross modal problem. It could be evidence of a bureaucratic turf war –that it was agencies who held ‘mixed views’ that the Commission should have led on ports - rather than substantive concerns.

**Review of the National Transport Commission 2012**

A second review of the Commission was undertaken by officials, with advice from three ‘government transport practitioners’ Ms Carolyn Walsh, former Chief Executive of the NSW rail safety regulator, Mr Paul Forward, former Chief Executive of the NSW roads agency, and David Anderson former Chief Executive of the Victorian roads agency. Some interesting aspects of this were noted in *Governance* (note i above).

Among the background matters for this review was that national regulators for heavy vehicles, rail safety and maritime had been agreed by the Council of Australian Governments and were to commence in early 2013; there was uncertainty about the Commission’s role once they were fully operational and some were concerned about duplication of functions. Also the Council of Australian Governments had significantly expanded the Ministerial Council’s tasks. Infrastructure Australia’s submission argued that the Council would profit from independent advice:

*The Standing Council on Transport and Infrastructure is the body with primary responsibility for national transport policy. The new mandate set by the Council of Australian Governments and the potential reforms needed in transport are much broader than operational regulatory reform. The experience of the predecessor to the Standing Council – the Australian Transport Council - with a broad reform agenda suggests that the key risk is not an overlap of advisory roles, but that advisory work does not fully address the relevant issues.*

*The key issue for this review is: what advisory structure would best serve the Standing Council in this task? A Transport and Infrastructure Senior Officers Committee does assist the Council however:*

*• its members have a duty to represent their Governments;*

*• its reports are not routinely made public.*

The review ignored this suggestion recommending, like the 2009 review, that the Commission concentrate on ‘regulatory reform’. Further, despite recognising the implied conflicts of duties, it recommended that officials be appointed to the Commission’s board; reducing the Commission’s independence from governments.

**2013-2017 overview**

A Federal Coalition Government was elected in September 2013. The first post-election communique of the Standing Council gave no indication of direction saying that members:

*‘agreed that the future is positive for the sector but that there are many challenges which will need to be carefully managed across jurisdictions’.*

<http://transportinfrastructurecouncil.gov.au/communique/files/SCOTI_5th_Communique_15_November_2013.pdf>

The Council of Australian Governments met around one month later and:

*‘commissioned urgent work on infrastructure, including……advice on the next major transport reforms, including proposals for heavy vehicle charging and investment reform’*

<http://www.coag.gov.au/meeting-outcomes/coag-meeting-communiqu%C3%A9-13-december-2013>

Subsequent progress has not been widely reported, however, the Council of Australian Governments published an (unsigned) ‘national partnerships’ agreement regarding transport which included the following:

*‘The Parties aspire to a safe, sustainable national transport system that enhances the interconnectivity of corridors (networks) of significant economic opportunity across Australia’*

<http://www.coag.gov.au/sites/default/files/communique/NP%20on%20Land%20Transport%20Infrastructure%20%20-%2010%20October%202014%20-%20UNSIGNED.docx>

This focus on interconnectivity of economic opportunity might be compared with the Standing Council’s vision for rail in the text of this article.

Subsequently, in 2014 the High Court delivered a judgement on a challenge to federal funding in Williams (2) that undercut many of the perceptions of the Commonwealth Government’s ‘role’ in land transport, see for example: <https://blogs.unimelb.edu.au/opinionsonhigh/2014/06/25/saunders-williams/>.

**2015 review of National Transport Commission and the rail agenda**

Another (!) review of the National Transport Commission was conducted in 2015 by Mr Mcilfatrick and Ms O’Loughlin; the former once headed the Tasmanian Infrastructure Department and the latter was a former head of the Council of Australian Governments reform council secretariat. They commented:

*‘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.’*

Although they echoed comments by Mr Wilson, they preferred Infrastructure Australia’s 2009 view of a wide rather than narrow role for the Commission:

*‘There is a strong view amongst stakeholders that the NTC should focus more on progressing the major strategic transport policy issues…... 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…..’*

Reflecting their concerns about the absence of a rail policy agenda they recommended:

*‘The Council should charge the Transport and Infrastructure Senior Officials’ Committee (TISOC) to develop a nationally agreed policy agenda for rail’*

This appears to be the source of the current activity; the ‘vision’ and work program.

**Projects, competition policy etc.**

**I**nfrastructure Australia produced a new national (Australian) infrastructure plan in 2015, focussing heavily on urban issues such as congestion, while recommending changes to road charging arrangements. This is discussed in other articles, see: <http://www.thejadebeagle.com/audit.html>.

A review of national competition policy was conducted by Professor Harper in 2014-15 and in December 2016 the Council of Australian Governments agreed to competition principles including many of which would affect the cross modal issue if they were applied to roads, for example:

*‘1d. separate the interests of policy (including funding), regulation and service provision and where practical encourage a diversity of providers.*

*1e. separate remaining public monopolies from competitive service elements, and also separate contestable elements into smaller independent business activities.*

*1f. Government business activities that compete with private providers, whether for-profit or not-for-profit, should comply with competitive neutrality principles to ensure they do not enjoy a net competitive advantage simply as a result of government ownership.*

*1g. A right to negotiate third-party access to significant infrastructure should be granted including where it would promote a material increase in competition in dependent markets and would promote the public interest.’*

Potential application to roads was noted, however, the specifics were limited to supporting the Transport and Infrastructure Council on a narrower scope to:

*‘accelerate heavy vehicle road reform, including identifying steps to transition to independent heavy vehicle price regulation by 2017‑18; and*

*investigate the benefits, costs and options for introducing cost-reflective road pricing for all vehicles’.*

Guidance was offered:

*‘reforms to enable cost‐reflective road pricing;*

*options to adjust arrangements for indirect taxes and charges as cost-reflective road pricing is introduced;*

*the links between collection of charges and the reinvestment of revenue into transport services for users;*

*options for independent oversight of pricing; and*

*independent institutional arrangements to support road transport reforms*.’

And

*‘Given the revenue and expenditure implications of road transport reforms, the Parties agree that CFFR should provide advice and support to the COAG Council on Transport and Infrastructure as appropriate.’*

<http://www.coag.gov.au/about-coag/agreements/intergovernmental-agreement-competition-and-productivity-enhancing-reforms>

The Council of Australian Governments’ reiterated some contentious views of the Transport and Infrastructure Council, for example a focus on heavy vehicle ‘pricing’ rather than charging for particular roads or certain vehicles on them. This would not be surprising if, as commonly believed, the Governments’ Council relies on advice from the Transport etc. Council. However, if that is so the idea of ‘acceleration’ of heavy vehicle reform some 11 years on and oversight by another Ministerial Council are interesting. [↑](#endnote-ref-22)
23. For resistance to independent advice, see for example: transport advisory council as proposed by Aplin and Affleck, national transport secretariat, treatment of the national transport policy framework and national land freight strategy, review of the national transport commission conducted by officials, officials sitting on the board of the commission.

Frustration can be inferred from the views expressed in reviews of the Commission by Aplin and Affleck, Wilson, and Mcilfatrick and O’Loughlin (notes xx and xxii above). The review of the rail safety and standards board by Taig also indicates some frustration*:*

*‘it tells me that Government does not have a strong focus on the benefits of harmonisation which RISSB and others are seeking to deliver. There are clearly substantial barriers to harmonisation in terms of the high levels of autonomy within individual States and railway organisations, and the very large sunk costs in existing diverse systems.’*

He recommended:

*‘Governments should identify a senior level person or group to provide clear leadership towards more harmonised railways in Australia. Their remit should include*

*a) providing clear governance and direction for RISSB from its government customers*

*b) commissioning work (with industry where appropriate) to clarify the national benefits of railway harmonisation and help set government priorities for RISSB, and*

*c) developing incentives for States, Territories and the rail industry to harmonise where appropriate and to discourage unnecessary fragmentation.*

*In this latter regard the governments may wish to focus initially on using their regulatory and funding roles in railways to greater effect, but should not rule out legislation if other forms of influence prove too unwieldy or ineffective.’*

<http://transportinfrastructurecouncil.gov.au/publications/files/RISSB_review_report.pdf>

This might be compared with the current work program. [↑](#endnote-ref-23)
24. Transport implications of the Williams cases (High Court decisions on challenges to Commonwealth spending powers; Pape, Williams (1) and Williams (2)) are discussed at: <http://www.thejadebeagle.com/transport-policy-post-williams.html> and *The High Court – The Williams case and transport* <http://johnmenadue.com/blog/?p=7286>.

In summary: a relevant Appropriation Act is necessary for any Commonwealth spending, and in addition:

The Commonwealth (Executive) Government can only spend on matters for which there is legislation (a precondition of which is legislative power) or on very limited matters arising from implied Executive power such as: preservation of the Constitution; matters uniquely within the ambit of a national government;

The Commonwealth can provide grants to the States with any condition (eg. purpose) set *by the Parliament* (s.96 grants).

No other Commonwealth spending is valid, and *recipients of invalid spending owe debts to the Commonwealth*.

Expansion of these powers can only occur by Constitutional mechanisms such as referral of powers by the States or referendum. Matters such as merit, convenience, prior practice, national significance, intergovernmental agreements or commercial agreements do not alter these powers.

The decisions upend prior assumptions made about the Commonwealth, for example rejecting views that:

The Commonwealth could spend on anything it likes;

Nationally significant matters are exclusively for the Commonwealth;

The Commonwealth can make grants to parties other than the States;

The Government determines conditions for s.96 state grants;

Agreement at intergovernmental forums confers power on the Commonwealth or its Government.

The decisions strongly assert the primacy of the Parliament over Government, implying that on matters beyond legislation and implied Executive powers, including on matters such as ‘national cooperation’, the Government represents the Parliament rather than acts on its own accord.

Among the logical consequences are that Commonwealth representatives in national forums such as the Transport and Infrastructure Council:

Should convey the views of the Parliament on each matter that extends beyond legislative remit;

Should provide detailed reports to the Parliament on all proposals, proceedings and discussions; and

Be directly selected by, and subject to the control of, Parliament.

None of this has occurred to date, indeed the Council includes among its publications Commonwealth Government policy documents. [↑](#endnote-ref-24)
25. For example Bus Industry Confederation, Australasian Railways Association and UITP *‘Moving people solutions for a growing Australia’*, 2010 <https://ara.net.au/sites/default/files/Moving_People_summary.pdf>

And repeated calls for ‘Freight Australia’ by the Australian Logistics Council; <http://www.austlogistics.com.au/wp-content/uploads/2016/08/ALC-Response-Draft-National-Rail-Vision-and-Work-Programme-12-August-2016.pdf>. [↑](#endnote-ref-25)
26. An obscura is a darkened enclosure through which light enters from one end and an image is projected from the other. Projected images are inverted and reversed, often indistinct. [↑](#endnote-ref-26)