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# Weird scenes outside the goldmine[[1]](#footnote-1)

*Infrastructure Australia sits outside the goldmine of Commonwealth funding. It is a gatekeeper of Australia’s Federal infrastructure spending.*

*One of Its recent reports claimed big savings can be made by franchising public transport. It argued that savings can be spent on infrastructure etc, making such a policy ‘customer focused’. It also recommended Commonwealth Government incentives.*

*The report claimed numerous lessons can be learned from rail franchising in Melbourne and the UK.*

*The report attracted substantial criticism including from leading Australian experts who doubted the claims of savings and questioned why other options were ignored.*

*Other critics argued that experiences in Melbourne and the UK are not as rosy as portrayed.*

*However, like the report, the critics largely focused on money and ignored other issues.*

*Neither report nor critics mentioned the obvious lesson from the combined forty years of continuously reported turmoil and failure in Melbourne and the UK.*

*Or that admission of ongoing problems is no reason to be confident that concerns can be resolved.*

*All ignored that the logic behind franchising leads to a slap in the face and a kick up the backside for infrastructure boosters; that ‘commercial in confidence’ claims should be slapped down and transport projects should be put on hold until existing systems become efficient.*

*The irony of the report’s suggestion that ‘savings’ be spent on projects not recommended by Infrastructure Australia was unremarked. As was the fact that one such project – metro – negates any potential of value-for-money franchising of Sydney’s rail system.*

*No issue was taken with the report’s call for Commonwealth Government ‘incentive’ payments, despite the recommendation being inconsistent with both Constitutional and governance principles.*

*Critics missed the admission that the ‘savings’ could be made without franchising, and that the explanation for the franchising proposal was essentially political.*

*There was no comment on the confusion about the ‘reform series’ (of which the report is a part); whether that of Infrastructure Australia; or of Infrastructure Partnerships Australia – a self- described think tank which although having public servants on its advisory board has been called a lobby group; or of both.*

*Then there was little recognition of a long standing international conference series on public transport franchising; led by Australian academics.*

*These and a large range of other issues leave me with a strange impression; of weird scenes outside the goldmine.*

## 1. Introduction

Infrastructure Australia recently published *Improving Public Transport: Customer Focused Franchising.*

The beagle asked for an exploration of issues arising from the report. It also asked for disclaimers; the author was formerly an adviser to Infrastructure Australia; prior to this his work required consideration of policy and operational issues regarding contracting and franchising of public transport especially in NSW; before this his work included studies into efficiency in transport. He is no expert in and has not sought all the most recent research in public transport franchising.

This article aims to contribute to a debate Infrastructure Australia wishes to re-initiate.

## 2. Infrastructure Australia

Infrastructure Australia is a Commonwealth statutory authority with a task of advising on infrastructure matters. It is rare among advisory bodies in having a governing board, a result of an interesting view of the former Minister for Infrastructure and Regional Development about ‘independence’. It is based in Sydney.[[2]](#endnote-1)

It conducts assessments of infrastructure project proposals and publishes summaries of its views. It also publishes an Australian infrastructure plan which includes more general advice.[[3]](#endnote-2)

Prior to acquiring a governing board in 2014, Infrastructure Australia published reports on a variety of infrastructure related policy matters. These included public-private-partnership guidelines and a national urban transport strategy.[[4]](#endnote-3)

More recently, it published pieces as part of a ‘reform series’. Topics for the series were identified in the Australian infrastructure plan. One of the topics was franchising public transport.[[5]](#endnote-4)

## 3. The report’s argument and proposed policy

### 3.1 The argument

The report on public transport franchising was published on 26 May 2017. The headline was a claim of big savings available from franchising city bus and train services; Australia-wide $28.6bn to 2040; $15.5 bn in present value terms. Table 1 shows the composition. [[6]](#endnote-5)

**Table 1: Composition of claimed savings**

|  |  |  |
| --- | --- | --- |
|  | **$m present value** | **% of total** |
| Sydney trains | 7173 | 46 |
| Brisbane trains | 2563 | 16 |
| Sydney buses | 1800 | 11 |
| Melbourne buses | 1085 | 7 |
| Adelaide heavy and light rail | 890 | 6 |
| Perth rail and bus | 790 | 5 |
| Total rail | 11412 | 73 |
| Total bus | 4132 | 27 |

The report claimed most of the savings are available in urban rail. Hence this article largely deals with rail franchising.

It claimed such sums are needed because public transport ridership is expected to grow while Australia’s population ages. With farebox cost recovery low there will need to be new ways of financing public transport.[[7]](#endnote-6)

The report argued that franchising differs from privatisation in that assets continue to be owned by government while an operator is chosen to manage part or all of a system for a set period. This allows for introduction of competitive pressures by serial contestability.[[8]](#endnote-7)

It argued franchising would make customers and taxpayers better off; savings could be spent on increasing services or infrastructure. Demand for public transport would grow.

The report alluded to experiences in several countries and discussed a little of the history of rail franchising in the UK and Victoria claiming these teach useful lessons.

It recognised that franchising can be complicated, particularly in rail where vertical integration or vertical separation may be possible, but argued governments can contract for specific ‘outcomes’.

### 3.2 The proposed policy

The report proposed that State governments franchise their public transport operations; this would be customer focused if savings were spent on public transport or infrastructure. For example:

*‘In New South Wales, franchising could contribute to paying for the Sydney Metro City and Southwest…. In Queensland, the savings could help pay for Cross River Rail’*

It argued the Commonwealth has an interest and a role in this. It proposed Commonwealth Government financial incentives for State government franchising.[[9]](#endnote-8)

## 4. Issues with the argument and policy

### 4.1 Savings

There are problems with the report’s estimates of savings and view they should be used for transport or infrastructure.

The supporting technical report noted that much of the savings could be achieved without franchising. If so, the estimated savings are not related to franchising.

To deal with this issue the technical report argued that governments lack the sustained political will to reap such savings; the savings would only be available via franchising. As political will emanates from representative democracy the argument is equivalent to saying that franchising creates savings by overturning results of democratic processes.[[10]](#endnote-9)

The amounts were claimed to be supported by modelling. The ‘modelling’ was merely arithmetic comprising assumed percentage reductions applied to total costs of public transport organisations. Supporting details were not provided for the percentage reductions. This is not a reliable approach to estimating even orders of magnitude savings.[[11]](#endnote-10)

The report assumed savings arise from a reduction in subsidies. Savings do not increase government revenue, indeed some government revenue streams could fall as a result of subsidy decreases.

By far the largest portion of savings were estimated to come from rail. However, rail is a notoriously complex and contentious area with economies of scope and scale present. Rail franchising has been associated with increases in subsidies, for example after asset degradation led to service and safety failures.[[12]](#endnote-11)

The report pointed to a supposed ability of franchising to reduce rail labour costs; this theme may have been a motivation behind several franchises. However, railways are capital intensive and labour savings are often more than outweighed by consequent capital costs. Presentation of railway costs as being labour dominated, usually presented by management, is generally viewed with suspicion. In some railways there is a long tradition of management/ workforce antagonism and presentations misrepresent real - actual or opportunity - costs.[[13]](#endnote-12)

Although half of report’s estimated national savings are from Sydney trains there is no opportunity for value for money franchising there. The under construction metro is cannabilising parts of the network used by Sydney trains with opaque and unpredictable effects on rail operations and travel.

The State government’s approach to metro railways has created great uncertainty about the future of Sydney’s railways. In this environment serious value for money bids would be not be made for franchise offerings. It is almost certain any franchising of Sydney trains would result in a net cost to the State budget and economy.[[14]](#endnote-13)

The report also mentioned ‘overbidding’; the franchise equivalent to overestimation of demand for toll roads. If there is overbidding financial gains from franchising will be overstated; they will later need to be revised down.[[15]](#endnote-14)

In theory, the relevant period before franchise savings can be assessed is related to asset lives and skill development. Cost effects of franchising cannot be determined until after at least one of these renewal cycles is completed.[[16]](#endnote-15)

Overbidding can lead to financial failure of the franchise holder. Some franchises have been bailed out by governments, others have been left to fold. In either case there are transaction and transition costs are not accounted in the report.

The leading Australian experts in the field of public transport franchising, Professors Hensher and Stanley cast serious doubt over the report’s savings estimates. They pointed out that evidence regarding rail franchise savings is sparse if not contrary to the report’s view.

Regarding the more likely candidates for franchising, buses, Hensher and Stanley argued the savings estimates were too high, savings do not arise from competitive tendering (franchising) and that higher and more sustainable savings would be available from performance based contracts. They expressed surprise that the report was not aware of these points.[[17]](#endnote-16)

### 4.2 Spending

State Treasuries and others will point out that savings from franchising should be used on the government’s highest priorities; infrastructure spending might not be among them.

The idea of allocating savings from franchising to infrastructure or public transport may have borrowed from recommendations for a similar approach to road pricing or congestion charging. However, there are significant differences.[[18]](#endnote-17)

The media release indicated savings of $15.5bn to be available. The amount is a present value estimate of future savings. Actual funds would only become available over a period of time. To spend in advance of realisation of savings would entail significant risks including moral hazard.[[19]](#endnote-18)

The report’s argument that savings be spent on public transport projects contrasts with the fact that Infrastructure Australia has not recommended some nominated projects as worthy of investment.

Neither the Sydney metro city and south west or the Brisbane Cross River rail proposals have been rated by Infrastructure Australia as ‘projects’, rather they are merely ‘initiatives’.

Previous articles have identified substantial issues with the Sydney metro and noted Commonwealth concerns regarding Cross River Rail.[[20]](#endnote-19)

### 4.3 Customers

The theoretical case for franchising improving customer services rests on five assumptions: that organisations respond to financial incentives; that aspects of value to customers can be identified and included in franchise contracts; that these aspects can be influenced by franchisees; that customers or their representatives provide relevant contract incentives to organisations; that none of this can occur while organisations remain in the public sector; that organisations in the public sector cannot be influenced by other means.

Each of these is questionable. To illustrate consider the last two points.

First, organisations respond to non-financial incentives. Publication of results has an important effect on public sector transport organisations including departments in charge of procuring services. It is among the reasons that such organisations fight hard and long over what might be published.

Second, the Independent Pricing and Regulatory Tribunal in NSW has created a system of financial and other incentives for public transport service provision.

Incentives related to customer services are incompatible with contracting for outcomes; as discussed in section 5.5 below.[[21]](#endnote-20)

The report suggested that franchising has led to improved customer service citing satisfaction surveys and rail on-time running.

Great care needs to be exercised in interpreting customer satisfaction surveys, particularly surveys administered or reported by an interested party such as a franchisee or franchisor. In any event, there are more than a few reports of customer satisfaction improvements in publicly operated public transport; improvements are possible with or without franchising.[[22]](#endnote-21)

Rail on-time running is a measure of infrastructure capacity utilisation – an internal diagnostic. It is an incomplete and often poor indicator of system performance and customer experience. Methodological tricks are employed in on-time running indicators for public relations purposes. This probably accounts for the multiple definitions and targets in Australia.[[23]](#endnote-22)

There are claims that in Melbourne the franchisee train operator reduced aspects of service quality, by trains skipping stations or not running, to gain the financial rewards available from meeting on-time running targets.[[24]](#endnote-23)

Most serious rail analysts avoid reliance on and dissection of on-time running. Reported on-time running typically improves after any government policy initiative. The case of Sydney in the mid 2000s is instructive; CityRail on-time running radically improved after trains were slowed and services were cut - much as expected.[[25]](#endnote-24)

### 4.4 Demand

The report suggested franchising led to increases in demand citing growth in ridership in the UK and Victoria. This idea is worthy of an econometric test, however such analysis was not performed.[[26]](#endnote-25)

Anecdotal evidence suggests franchising to be irrelevant to demand at least on rail. It is true that demand grew rapidly on UK network rail and Melbourne’s rail system after franchising but rapid growth was also experienced elsewhere including Perth, Brisbane and Sydney. The matter is contentious.[[27]](#endnote-26)

Growth in demand has exposed problems in franchising including from overbidding. In some cases franchise holders did not have sufficient fleet to meet demand. While in the early years of a franchise this is seen as a financial issue, an inability to meet forecasts challenges the bona fides of the franchisee and of the government that accepted its bid. Similar situations have occurred for toll roads.[[28]](#endnote-27)

## 5. Experience and lessons

### 5.1 Comparisons

The report noted franchising has occurred in several parts of the world. It also presented a ‘cost-recovery’ table for Australian and some other cities. It would be easy to confuse franchising and cost recovery, yet they are independent.

Cost recovery comparisons are so notoriously difficult that the utility of such presentations is very much open to question.[[29]](#endnote-28)

For at least Sydney, cost recovery is likely to be under-represented for both rail and buses. Moral hazard is involved.[[30]](#endnote-29)

Given the claimed extent of franchising, it is questionable whether case studies limited to UK rail and Melbourne in Victoria are representative. However, this is the same as reported by KPMG in 2015.[[31]](#endnote-30)

Prior to discussing these cases, it should be noted that franchising took place against an expectation of low growth in rail ridership. At the time railways had been in decline for a considerable period and structural separations, access regimes, commercialisation and privatisation were seen as managing down the costs of a moribund industry – even if this was presented to the public as an opportunity for renewal.

Among the implications were some expectations of a fall in costs, little or no system expansion and perhaps little attention to bidder claims of patronage growth. There was a view that the private sector could handle cost reductions better than the public sector.[[32]](#endnote-31)

### 5.2 Experience: UK

The rail franchising in question for the UK covered only the national system, not the London underground (tube) system.[[33]](#endnote-32)

The privatisation/franchising took place in 1995; vertically and horizontally separating British Rail. It has been the subject of great controversy since.

A cursory reading would reveal aspects of the scheme to have failed with consequences going well beyond financial problems for franchisees. Contrary to the view that privatisation/franchising removes political interference or overcomes political nervousness, one expert claimed these factors have caused real problems in the UK.[[34]](#endnote-33)

Despite the franchise scheme being created and run by a specialist office there were early failures in planning, leading the creation of a Strategic Rail Authority. This was not the only new bureaucracy; there was a new rail regulator and an entirely new function of delay attribution needed to be served by staff in the government, track authority and franchisees.[[35]](#endnote-34)

The most concerning aspects involved safety breakdowns. There were a series of ‘interface’ collisions culminating in fatalities at Southall (1997 – 7 fatalities) and Ladbroke Grove (1999 - 37). These drew attention to the vertical separation; the operation of trains by organisations that did not control the tracks. They also drew attention to fragmentation in the industry.

Track caused derailments at Hatfield (2000 – 4 fatalities) and Potters Bar (2002 – 7) led to what some called ‘panic’, the failure and renationalisation of the central plank of privatisation – RailTrack Plc.[[36]](#endnote-35)

Arising from the panic was a very serious a debate about the implications for Parliamentary democracy of the structure of the railway privatisation/franchising. The context was a claim that the rail economic regulator in effect determined the level of subsidy to be given to the railways; a level which post Hatfield the regulator argued should be dramatically increased. The contra argument was that Government sought to avoid responsibility by wrongly arguing that its hands were tied.[[37]](#endnote-36)

In real terms total reported subsidies are now around twice the peak prior to franchising and privatisation. For a short time after privatisation subsidies declined, however, following Hatfield they rose to around four times the previous peak.[[38]](#endnote-37)

Given the scope and scale based nature of urban rail it is not possible to meaningfully compare pre and post privatisation UK subsidies for ‘above rail’ operations; total subsidies to above and below rail, and administrative overheads need to be compared.

For the same reason growth in ridership or new projects does not account for the rise in subsidies.

Some commentators also point to further latent conditions in the UK industry resulting from franchising that will increase costs – and therefore subsidy requirements – in the future. Included in these are diminution in managerial and specialist skills and planning.

In summary, privatisation and franchising in the UK is not regarded as an unqualified success – or even a success at all.

Some commentators argue that bringing the franchises back in house would save money. However, the arrangements have embedded strictures that will make this a formidable task.

In the recent UK general election, the Labour Party proposed renationalisation of the railway and did ‘surprisingly’ well. There are claims that two out of three people in the UK want to see renationalisation and the end of franchising.[[39]](#endnote-38)

### 5.3: Experience: Melbourne

Victoria privatised its railways in 1999. While initially considering a vertical separation, experiences in the UK and in NSW - which were then vertically separated - may have convinced it otherwise.

Victoria’s franchise offerings were vertically integrated and geographically separated. Since then there have been three different types of arrangements in Melbourne, the latest entailing a form of vertical integration.[[40]](#endnote-39)

Despite some positive coverage, the early arrangements are generally considered to have failed several times. Discussants debated contracts and industry structure amid amusing anecdotes such as retrieval of unwanted carriages from farms when demand grew.[[41]](#endnote-40)

The consequences to the public or in transitional/transaction costs of the failures are unknown.[[42]](#endnote-41)

As in the UK, concerns arose about infrastructure condition. Consequent to this government appears to have gradually begun to understand its inability to avoid responsibility for planning and integration of rail with other transport.[[43]](#endnote-42)

However, in its most recent assessment of arrangements the Auditor General stated there remain substantial areas in which performance and accountability are unsatisfactory; including the ‘performance regime’ and in particular relating to asset management - the Achilles heel of the UK scheme and the vertically separated corporatisation in NSW.[[44]](#endnote-43)

The Auditor General noted that while a lack of information – a problem in itself – made assessment of asset condition difficult, the available evidence suggested it had deteriorated:

*‘In May 2015, the Office of the National Rail Safety Regulator (ONRSR) reported that Victoria’s metropolitan and regional rail infrastructure and rolling stock (for the train network only) was generally fit for purpose, but much of it had deteriorated and was in poor condition…..*

*The limited information available about Melbourne’s train and tram networks indicates that the condition of these assets has deteriorated since 2009.’*

A comment by the Auditor General that this situation may be partly due to the government ignoring a previous recommendation regarding asset management is disturbing:

*‘In our 2007 report Managing Victoria’s Rail Infrastructure Assets, we recommended that the former Department of Infrastructure develop a long-term asset management strategy for metropolitan rail infrastructure, to help identify and prioritise the maintenance and renewal of these assets. The department did not address this recommendation. Consequently, there was no long-term asset management strategy in place for the train and tram networks at the beginning of the current franchise agreements—known as MR3—in 2009’*

The Auditor General claimed that among problems facing government was an inability to access certain assets to assess their condition and previous reporting delays by franchisees.

As the cost of possible asset degradation/rectification is unknown it is not possible to put a cost on the franchising exercise. The government may need to outlay more in the future to deal with maintenance backlogs and ensure network asset stability:

*‘PTV has reviewed the adequacy of funding levels for asset maintenance and renewal works on the train and tram networks and found that it cannot accurately determine whether current funding is sufficient, partly because it lacks comprehensive information on the condition of the assets. PTV’s benchmarking against other jurisdictions suggests that its funding for asset maintenance and renewal as a percentage of asset renewal costs is relatively low…*

*Given the importance of train and tram assets, PTV’s inability to demonstrate a comprehensive understanding of required funding levels is significant.’*

The Auditor General’s claims that Public Transport Victoria intends to act on these matters may be an improvement over the former situation, however, not all previous intentions led to action.

The fact that it has taken so long for problems to be recognised casts doubts on claims of success or value for money. In conjunction with the previous approach to asset management and the government not enforcing aspects of contracts, it calls into question government and bureaucratic attitudes to franchising.[[45]](#endnote-44)

Some 18 years after the privatisation and franchising there is no clear evidence as to whether Melbourne rail franchising continues to fail or is becoming successful. One commentator put it:

‘*have taxpayers and travellers benefitted from outsourcing or has it made them worse off? Unfortunately, I’ve not seen anything that comes close to providing an independent, reliable and trust-worthy answer. Lobby groups and ideologues are too politicised to take seriously – critics and advocates alike attribute any and every deterioration or improvement to the 1999 changes.’[[46]](#endnote-45)*

In summary, most agree there are substantial problems with Melbourne rail franchising.

### 5.4 Experience: Victoria regional rail

The report did not cover the failure of franchising regional passenger rail or tracks in Victoria. The limited publicly available material suggests that track degradation was among the problems that led to ‘renationalisation’ of these industry segments.[[47]](#endnote-46)

The failures are a major concern because regional rail businesses are much better suited to franchising and privatisation than urban railways. The apparent reluctance of successive governments and private sector to attempt re-franchise arrangements is no vote of confidence in franchising.

### 5.5 Experience: Government contracting for ‘outcomes’

Contracting for ‘outcomes’ is an attractive concept increasingly used in the private sector. Examples include: lawyers taking a percentage of payouts to successful litigants instead of a ‘cost based’ scheduled fee; payments for delivered engine power in railroads and aviation instead of purchase or lease of locomotives and engines.

The difficulty of government contracting for outcomes arises from an inability to define them; for public transport the transport outcome sought is a reduction in road traffic in central areas, which may be largely outside any service provider’s influence. The definitional issue is one of the problems with the government trading enterprise model discussed in section 9 below; a problem not resolved by privatising businesses.

For franchising, the issue underlies a debate between ‘gross cost’ and ‘net cost’ contracting models; retention of revenue by public transport operators or pooling of revenues and subsidies. It also underlies questions of whether government or contractors provide general, specific or essential assets such as fleets and depots. There is a further debate about whether to provide incentives for: changes to input costs for example maintenance and renewal programs or bus fleet age; ‘outputs’ such as individual service quality characteristics; indicators such as service quality surveys; results such as ridership.

The issue is not about the type of contracting model, but whether contracts can effectively lead to replication of non-financial outcomes achieved by public ownership. It admits the possibility of incomplete contracts.[[48]](#endnote-47)

Governments do enter contracts with public sector organisations for services; Community Service Obligations contracts. In principle a Community Service Obligations contract held by a public sector organisation could become a franchise contract. Any differences in the terms of such contacts would indicate government failure to adopt competitive neutrality principles.

Modern Community Service Obligations contracts no longer seek to procure ‘outcomes’ in urban transport. This is because relevant outcomes – amelioration of road traffic congestion and externalities, land use agglomerations etc. – are a function of more than public transport. Nor do the contracts merely obtain services such as operation to timetable.

Rather the contact is part of an integrated system of governance also involving public ownership, regulation and financial structures. What is not in the contract needs to be addressed by these other means. This is the reason some literature refers to procurement rather than contracts.[[49]](#endnote-48)

### 5.5 Learning the lessons

Both KPMG and Infrastructure Australia claimed there are lessons to be learned for franchising from the experience of the UK and Victoria rail. They suggested franchising can be improved by application of some inoffensive generalisations such as ‘franchising is not an asset sale’ or ‘ensure the selection criteria are transparent’. Such lessons offer no assistance to governments or their advisers.[[50]](#endnote-49)

That problems in urban rail franchising are recognised does not mean they will be addressed; indeed it does not even mean they are able to be addressed. Nor is it evidence that all problems have been detected. Contrary to the views of the report and KPMG, recognition of problems in a scheme is not evidence that the scheme can work.

The case studies’ combined 40 years of experience in urban rail franchising has been beset by almost constant concerns. The franchise systems still show no real signs of success – at best. Together with the evidence of failures in the more franchisable business of regional passenger rail, the lesson for government is the need for great caution in considering passenger railway privatisation type initiatives.

Current developments in NSW support this conclusion. There the ‘metro’ is to be a vertically integrated franchise. However, the design of the metro includes elements that could seriously damage Sydney’s transport systems because of incompatibility with the existing railway. Whether the incompatibility does cause problems in Sydney remains to be seen, but such ‘break of gauge’ is a way of enhancing the financial value of the under-construction franchise at the expense of the existing network.

Given the lack of reference to the Thredbo conference series and the comments by Hensher and Stanley (section 4.1 above) the report has not drawn any real lessons from bus franchising.

## 6. Commonwealth role

The report’s idea of Commonwealth Government interest, and it proposed role, are mistaken.

The report’s argument seems to be that the size of financial gains to the States means franchising is of national significance.

It is questionable whether the claimed savings are nationally significant; claimed annual financial gains would be in the order of only $1 billion. The above discussion means very little of this could responsibly be sought through franchising.

However, whether or not such amounts etc. are nationally significant is beside the point. National significance does not bring a matter within Commonwealth powers or responsibilities.[[51]](#endnote-50)

Similarly while the report claimed Council of Australian Governments agreements etc. are potential mechanisms for Commonwealth funding none of these are capable of creating Commonwealth powers.

Previous articles identified potential sources of Commonwealth power in relation to public transport. The proposed incentive payments fall outside these sources.[[52]](#endnote-51)

For the Commonwealth to make ‘incentive’ payments for any matter related to public transport it would need to rely on Constitution s.96. However, the use of this section depends on Parliamentary approval – it is not merely a matter for the Government. An Appropriation to the Government and agreements with the States via national arrangements cannot create an ability for the Government to make payments without Parliamentary endorsement.

Commonwealth involvement should result in the Commonwealth ‘owning’ any problem arising. Basic governance principles point to Commonwealth accountability for results of franchising it induces.

One implication is that the Commonwealth should assure itself of particulars in relation to franchises. If public transport is entirely franchised following the offering of incentives, a further implication is that the Commonwealth has assumed responsibility for the results.

Previous articles pointed to the Commonwealth Government lacking the authority and current competence to perform this role. They recommended public Parliamentary inquiries into urban rail plans.

Were the Commonwealth to consider the involvement suggested by the report, a similar recommendation would be appropriate; prior to considering incentives for public transport franchising, the Parliament should conduct an open public inquiry into the proposed terms and conditions of franchises.[[53]](#endnote-52)

## 7. Omissions

### 7.1 Economic regulation

While the report referred to the NSW Independent Pricing and Regulatory Tribunal’s estimates of urban transport costs it did not explain the context of this work; the Tribunal’s approach to improving the efficiency of that transport.[[54]](#endnote-53)

The Tribunal took the view that it is possible to establish a framework that would improve the performance of publicly owned public transport operators in a way that strengthened democratic accountability. It conducted a detailed study into improving the efficiency of publicly operated urban rail by incentives, notwithstanding the subsidy requirements of public transport.

Its approach is to identify efficient costs and allocate them to either the government (Community Service Obligation) or passengers (fares) according to the ratio of external to total benefits arising from services. The efficient costs include costs of capital. The residual is inefficient costs which do not affect fares. It is then an option for the government to decide whether to pay for these costs or require the business to become more efficient.[[55]](#endnote-54)

The technique is the same as in other industries regulated by the Tribunal; industries which do not receive subsidies. For those industries the regulator also scrutinises capital plans and ‘investments’ for need and efficiency.

The effect of the framework is that ‘investments’ in public transport lead to an increase in required fare revenue. Fares rise unless ridership grows in line with investment. This is a useful enhancement for testing investments; by improving democratic accountability.

If applied it could make governments more reluctant to commit to ‘invest’ without seeking community views. For example the Sydney metro, at a price tag of $20bn could have an annual fare revenue requirement of around $450m in addition to a portion of its operating costs – roughly half of current rail fare revenue in Sydney.[[56]](#endnote-55)

Were public transport to be franchised, it would seem logical for the same regulatory arrangements to apply.

### 7.2 Franchising conditions

The report omitted well known franchising issues such as differences between: stable or growing markets; buses and trains; vertically separated and integrated railways.

Contra-indications like public safety dangers arising from interfaces created by vertically separated franchising evidenced by the rail crash at Ladbroke Grove (UK) were not raised.

The paper overlooked that reform can cut both ways; some consider the best ‘reforms’ for the UK and Victoria would be re-nationalisation of their railways.

### 7.3 Targets for franchising

The report did not identify real targets for franchising. Sydney buses and regional passenger trains are candidates.

However, the cause of franchising those candidates has been set back by the NSW government’s laughable explanation for franchising buses in inner Sydney buses while ignoring those in the Premier’s electorate.[[57]](#endnote-56)

### 7.4 Research on public transport service procurement

The report did not refer to the body of research on public transport franchising; including some of Infrastructure Australia’s own work and a series of conferences held over the last three decades.

The series was led by Sydney University’s Institute of Transport and Logistics which was well known to Infrastructure Australia.[[58]](#endnote-57)

Its exposition of UK and Melbourne experience did not refer to many adverse reviews and comments.

Nor did the report refer to research into best practice arrangements for commuter rail service procurement, or many elements of optimal design identified by this research.[[59]](#endnote-58)

### 7.5 Options

Hensher and Stanley noted the report looked at a very narrow range of options to improve the efficiency of and make savings from public transport. In so doing the report omitted referring to a considerable body of research pointing to benefits of negotiated performance contracts. These can involve benchmarking, a technique used by regulators.[[60]](#endnote-59)

The report also did not comment on the simplest yet essential urban transport reform measure of all; inclusion of road pricing in urban project assessments. This is a strange oversight as Infrastructure Australia had suggested it previously and it would raise money directly from motorists and indirectly from increased use of public transport and reductions in ‘required’ road spending.

### 7.6 Implications of franchising

The report did not set out the key implication of its case. If franchising would lead to big savings – and more efficient use of infrastructure – it should equally lead to changes in the amount and type of urban infrastructure projects.

If it believes the report’s pro-franchising ideas, Infrastructure Australia should rescind all its assessments of urban projects – roads too - and reconsider whether any would be justified if there was franchising. Much as it should do for road pricing.

In this context the argument that savings should be spent on more infrastructure is weird. It is tantamount to saying: franchising is a way to increase spending on infrastructure without touching projects it turns into white elephants.

## 8. The real argument for franchising

### 8.1 Not the making money argument

Notwithstanding sophistry, franchising is a form of privatisation.[[61]](#endnote-60)

The typical and bad argument is that franchising or privatisation makes money for government.

The simplistic arguments for making-money concern whether government achieves a financial return from the sale/bids by offering a (restricted) ‘licence to print money’.[[62]](#endnote-61)

Some argue financial returns are maximised by government restricting competition against the franchisee. A government capable of doing so for a private firm is equally able to do so for a public sector organisation.

More sophisticated versions of the making-money argument refer to fiscal constraints. However, these arguments are doubtful; governments generally have much greater financing capability than private corporations.

The making-money arguments are unsatisfactory. Some may seek to defend such arguments by saying they are necessary to attract government attention – they are a ‘burning platform’. This may be so but if attention is to be attracted, sound advice should follow.

### 8.2 The government trading enterprise argument

The fundamental argument for franchising public transport services is that current arrangements, of services provided by public sector businesses, can be improved. Typically proponents argue that money can be saved – costs cut – by franchising or other forms of privatisation.[[63]](#endnote-62)

To assess the argument it is necessary to understand current arrangements for public sector businesses; these arrangements reflect the government trading enterprise reforms and the national competition policy.[[64]](#endnote-63)

The trading enterprise reform model has public sector businesses, including public transport providers, operating as if they were private firms. The model asks for: most businesses to be corporatized with governing boards; government contracts to be issued; elimination of Ministerial ‘interference’; regulation of the businesses as if they were private firms. It is consistent with the competitive neutrality requirements of the competition policy; businesses are not to be advantaged or disadvantaged by reason of government ownership.[[65]](#endnote-64)

The primary reason for the trading enterprise reforms, for public sector businesses to behave as if they were privately owned, rests on a theory that an organisation’s efficiency is compromised when its management is influenced by factors other than profits. The theory posits a dichotomy between ‘commercial’ influences i.e. response to financial incentives and ‘non-commercial’ influences i.e. behaviour that sacrifices profits in favour of other reasons. The latter is called political influence.[[66]](#endnote-65)

The real issue is not the fact of political influence on the organisation but *that the influence is hidden*; the argument is that trading enterprise reforms promote democratic accountability by making political influence transparent.

The central idea is to seek efficiency through a better functioning democracy. This idea seeks to tackle a root concern about business behaviour and privatisation; does unrestrained behaviour detract from democratic society?

The trading enterprise reforms deal with this root concern by allowing the community to democratically influence service provision. The community can ask government to procure services which are ‘inefficient’. It can ask government to procure services in an inefficient way. However, these requests need to be informed; the community needs to be aware of the trade-offs involved, of the financial costs of inefficiency.[[67]](#endnote-66)

For this reason the trading enterprise model has democratic governments influencing public sector businesses via costed Community Service Obligations contracts to procure outputs that otherwise would not be provided; purchaser-provider arrangements.[[68]](#endnote-67)

Community Service Obligations contracts are franchises granted to a public sector business.[[69]](#endnote-68)

Reflecting its concerns with democratic society, the trading enterprise model also is concerned with misuse of market power. Monopoly functions are to be regulated such as to achieve outputs and prices seen in a competitive market. The community via government can still ask for different outputs and prices from those specified by a regulator - for example lower prices via costed Community Services Obligations. An example is the NSW public transport fare determination process involving the Independent Pricing and Regulatory Tribunal. Hence economic regulation can co-exist with subsidies, provided both are explicit and consistent with democratic accountability.[[70]](#endnote-69)

In theory there is no difference between the trading enterprise model and privatisation. Hence the valid – non ideological or self-interest - argument for privatisation is that the trading enterprise reforms have failed. The real argument is that arrangements involving a public sector business cannot deliver the outcomes sought by the trading enterprise model. The reason will be that executive government has a hidden influence on public sector businesses.

Hence the problem to be cured by franchising is not inefficiency but *hidden political influence* that causes inefficiency. More specifically, political influence hidden from parliament.[[71]](#endnote-70)

There are two opposing ways in which a government business might relevantly fail; it might not behave enough like a private firm, or it might behave too much like an unconstrained private firm. In fact it might do both![[72]](#endnote-71)

The argument for franchising is one to re-examine the application of trading enterprise reforms. Such examination could suggest *some functions* be privatised and be more market accountable and other functions brought closer to executive government to be more democratically accountable.[[73]](#endnote-72)

Such attention to functions rather than organisations is envisaged by the national competition policy and strands of public transport franchise research. The latter posits a Strategic-Tactical-Operational framework; in which only operational aspects should be placed at arms-length from government and if necessary be subject Community Service Obligations. Strategic functions should be removed from the business/franchisee as they are a matter for democratic choice. Tactical functions are arguable.

### 8.3 Implications of the real argument – what can be franchised

A first consequence of the real argument is that the focus of any discussion of privatisation, including franchising, should be what can and should be privatised *without reference to ‘government’ gains, ‘risk transfer’ or how gains might be utilised*.

The Strategic – Tactical – Operational is an attractive and probably necessary framework for analysing what could be franchised. It can be readily applied to buses and discrete – non-networked – railways such as regional passenger services.

Also relevant to the analysis is classification of assets into business specific, industry transferable and essential facilities; the former two being more amenable to franchising or privatisation especially when made ‘interoperable’.[[74]](#endnote-73)

While many bus assets are industry transferable – a bus in one region can be redeployed to another – this is not the case for railways. Even some rail fleet, generally thought to be transferable, can be difficult to re-deploy due to differences in infrastructure gauge, clearances and power supplies. This is among the reasons for it being much simpler and lower risk to franchise regional passenger rail than urban networked railways.[[75]](#endnote-74)

### 8.4 Implications of the argument – urban networked railways

Urban networked railways present very hard problems. The reason stems from the bound nature of railways; infrastructure that guides the use of vehicles that require separation.

The essential product of an urban passenger railway is the timetable; the timetable determines fleet requirements and induces ridership. The timetable is underpinned by an infrastructure schedule which will allow other uses of tracks, for example by other trains including those coming from outside the passenger network.[[76]](#endnote-75)

An important question is: What aspects of the timetable should be a matter for democratic choice, and what aspects should be a matter for ‘efficiency’. An alternate formulation of the question is: what aspects of the timetable are strategic, tactical or operational?

An equally important question is: what aspects of the timetable can be subject to an effective contract?

Railway efficiency reflects timetables and delivery of resources to the timetable. Given the magnitudes involved it is almost certain that the main source of urban railway economic and social gains lie in timetabling.

The key risk of privatising or franchising an urban railway is that ‘savings’ will be achieved by reducing service levels with potentially enormous economic costs, among which will be unnecessary spending on infrastructure.[[77]](#endnote-76)

The report suggests that urban passenger train franchises should be limited to delivering trains to the timetable. In part this reflects the fact that other experiments have failed.[[78]](#endnote-77)

However, ‘savings’ from such franchising will be limited to the change in resources needed to run trains to the timetable, rather than changes to all elements of railway costs which include timetable design. This throws further doubt on the estimated savings.

For practical purposes it should be assumed that the timetable runs in perpetuity. In an urban rail Community Services Obligations or franchise contract the government is not merely buying services; it is buying the capacity to provide services into the future. The failure to realise this probably underlies many of the problems experienced in Australian urban railways in recent years.[[79]](#endnote-78)

Capacity to run the timetable depends on asset condition, observation of which is considerably lagged and which itself is a lagged function of maintenance and renewals. Condition changes with both time and use and is influenced but not fully determined by train operations. This leads to severe problems in privatising or franchising major urban networked railways.

Reported business performance can be artificially boosted by maintenance and renewal deferrals; the effect may not be evident for several years or more. One implication is that urban rail franchises need to be longer term than buses. Reflecting this and the scale of impact of poor performance, usual privatisation or franchising safeguards such as ‘performance bonds’ may be ineffective.[[80]](#endnote-79)

Another implication is that internal government resource requirements will increase if a system is corporatized, privatised or franchised. Government needs to acquire and use expertise for detailed asset assessment and delay attribution; duplicating functions of the franchisee. Government may need to specify and directly fund maintenance works scope, however doing so may create interface problems. Government needs to acquire detailed operational analytic capabilities and acquire large volumes of data from the operator(s) in order to assess the efficiency of the timetable.[[81]](#endnote-80)

With this background it would be naïve to just assume that a networked urban railway can be effectively corporatized, privatised or franchised. A detailed operational and managerial study would be needed for any such decision; unfortunately there does not appear to be an adequate example.

### 8.5 Implications of the real argument – transparency of government

A second consequence of the real argument is that all arrangements between the government and private sector regarding service provision should be public. All documentation and other material regarding franchising and privatisation should be placed into the public domain. [[82]](#endnote-81)

The trading enterprise reforms aim to remove the opportunity for the government to provide unseen influence over ‘arms-length’ businesses. It would be hypocritical to argue that arrangements between a government and public sector organisations should be overt while claiming ‘confidentiality’ for similarly purposed relations between the government and private sector firms.

The argument that some franchising or privatisation matters should be treated as ‘confidential’ is also inconsistent with Australian principles of government.

Australia’s systems of government involve representative democracy and responsible government. Representative democracy has voters represented by parliamentarians periodically chosen in elections. Responsible government means that executive government, Ministers, account to and hold office while they maintain the confidence of parliament.[[83]](#endnote-82)

Privatisations and franchising can extend legal rights to the private sector at the expense of public monies for more than the duration of one parliament, thus curtailing options for parliament and therefore the community. Examples include long term leases of ports and claims of ‘sovereign risk’.[[84]](#endnote-83)

It is at least arguable that representative democracy requires disclosure of all significant arrangements any parliamentarian has entered while in, or as an agent of, parliament. This is the basis of disclosure registers etc. which deal with far less important matters than privatisations. High profile failures to conform to registers is reported to have weakened confidence in Australia’s institutions. However, as elections are only periodic and decided on more than one issue, this may not be an adequate incentive in relation to substantive dealings with public or private businesses.[[85]](#endnote-84)

Parliament will be unable to form a proper view on a Minister unless it has information on the Minister’s activities. This must include complete information on all ‘agreements’ the Minister has made.

Expert or even quasi-judicial review of actions and agreements, such as through anti-corruption bodies will not be adequate. The purpose of publication is not to prevent corruption, although this may be a side effect. It is to ensure arrangements accord with responsible government.

Consideration of democratic principles leads to the same result as the logic of the government trading enterprise reform model.

Franchising and privatisation therefore need to be seen in the context of, to support, Australia’s system of government. These matters are far more significant than modest one-off reductions in State government spending.

The issue is vital to the report. The report is based on the idea that State governments are politically unable to fully pursue efficiency through public sector businesses and that franchising overcomes this constraint.

## 9. A slap in the face and a kick up the backside

### 9.1 Introduction

The report’s suspect arguments favour infrastructure spending.

Overestimation of savings, the call for potentially un-Constitutional Commonwealth spending, the sanguine view of experience in the UK and Victoria, limited ‘lessons’ learned and the suggestion that savings be spent on proposals not yet considered ‘projects’ on the Infrastructure Priority List are cases in point.[[86]](#endnote-85)

However, the logic underlying the franchising ideas presented in the report lead to a slap in the face and a kick up the backside for those promoting urban transport infrastructure investment.

### 9.2 A slap in the face

Those who argue for any form of confidentiality arrangements between a government and a private sector party, such as in a franchise, privatisation or funding for projects, receive a slap in the face from a proper analysis of the matters in the report.

This arises from the logic that franchising, as an extension of the government trading enterprise reforms, should involve publication of all relevant arrangements between governments and the private sector.

At present Australian privatisations, public private partnerships, some franchises and most project proposals are notorious for their lack of public transparency. In some cases information has been withheld from parliaments. This is contrary to the pro-democratic efficiency improving intentions of the trading enterprise reforms and the competition policy, policies that some see culminating in privatisation.[[87]](#endnote-86)

The national PPP guidelines, drafted by Infrastructure Australia, briefly raise the transparency issue in a discussion about disclosure/confidentiality arguing there are different considerations for the release of information before and after the contract is executed. The overview suggests disclosure to be an option to be considered by the government of the day:

*Governments may release the contract and a summary to the public following financial close that may include the background to the project and a summary of the key contractual terms and conditions.[[88]](#endnote-87)*

The detailed ‘practitioners guide’ takes a more principled view:

*‘Accountability of the executive government to the legislature and freedom of information for citizens are key principles of the Westminster system of government operating in the Commonwealth, State and Territory jurisdictions. As a general principle, this requirement for visibility and accountability means that full disclosure should be the default position…..’*

However the guide also has disclosure to be determined by the government of the day.[[89]](#endnote-88)

There is an obvious conflict of interest in this; a government will be less willing to release information that may reflect poorly on it, but release of such information is an incentive for the government to ensure arrangements are in the public interest.

Disclosure has recently been considered by the World Bank, which also intends to differentiate between pre and post contract disclosures.[[90]](#endnote-89)

Neither the national guidelines nor the World Bank make a good case for claiming any confidentiality after a contract is concluded. Moreover, while the national guidelines allow a ‘voluntary’ disclosure it is unclear whether government or private party makes the election. In practice there remains the opportunity for governments to use this as a shield from scrutiny.

As noted in this article, ‘money’ considerations are a bad reason for private sector involvement in urban transport. As such claims that ‘disclosure could jeopardise government-private sector negotiations / value for money’ are not legitimate reasons for with-holding information from parliaments and the public in democratic countries. The cost of doing business with a democratic government should include disclosure of all relevant matters.

The franchising report should have included disclosure principles.

### 9.3 A kick up the backside

The logic of the report delivers a kick up the backside to project proponents.

The argument of large potential gains from franchising is equally an argument that proposals for infrastructure spending need reconsideration.

The enormous savings suggested for rail in Sydney and Brisbane must throw doubt on current infrastructure proposals in those cities. If their rail systems are inefficient to the extent suggested there can be little confidence that real transport problems, let alone potential solutions, are able to be identified.

Projects identified as necessary in a city with an inefficient rail system may turn out to be white elephants when system efficiency improves.

Worse, once a government has committed to a white elephant it might cause economic and social damage to hide the fact and save political face.

Examples of such behaviour include degrading existing transport services or jeopardising future opportunities in order to make the favoured project look good, or locking-out superior reforms by piecemeal private negotiations of toll roads.[[91]](#endnote-90)

Hence it is doubly ironic that the report suggests savings from the most inefficient systems – in Sydney and Brisbane – be spent on local projects that it does not (yet?) consider merit investment. And at least one of which renders value-for-money franchising problematic.

In Melbourne, the uncertainty about current asset condition raises doubts about the need for the capacity augmentation projects currently mooted.[[92]](#endnote-91)

Infrastructure plans and projects should be based on efficient outcomes and operations. This is the reason for a previous Infrastructure Australia suggestion that urban transport projects should be identified and assessed as if there was road pricing.[[93]](#endnote-92)

An analogous suggestion, that infrastructure plans and projects should be identified and assessed as if there was efficient public transport service provision is not in the report.

If the report is believed there would be a compelling case for removal of every urban transport infrastructure initiative and project from the infrastructure priority list until it can be demonstrated that the ideas would be worthy of consideration if there was efficient road and public transport use.

With this kick up the backside, proponents might focus on developing robust proposals for assessment rather than redrafting ‘business cases’ or attempting to pressure the Commonwealth via the media.

## 10. Independence

### 10.1 Overview

The word ‘independent’ frequently pops up to enhance the credentials of participants in public policy debates. It begs the question: independent of what/whom?

This is an important question for organisations that sit near goldmines of government funding, such as Infrastructure Australia. More so when they *recommend* Commonwealth spending on things like projects or incentives for States to franchise public transport.

The independence necessary in a democracy is for advisers and decision makers to not seek private benefits from public sector decisions. Whether advisors are in a department or a statutory authority is of much lesser moment.[[94]](#endnote-93)

### 10.2 Modelling

While the ‘modelling’ for franchise savings was conducted by an ‘independent’ firm, Infrastructure Australia had some input. The results are not independent of Infrastructure Australia.

### 10.3 Independence and politics

It is trite to observe that privatisation is a politically contentious issue; viewed with considerable suspicion by the population. As is road pricing.

Reference to ‘franchising’ may be an attempt to side-step poor perceptions of privatisation but does not address underlying concerns. However, it is probable that reports of experience of franchising in UK and Melbourne rail, fair or not, contributed to current general concerns about privatisation.

Revenue hypothecation under the term ‘customer focused’ is presumably aimed at offsetting community suspicion of franchising/privatisation, as is the case for promises of spending road pricing profits to lessen congestion.

Various aspects of public transport franchising entail political considerations. These include: the UK parliamentary debate about the rail regulator; the recent UK election and claims that polls indicate support for stopping franchising; the claimed failure of Victorian governments to enforce elements of franchise contracts or satisfactorily address asset surety; reasons for the failure of Victorian regional rail franchising; the reluctance to consider franchising regional rail elsewhere in Australia; the role of the Commonwealth executive Government as distinct from Parliament; the government trading reform argument and the perverse practice of privatisation that reduces transparency of government decisions.

At a more basic level there is the idea that franchising is needed because State governments lack political will (to achieve efficiencies in public sector organisations).

These matters raise a question of a trade-off between ‘efficiency’ and democratic accountability.

However, the report did not satisfactorily recognise or resolve this. It did not point to approaches which reconcile democratic and efficiency concerns, such as used by the NSW Independent Pricing and Regulatory Tribunal (section 7.1 above).

Nor did it raise the options of proposals for franchising/privatisation to be put to the community prior to implementation such as was famously done by former NSW Premier the Hon. Mike Baird MP prior to the sale of ‘poles and wires’.[[95]](#endnote-94)

The report’s idea that the Commonwealth Government offer financial incentives for franchising compounds the oversight. Apart from the Constitutional and governance defects identified earlier, the proposal is faulty for two reasons.

First, if Commonwealth support is to be offered, it should be for results rather than processes. That means support should not be offered for franchising, but for improvements in public transport efficiency and effectiveness by whatever means.

Second, a Commonwealth offer to support public transport franchising would weaken both Commonwealth and State democratic processes unless the proposal was put to the Commonwealth electorate first.

### 10.4 The reform series

The franchising report is part of an Infrastructure Australia ‘reform series’ that started with a report on value capture.

However, on Infrastructure Australia’s website the words ‘reform series’ also appear in relation to a different organisation, Infrastructure Partnerships Australia. A speech on the site includes ‘IPA Reform Series’ in its title, refers to an ‘Infrastructure Australia and Infrastructure Partnerships Australia Major Reform Series’, and says Infrastructure Australia sponsored its first event.[[96]](#endnote-95)

Infrastructure Partnerships Australia calls itself an ‘independent think tank’ and a peak industry body. Senior public servants and private sector infrastructure participants sit on its advisory board. It has been called a lobby group in some media reports. It has made claims regarding ‘infrastructure deficits’, argued for more infrastructure spending and proposed ‘reforms’ to make more money available for that purpose.[[97]](#endnote-96)

This author finds the references to ‘reform series’ confusing. How many reform series are there?

This article demonstrates the report’s arguments are suspect and overlook considerations that would lead - via more transparency and scrutiny of infrastructure proposals – to the opposite of some interpretations of the report; to deferred and possibly less infrastructure spending. If implemented, some of the proposals may have a deleterious effect on real reform efforts.[[98]](#endnote-97)

Hensher and Stanley noted the report looked at a very narrow range of ‘reform’ options. They asked whether this was due to lack of knowledge of options or ‘more likely’ a choice for ‘some reason’.

The report has not advanced the case for a reform series.[[99]](#endnote-98)

### 10.4 Governance

The former Minister’s stated intention in changes to Infrastructure Australia’s arrangements in 2014 related to financial independence from the Government.

The former Minister’s view about independence - that the key matter was independence from Executive Government - was the basis of the argument for the current governance arrangements for Infrastructure Australia accepted by Parliament.

The result is an Infrastructure Australia which while getting its income from the public purse via appropriations, not contracts, is classed as ‘financially independent’.

Being classed as financially independent, it has a governing board which appoints a chief executive etc. These arrangements are typically used for government businesses whose income does not wholly come from government appropriations. The arrangements are unusual – probably unique in the Commonwealth - for bodies that provide advice to government and that do not provide services to the public or for fees.[[100]](#endnote-99)

The apparently strange governance of Infrastructure Australia, the report’s shortcoming in its exploration of governance related reasons for, and implications of, franchising public transport services and the continued erroneous re-iteration of an outdated view of Commonwealth Government powers suggests a need for (better) advice about governance.

## 11. Conclusion

Independence does not equate with expertise. A more thorough analysis of franchising is needed. Arbitrary claims of big gains do not impress.

Governments should be advised to not consider franchising of urban railways at least until a thorough public analysis is completed. Those with an interest in the matter should attend the forthcoming Thredbo Series Conference in Stockholm.[[101]](#endnote-100)

Infrastructure Australia might re-look at its franchising paper and its understanding of governance. It should practice – by reflection in the Infrastructure Priority List - reforms it preaches such as road pricing and public transport efficiency.

J Austen

15 July 2017

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1. Disclaimer; the author was an adviser to Infrastructure Australia 2007 to 2014 and is inclined to favour public transport franchising. [↑](#footnote-ref-1)
2. Until 2014 Infrastructure Australia had a board with mixed advisory functions; it and the chief executive were appointments by the Minister under statute are were the advisory organisation.

In 2014 this changed with Parliament accepting (with some modifications) proposals from the former Minister, the Hon Warren Truss MP, that Infrastructure Australia continue to have only advisory functions but have a governing board.

The Minister’s view was strange in that he seemed to think ‘independence’ meant business independence from Executive Government as distinct from independence of advisors from beneficiaries. It was further implied that there was a ‘conflict of interest’ that needed to be resolved; that of the chief executive actually accounting to the Minister and (notionally) to the board.

Notwithstanding the wish for an independent board the Minister proposed that the board report to him. <http://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/e674bc2a-82df-4a25-981b-1f2bab3d0b16/0005/hansard_frag.pdf;fileType=application%2Fpdf>.

From 2014 it became clear that Infrastructure Australia should be a statutory authority independent of the Commonwealth Executive Government but not because of any ‘conflicts of interest’ or financial matters. Rather the reason is a High Court decision that implied Commonwealth spending on infrastructure may depend on conditional grants to the States (specific purpose payments) made in accord with Constitution s.96. That section of the Constitution has conditions on those set by the Parliament not the Executive. Consequently, it is the Parliament rather than the Government that requires advice from Infrastructure Australia. The situation is different for States. See: governance articles at the jadebeagle.com [↑](#endnote-ref-1)
3. Australian infrastructure plan, discussed at <http://www.thejadebeagle.com/australian-infrastructure-plan.html>. Readers might note the criticism of the plan as being unduly pro-infrastructure; of viewing ‘reforms’ as a way of raising more money to spend on infrastructure. The same criticism can be made of the present report. [↑](#endnote-ref-2)
4. <http://infrastructureaustralia.gov.au/policy-publications/public-private-partnerships/index.aspx>

<http://infrastructureaustralia.gov.au/policy-publications/publications/Infrastructure-Australias-Urban-Transport-Strategy-December-2013.aspx> [↑](#endnote-ref-3)
5. To date there are two other topics in the series. One is ‘value capture’; government policies to acquire funds for infrastructure from the change in land values caused by infrastructure construction. See: <http://infrastructureaustralia.gov.au/policy-publications/publications/Capturing-Value.aspx>.

The other, corridor protection, will be the subject of a forthcoming article.

 [↑](#endnote-ref-4)
6. <http://infrastructureaustralia.gov.au/policy-publications/publications/Improving-Public-Transport-Customer-Focused-Franchising.aspx>; <http://infrastructureaustralia.gov.au/news-media/media-releases/2017/2017_05_25.aspx> [↑](#endnote-ref-5)
7. The potential inconsistency between an aging population and growth in peak transport demand – on roads and public transport for journeys to work – was identified in previous articles on the Australian infrastructure plan. See: <http://www.thejadebeagle.com/submission-to-infrastructure-australiarsquos-national-infrastructure-audit.html> [↑](#endnote-ref-6)
8. The claim that franchising is not a form of privatisation was also made by KPMG (note xxx below). This is not correct for reasons set out in note lx below. [↑](#endnote-ref-7)
9. The report’s recommendations were:

*1. Where practical, the operation of new additions to the transport network should be franchised. This should occur where additions are stand-alone operations rather than small extensions to existing networks.*

*2. State and Territory governments should adopt the Customer Focused Franchising model. Under the approach governments would re-invest a proportion of the cost savings of franchising back into transport infrastructure. The model provides governments with a practical pathway to alleviate community concerns regarding reform and creates a significant pool of revenue that can be used to deliver infrastructure and service improvements.*

*3. Australian governments should draw lessons from jurisdictions where services have been franchised, including Victoria and the United Kingdom. Governments should consider the following five principles when franchising: ensure contractors are incentivised to improve service quality; allocate risk to those best able to manage it; periodically re-franchise and choose an appropriate contract length; ensure the assessing agency is appropriately informed and skilled; and ensure selection criteria are transparent.*

*4. The Australian Government should provide incentives to encourage state and territory governments to expose public transport services to contestable supply through franchising. The franchising of major public transport services will deliver productivity benefits across the Australian economy. For this reason, the Australian Government has a clear role to play in encouraging reform. The incentives could be structured using a range of mechanisms including, the City Deals framework, COAG’s Competition and Reform Agreements or Infrastructure Reform Incentives.* [↑](#endnote-ref-8)
10. For the comment that savings are not related to franchising and the political argument see: Technical report (note v above) p4. One of tasks of the Commonwealth is to uphold the Constitution which sets up a system of representative democracy. [↑](#endnote-ref-9)
11. While modelling was said to have been conducted by an independent party, Infrastructure Australia played some role in it. The modelling therefore was not independent of Infrastructure Australia. See: <http://infrastructureaustralia.gov.au/policy-publications/publications/files/Final-Franchising-technical-report.pdf> [↑](#endnote-ref-10)
12. Not least because not all rail costs are ‘operational’ (above-rail). There are substantial below-rail or infrastructure costs, which may not yield savings induced by competition. The UK is an example of where total subsidies increased due to network degradation after franchising of operations and privatisation of track. In Victoria, the recent Auditor General report suggests the possibility of a similar issue; see note xli (below). [↑](#endnote-ref-11)
13. This will be discussed in a forthcoming article. [↑](#endnote-ref-12)
14. See: the toucheth not the monorail series at thejadebeagle.com [↑](#endnote-ref-13)
15. Overbidding for toll roads is a well-known public policy problem visible by financial failure of toll roads. See for example: <https://infrastructure.gov.au/infrastructure/infrastructure_reforms/files/Disincentivising_Overbidding_Toll_RRoa_Concessions.pdf>.

The author understands that under (previous?) project assessment guidelines the economic case for toll roads was identical with the financial case. A financial failure would imply an economic benefit: cost ratio of less than 1 i.e. net economic losses. It is not merely a matter for toll road owners but for society. [↑](#endnote-ref-14)
16. The lagged implications of overbidding probably account for at least part of the financial failure of some rail operator franchisees. In the case of franchised or privatised infrastructure, a response may be to defer renewals which may have been the case in the UK and Victoria.

Particular care needs to be taken with asset management under certain corporate financial accounting systems; in some previous cases infrastructure assets used by subsidy traffic were valued at zero meaning that depreciation was not reported in financial accounts and profits ‘artificially’ boosted in the short term by deferrals of maintenance. The issue arises from application of a commercial framework to subsidy railways rather than franchising per se; it will be discussed in a forthcoming article. [↑](#endnote-ref-15)
17. <https://theconversation.com/why-touted-public-transport-savings-from-competitive-tendering-are-too-high-78527>. [↑](#endnote-ref-16)
18. There are both technical and presentational/political arguments for use of ‘excess’ revenues from road pricing on mitigation of road congestion. These are similar to arguments for hypothecation of CBD car parking levies to public transport etc. although those levies are less effective in reducing congestion. These differ from the ‘use of public transport savings’ argument in that they relate to continuous revenue streams without the risk of asset degradation, and arise from the otherwise ‘overuse’ of roads. [↑](#endnote-ref-17)
19. If the promise of spending is the inducement to make savings, spending in advance of achievement of savings removes that inducement. This is an example of ‘moral hazard’.

 [↑](#endnote-ref-18)
20. Infrastructure Australia has replaced its former categories ‘ready to proceed’ and ‘threshold’ with ‘project’. Both Sydney metro city and south west and Cross River rail are rated as less developed i.e. ‘initiatives’. See: <http://infrastructureaustralia.gov.au/projects/files/IPL_170225.pdf>.

Previous articles have considered some issues surrounding these projects see: the toucheth not the monorail and Badgerys Creek series at thejadebeagle.com.

While politicians and advisers claim that all that is needed to make the proposals ‘projects’ is an ‘updated business case’, there is a high probability that ideas need to be modified – there needs to be changes in government policies, steel and concrete amounts etc. – rather than redrafting or better explanation of what is proposed.

 [↑](#endnote-ref-19)
21. See note liii (below). The question of incentives is dealt with at length in the Thredbo conference series; see note lvii (below). [↑](#endnote-ref-20)
22. For example: <http://www.bts.nsw.gov.au/ArticleDocuments/79/r2011-11-customer-survey.pdf.aspx?Embed=Y> [↑](#endnote-ref-21)
23. See for example: <http://atrf.info/papers/2012/2012_Currie_Douglas_Kearns.pdf> and NSW Independent Transport Safety and Reliability Regulator, *Review of on-time running of CityRail services* (2004).

Note the potential for on-time running figures to be skewed by selection of an inappropriate time period (eg. peak hours for on time running in Sydney were not the times of the passenger peaks, and the desire to improve the statistics was reflected by running more trains prior to peak demand times); exclusions (eg. acts of god defined by the railway); locational biases (eg. excluding major network nodes) and in some remarkable cases by limiting the definition to the vehicle leaving the depot for its first run.

 [↑](#endnote-ref-22)
24. <http://www.theage.com.au/victoria/melbournes-billiondollar-rail-system-sells-passengers-short-20150325-1m7jze.html> [↑](#endnote-ref-23)
25. See for example: Douglas N, *Valuing Public Transport Service Quality using a combined Rating and Stated Preference Survey*, Australian Transport Research Forum 2015.

For travel optimisation a delay minute (due to poor on-time running) is worth several transit minutes (due to slow trains). It is possible to roughly estimate the economic effect of timetable changes aimed at improving on-time running.

To illustrate the enormous amounts involved: For Sydney in the mid 2000s an additional 3 minutes travel time due to slower trains had a gross cost around $4.3bn in present value terms. [↑](#endnote-ref-24)
26. Compare this with econometric modelling for Sydney rail by Douglas; atrf.info/papers/2015/files/ATRF2015\_Resubmission\_136.docx [↑](#endnote-ref-25)
27. OECD in its review of changes in rail industries cites some UK reports that franchising has had a positive effect on demand;

<http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/WP2(2013)6&docLanguage=En>

However in the absence of a formal study the matter should be treated as unresolved for Australia. The following chart of urban rail patronage is from <https://bitre.gov.au/publications/2014/files/trainline_002.pdf>



The chart shows strong growth in patronage in both franchises and unfranchised systems; Melbourne and Perth. The result for Brisbane looks suspect, after strong growth to 2007-08 patronage stabilised and then declined even though city population increased. In this context, Melbourne does not look exceptional.

In Sydney deferral of growth may have been caused by reductions in rail capacity; slowing and fewer trains in the early and mid 2000s. [↑](#endnote-ref-26)
28. See for examples://theconversation.com/as-another-toll-road-bites-the-dust-what-is-the-future-for-ppps-12386.

 [↑](#endnote-ref-27)
29. Urban rail cost recovery statistics can have particular inclusions and exclusions; track, fleet, replacement or stand-by services, as well as cyclic issues and revenue allocation matters. [↑](#endnote-ref-28)
30. Sydney cost recovery is assessed by the NSW Independent Pricing and Regulatory Tribunal. The Tribunal has consistently taken the view that fares are too low and should be distance based. Information for the Tribunal largely comes from the State government and its railways which both have incentives to report low cost recovery in order to seek fare rises. [↑](#endnote-ref-29)
31. <https://home.kpmg.com/au/en/home/insights/2015/12/australia-uk-rail-franchising.html> [↑](#endnote-ref-30)
32. <http://atrf.info/papers/2010/2010_Mees.pdf> [↑](#endnote-ref-31)
33. The UK national rail system was privatised with operations separated from track and franchised in 1995 by the UK Government. The London Underground – the tube – was privatised as a vertically integrated operations via a public private partnership in 1999. [↑](#endnote-ref-32)
34. See: <http://www.bath.ac.uk/management/cri/pubpdf/Occasional_Papers/23_Glaister.pdf>. [↑](#endnote-ref-33)
35. Delay attribution.

As on-time running attracted financial rewards and sanctions, it also attracted arguments as to what caused delays. The delay attribution function in the UK had a large number of staff, over 1000 observations points and over 200 predetermined cause classes. It now is an entire organisation with a Board. The companies reportedly also employed three hundred staff to argue over delay attribution (http://www.telegraph.co.uk/news/uknews/road-and-rail-transport/8393927/Train-firms-hire-300-delay-attribution-officers-to-avoid-paying-compensation.html 08) and the system became the butt of jokes including claims that the franchisees made more profits out of delay attribution than running trains see for example Ian Vince, *The Little Black Book of Red Tape: Great British Bureaucracy*, 2008. [↑](#endnote-ref-34)
36. While a common perception is that interfaces are engineering matters eg. contact between wheel and rail, they also occur between organisations.

Post privatisation in the UK there were significant interface incidents related to a failure of communication across organisational boundaries; among train operators and between train operators and the track authority.

Among the causes of the Ladbroke Grove accident was a train driver failing to stop at a signal that was poorly positioned. Evidence to the inquiry was of post privatisation discontinuance of former British Rail arrangements for signal sighting committees where track and signal staff together with train drivers in that organisation considered the adequacy of signal positions. See: <http://www.railwaysarchive.co.uk/docsummary.php?docID=38> [↑](#endnote-ref-35)
37. The UK regulator controversy was noted in Glaister, <http://www.bath.ac.uk/management/cri/pubpdf/Conference_seminar/33_Proceedings.pdf>

 and <http://www.orr.gov.uk/__data/assets/pdf_file/0020/17084/cer-napoli-british-regulation-experience.pdf>

The former includes a better discussion of safety by Andrew Evans than in the Infrastructure Australia franchising report: <http://www.bath.ac.uk/management/cri/pubpdf/Conference_seminar/33_Proceedings.pdf> [↑](#endnote-ref-36)
38. <http://www.orr.gov.uk/__data/assets/pdf_file/0005/22982/rail-finance-statistical-release-2015-16.pdf>; and for commentary on how accounting changes may have inflated the appearance of train operator success see <http://www.sciencedirect.com/science/article/pii/S0155998214000416?via%3Dihub> [↑](#endnote-ref-37)
39. For this and the preceding paragraphs see: [www.christianwolmar.co.uk/2017/04/rail-825-renationalisation-is-more-complex-than-a-slogan/](http://www.christianwolmar.co.uk/2017/04/rail-825-renationalisation-is-more-complex-than-a-slogan/). More sympathetic OECD views (from 2015 covering Laidlaw and Brown reports) are at http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/WP2(2013)6&docLanguage=En [↑](#endnote-ref-38)
40. Under current arrangements VicTrack, owns the infrastructure and fleet assets. It leases these to Public Transport Victoria; both are government organisations.

Public Transport Victoria sub leases the assets to the two private sector franchisees; one franchise is for Melbourne’s rail system the other franchise is for trams. The relevant contracts require the franchisees to provide services and maintain (to some extent) the assets. [↑](#endnote-ref-39)
41. See for example <http://www.theage.com.au/articles/2002/12/17/1039656391562.html>. Note the overbidding in terms of passenger forecasts – growth rates were below those assumed by bids. Notwithstanding this the system experienced capacity problems shortly thereafter. [↑](#endnote-ref-40)
42. After an initial (2004) assessment that the franchises provided value for money, Victorian Auditor General reports have found major issues with the rail franchising. These include problems with surety about asset management (2007) and more recently the ‘customer experience regime’ (2016); see Appendix B of <http://www.audit.vic.gov.au/reports_and_publications/latest_reports/2016-17/20161107-rail-franchisees.aspx>. For an amusing anecdote see: <http://www.smh.com.au/national/vic-govt-buys-back-old-train-carriages-20070423-921.html>

 [↑](#endnote-ref-41)
43. <http://www.audit.vic.gov.au/reports_and_publications/latest_reports/2016-17/20161107-rail-franchisees.aspx> [↑](#endnote-ref-42)
44. Other issues identified by the Auditor General included:

 Customer experience:

*‘The customer experience performance regime under the current franchise agreements was poorly designed and costly to administer, making it ineffective. PTV decided that it was not delivering value for money, and largely abandoned it in 2012. Since then, PTV has relied on limited subjective data to assess the way franchisees fulfil their customer experience obligations and to determine the payment of associated bonuses and penalties.’*

On-time running:

*‘Under the OPR, PTV determines incentive and penalty payments by measuring the impact of an individual service delay or cancellation on passengers. This is a different measure to the publicly reported figures, which reflect whether trains and trams run on time.’* [↑](#endnote-ref-43)
45. For example by Currie 2009 see: <https://www.lta.gov.sg/ltaacademy/doc/J09Nov-p36Currie_RailFranchising.pdf>.

This might be compared with <http://www.smh.com.au/business/oecd-against-victorianstyle-public-transport-tendering-and-franchising-20080928-4pqd.html> [↑](#endnote-ref-44)
46. <https://blogs.crikey.com.au/theurbanist/2017/02/08/return-public-transport-people/>. [↑](#endnote-ref-45)
47. Partial renationalisation: V-line, the government owned regional rail service provider was ‘renationalised’ by Victoria.

In 1995 V-line was split into V-line passenger and V-line freight. In 1999 the latter was privatised via a sale of fleet etc. and a 45 year lease over regional track.

In 1999 V-line passenger was franchised for 10 years, however, the franchisee handed back the operation to the Victorian government in 2002.

In 2007, the freight operator handed back the regional tracks to the Victorian government.

For practical concerns that have occurred with metropolitan assets see: <http://www.theage.com.au/victoria/why-our-rails-cant-cope-with-the-heat-20131218-2zl3t.html> [↑](#endnote-ref-46)
48. Gross cost contracts see the fare revenue remitted to government and pooled. Net cost contracts see fare revenue retained by the operator. The optimal choice depends on whether the operator can sufficiently influence ridership, or whether ridership is determined by general economic conditions. See for example: <http://siteresources.worldbank.org/EXTURBANTRANSPORT/Resources/341448-1269891107889/6914036-1278599591319/7230414-1278599610386/contracting.pdf> [↑](#endnote-ref-47)
49. See: <http://www.thejadebeagle.com/governance.html> [↑](#endnote-ref-48)
50. KPMG argues:

*‘ Given that it is almost 20 years since the first generation of rail franchising in the United Kingdom and 15 years from its introduction in Victoria, enough trains have passed over enough tracks to provide a robust body of insights into the process. "The good news is that rail franchising efforts in the UK and Australia provide a rich repository of experience for public and private sector participants to draw on as they jointly consider the best public transport solutions for the future."
Stan Stavros National Head, Infrastructure & Projects Group’*

Its five lessons are:

*‘1. Context and leadership can help drive implementation*

*2. Franchising is not an asset sale*

*3. Structuring of the franchise and the franchisee is critical*

*4. A shift in the risk paradigm*

*5. Contract management requires a pragmatic approach’*

Infrastructure Australia’s five lessons are:

1. Design a contract with appropriate incentives.

2. Allocate risk to those best able to manage it.

3. Periodically re-franchise and choose an appropriate contract length.

4. Ensure the assessing and management agency is appropriately informed and skilled

5. Ensure selection criteria are transparent.

It does not seem that either KPMG or Infrastructure Australia drew any lessons from the failure of regional rail and infrastructure franchising in Victoria.

These lessons might be compared with those drawn by a World Bank presentation at note xlv (above).

That presentation dismissed the key reasons provided by Infrastructure Australia for franchising; claiming that bad reasons for contracting are *‘Always more cost-effective/ cheaper for taxpayer and passengers • Always better quality and higher level of service • Less demanding for Public authorities’*

Others claim Infrastructure Australia has not learned relevant lessons; https://www.macrobusiness.com.au/2017/07/infrastructure-australia-warned-rail-privatisation/ [↑](#endnote-ref-49)
51. <http://www.thejadebeagle.com/williams-case.html> [↑](#endnote-ref-50)
52. <http://www.thejadebeagle.com/commonwealth-urban-transport.html> [↑](#endnote-ref-51)
53. <http://www.thejadebeagle.com/meddling.html> [↑](#endnote-ref-52)
54. The regulatory framework applied to NSW public transport is outlined at: <https://www.ipart.nsw.gov.au/files/sharedassets/website/trimholdingbay/final_report_-_improving_cityrails_accountability_and_incentives_though_an_effective_service_contract_-_december_2008_-_website_document.pdf> and

<https://www.ipart.nsw.gov.au/Home/Industries/Transport/Reviews/Public-Transport-Fares/Review-of-CityRail-fares-from-2009-and-regulatory-framework?qDh=2> [↑](#endnote-ref-53)
55. <https://www.ipart.nsw.gov.au/Home/Industries/Transport/Reviews/Public-Transport-Fares/Public-Transport-Fares-in-Sydney-and-Surrounds> [↑](#endnote-ref-54)
56. Assumes capital cost $20bn, discount rate 7%, with an annualised capital cost of $1.4bn. [↑](#endnote-ref-55)
57. See: <http://www.thejadebeagle.com/quo-vadis.html> [↑](#endnote-ref-56)
58. Near 30 years of experience and expert debate about public transport franchising is at: <http://www.thredbo-conference-series.org/> [↑](#endnote-ref-57)
59. See for example: <http://atrf.info/papers/2009/2009_Mejia_Lind.pdf>. [↑](#endnote-ref-58)
60. See note liii (above). [↑](#endnote-ref-59)
61. Alan Davies claimed that calling the Melbourne rail franchise privatisation is ‘wildly misleading’. He said the Victorian government still owns and is responsible for the tracks and the rolling stock. <https://blogs.crikey.com.au/theurbanist/2017/02/08/return-public-transport-people/>

Similarly KPMG argued that franchising is not ‘an asset sale’.

Both are wrong in substance for Australia where publicly owned operators are not permitted to offer services – a situation different to some European cities.

While the Victorian government may ‘own’ the assets, it does not control them; the usual test for legal ownership is control. The assets have been alienated from the Victorian government for 18 years to date, with a further 7 years at least in prospect. The government is not ‘responsible’ for the use of the assets in any real sense; a point implicit in the rail safety regulator’s comments and in the Victorian Auditor General’s observation that government representatives have been unable to access certain assets to inspect their condition; see note xli (above).

 [↑](#endnote-ref-60)
62. Note xlvii (above) indicated the World Bank considers the ‘making money’ argument to be a ‘bad’ reason for franchising. [↑](#endnote-ref-61)
63. Most forget the European examples of one tier of government providing public transport services to another tier. [↑](#endnote-ref-62)
64. The terms ‘business’ and ‘trading enterprise’ are used interchangeably in the literature. This reflects the topic; public sector organisations whose main functions concern trading. They receive of money for services especially from private sources including the public, and thus are considered to be businesses. Public utilities such as water and power authorities are such businesses. They are distinct from advisers, regulators and representatives who typically receive funds from the public purse (the consolidated fund) and who do not sell services. Public transport operators, while receiving some funds from the public purse also sell services to the public via fares; revenue from these fares need not go to the consolidated fund. The government trading enterprise reforms see these businesses also selling services to the government, via contracts.

Typically public sector businesses are created by statute and belong to parliaments rather than executive governments. Most such statutes have a Minister being responsible *to the parliament* as ‘owner’ of the business and provide the Minister with some powers over the organisation.

In the mid 1990s papers written by government central agencies posited a ‘conflicts of interest’ doctrine such that for a corporatised business the ‘portfolio’ Minister (who would enter contracts with the business for services) could not be the ‘owner’. They argued that a central Minister such as the Treasurer or Minister for Finance would need to be the ‘owner’. The argument while consistent with accumulation of power by these agencies lacks substance in a cabinet government. The issue to be addressed is not conflicts of public duties – the issue of conflict of public duty and private interest does not arise - but the opportunity for undisclosed influence on the organisation which could occur under any Minister. This will be addressed in a later article.

Information about the government trading enterprise reforms, including corporatisation, can be found in the Productivity Commission series <http://www.pc.gov.au/research/completed/gte0607> etc.

Information about the national competition reforms can be found at <http://ncp.ncc.gov.au/>.

These are discussed briefly in <http://www.thejadebeagle.com/governance.html> [↑](#endnote-ref-63)
65. Other aspects of competition policy relevant to franchising are: the removal of regulatory power from trading firms; application of competition and consumer law and removal of the shield of the crown; access to essential infrastructure of national significance; review of the structure of organisations and markets prior to introducing competition or privatisation.

For example see: <http://ncp.ncc.gov.au/pages/competitive_neutrality>, <http://ncp.ncc.gov.au/pages/structural_reform>

The idea of an organisation owned by one government providing services to another government was not explored in the competition policy, although it is consistent with all its themes. This is reportedly the case in several European cities they reviewed for best practice commuter rail arrangements; Berlin and Zurich for example. See: <http://atrf.info/papers/2009/2009_Mejia_Lind.pdf> [↑](#endnote-ref-64)
66. The terms ‘commercial’ and ‘non-commercial’ refer interchangeably to profitable/unprofitable activities, and decisions made to maximise profits (or minimise losses)/without a profit motive. [↑](#endnote-ref-65)
67. In addition to permitting Community Service Obligations contracts, legislation establishing government trading enterprises can also allow for Ministerial or government directives. Typically such directives need to be in writing, tabled in parliament (i.e. public) and reported in the business’ annual report. These requirements highlight the importance placed on public transparency.

 [↑](#endnote-ref-66)
68. Associated with this reason is an enhancement of accountabilities – financial and political - by separation of functions into those which relate to markets and those which relate to politics. The separation is achieved by placing market related functions in one type of organisation – a trading enterprise – and political functions including regulation into another – a department that may procure outputs from the trading enterprise.

 [↑](#endnote-ref-67)
69. A bus franchise typically goes further; it offers the franchise holder exclusive rights to operate in an area which may reduce Community Service outlays. Such restrictions imply cross-subsidies and theoretical deadweight losses in metropolitan bus operations, but it may be the only feasible approach given the potential for competition to be destabilising. [↑](#endnote-ref-68)
70. The Tribunal determines maximum fares for public transport in NSW (see note liii above). The government is free to set fares below this level but if it does so the business receives a costed Community Services Obligation. [↑](#endnote-ref-69)
71. As the business belongs to parliament, parliament is entitled to deal with it as it sees fit. In practice an executive government Minister is empowered by the parliament to deal with the business. Parliament’s ability to assess the Minister’s performance of this ‘delegation’, part of responsible government, rests on the information it has about the Minister’s relevant activities. Hidden influence undermines this scheme. [↑](#endnote-ref-70)
72. Bureaucrats (nominally) in charge of dealing with government corporations would be familiar with the situation of the corporation refusing to do something seen as necessary, such as providing information, because ‘we are a commercial organisation’, yet seek to excuse poor financial results because ‘we are government owned’. The situation is most likely to arise at times of capital renewals for organisations ‘owned’ by Treasuries; investments can be deferred because ‘returns are not high enough’. [↑](#endnote-ref-71)
73. Strategic Tactical Operational framework; see for example <http://ppiw.org.uk/files/2014/11/Approaches-to-strategic-transport-planning.pdf> [↑](#endnote-ref-72)
74. For railways business specific assets include wagons, and some (small) stations and terminals. Industry transferable assets include common gauge locomotives. Both of these classes are replicable, with industry transferable assets more easy to acquire. Essential facility assets include the infrastructure, large depots and major stations. Buses would be industry transferable assets, bus depots would be essential facilities. [↑](#endnote-ref-73)
75. The under-construction metro in NSW is an example of a franchise enhanced by restrictions from competition due to design characteristics. See: the toucheth not the monorail series at the jadebeagle.com. [↑](#endnote-ref-74)
76. The infrastructure timetable will need to cater for train operations and maintenance closures. Train operations may not be limited to urban passenger trains; in Sydney they include long distance passenger trains as well as freight trains. [↑](#endnote-ref-75)
77. To demonstrate this a 1 minute loss in timetable efficiency due to slow running in Sydney in the early 2000s would have a (then) economic cost of at least $2bn in present value terms; even given the unrealistic assumptions of no growth in ridership, no growth in wages and no effect on the road network. [↑](#endnote-ref-76)
78. See notes xxxii to xlvi (above) for the UK and Victoria.

The criticality of the timetable matter is heightened by three other reasons that are often overlooked.

	1. Properly specified urban rail timetables are complex and take a considerable time to develop and implement – much longer than bus timetables. In a properly run railway it may not be possible to ‘just add more trains’ in the way that additional buses can run on a route.
	2. Rail timetables can affect road networks, by setting a ‘default’ speed for travel choice. Again unlike bus timetables, urban rail timetables can be extremely consequential and deserve great care.
	3. By its direct relation to the infrastructure schedule, the timetable is the fundamental determinant of infrastructure requirements for the network. Future timetables, for example more trains to handle a growing population, are the rationale for rail infrastructure projects. [↑](#endnote-ref-77)
79. Indicated by maintenance rectification programs in Melbourne and Sydney for example. [↑](#endnote-ref-78)
80. See note lxxvi (above) for the scale of problems involved [↑](#endnote-ref-79)
81. This is demonstrated by the experience in the UK post the Hatfield accident where uncertainty led to what is claimed to be panic and overspending on rail. It also is demonstrated by the experience in Victoria where the Auditor General stated government lacked sufficient expertise and information to assess asset condition. See note xliii (above). [↑](#endnote-ref-80)
82. The term ‘the government’ here refers to executive government; Ministers. The reason for this being the target of the trading enterprise reforms is that parliamentary influence over an organisation will be via legislation i.e. overt. It also is consistent with representative democracy.

Executive government, Ministers, can conceivably influence the organisation via covert means but are accountable to the parliament not the electorate.

Hence there are two potential weak links in the chain between the organisation and the electorate which can only be cured by making all government influence the overt; facilitating responsible government and therefore representative democracy. [↑](#endnote-ref-81)
83. See for example: <https://www.google.com.au/search?q=responsible+government+high+court&oq=responsible+government+high+co&aqs=chrome.1.69i57j69i59.7824j0j7&sourceid=chrome&ie=UTF-8> [↑](#endnote-ref-82)
84. Examples of economic binding include ‘leases’ of ports; for example of Melbourne for 50 years. [↑](#endnote-ref-83)
85. Recent high profile examples include Ministerial and parliamentary travel entitlements see: <http://www.abc.net.au/news/2017-01-09/politicians-entitlements-and-why-they-are-under-fire/8170082>

Parliament can and should assess a Minister’s performance in a portfolio i.e. one field of activity. The electorate does assess parliamentary performance but across all fields; over many portfolios.

Ideas of representative democracy and responsible government are set out in <http://www.hcourt.gov.au/assets/publications/speeches/current-justices/frenchcj/frenchcj25jun10.pdf> [↑](#endnote-ref-84)
86. For the infrastructure priority list Infrastructure Australia replaced its early 4 categories (real potential, threshold, ready to proceed etc) with two ‘initiative’, and ‘project’. The ‘project’ category roughly equates with the former threshold and ready to proceed categories indicating Infrastructure Australia has ‘positively assessed’ the proposal. By implication proposals in the ‘initiative’ category are not recommended by Infrastructure Australia. The February priority list has Sydney metro and Cross River Rail as ‘initiatives’. See: <http://infrastructureaustralia.gov.au/projects/infrastructure-priority-list.aspx>.

 [↑](#endnote-ref-85)
87. <http://www.thejadebeagle.com/update-on-a-sell-out.html> [↑](#endnote-ref-86)
88. <https://infrastructure.gov.au/infrastructure/ngpd/files/Overview-Dec-2008-FA.pdf> [↑](#endnote-ref-87)
89. ‘*Accountability of the executive government to the legislature and freedom of information for citizens are key principles of the Westminster system of government operating in the Commonwealth, State and Territory jurisdictions. As a general principle, this requirement for visibility and accountability means that full disclosure should be the default position for a PPP contract with the private sector, except for consideration of voluntary disclosure of the following:*

*• trade secrets;*

*• genuinely confidential business information; and*

*• material which, if disclosed, would seriously harm the public interest.*

*Government must weigh up the public interest in maintaining confidentiality of the above matters against the public interest of disclosure. Confidentiality is particularly important during the bid stage where bidders supply confidential and sensitive commercial information and the disclosure of cost structures would compromise the competitive bidding process’.*

<https://infrastructure.gov.au/infrastructure/ngpd/files/Volume-2-Practitioners-Guide-Oct-2015-FA.pdf> [↑](#endnote-ref-88)
90. <http://pubdocs.worldbank.org/en/773541448296707678/Disclosure-in-PPPs-Framework.pdf> [↑](#endnote-ref-89)
91. There are unanswered questions as to whether the metro projects in Sydney jeopardise the existing railway and other parts of transport systems including Badgerys Creek airport; see the touchethe not the monorail and Badgerys Creek articles at thejadebeagle.com.

For tolling, difficulties in achieve citywide consistency and rationality in road tolls in NSW arise from the incremental nature of (negotiations for) the various toll roads in Sydney, see for example: <https://www.mynrma.com.au/media/Toll_Roads_NRMA_report.pdf>

 [↑](#endnote-ref-90)
92. <http://atrf.info/papers/2010/2010_Mees.pdf> [↑](#endnote-ref-91)
93. <http://infrastructureaustralia.gov.au/policy-publications/publications/files/InfrastructureAus_Rep_UrbanStrategy.pdf> [↑](#endnote-ref-92)
94. The exception of the Commonwealth arises only from s.96 of the Constitution which gives Parliament, not the Executive Government, power to make conditions on grants to the States; such conditions forming the basis of specific purpose payments such as for urban infrastructure. [↑](#endnote-ref-93)
95. <http://www.abc.net.au/news/2015-11-25/transgrid-nsw-government-reveals-buyer-of-poles-and-wires-lease/6963420> [↑](#endnote-ref-94)
96. <http://infrastructureaustralia.gov.au/news-media/speeches-presentations/IPA-Reform-Series-310517.aspx> [↑](#endnote-ref-95)
97. <http://infrastructure.org.au/>, <http://infrastructure.org.au/our-board/> <https://blogs.crikey.com.au/theurbanist/2010/09/18/hsr-feasibility-study-what-should-it-address/>

<http://www.smh.com.au/comment/paying-for-australias-infrastructure-20131130-2yiyu.html>

<http://www.canberratimes.com.au/act-news/infrastructure-lobby-slams-liberal-position-on-light-rail-contracts-20150318-1m1z8r.html>

<http://www.theaustralian.com.au/budget-2017/infrastructure/federal-budget-2017-states-lose-as-pm-leads-on-infrastructure/news-story/0020751eb41e28dcba54cc65d8d91b1a> [↑](#endnote-ref-96)
98. See for example section 9.1 [↑](#endnote-ref-97)
99. [↑](#endnote-ref-98)
100. <http://www.finance.gov.au/resource-management/governance/policy/structure-types/#h3>; <https://www.finance.gov.au/resource-management/governance/overview/#sectors>.

Infrastructure Australia is the only advisory body among the 84 Commonwealth Corporate entities in the general government sector; prior to 2014 there was another such body the *Corporations and Markets Advisory Committee* – it has been disbanded. Corporate entities in that sector include museums, the ABC, insurance pools, CSIRO, Defence housing, the Sports institute, Airservices Australia, Land Councils and the Human Rights Commission.

All Commonwealth advisory bodies other than Infrastructure Australia are non-corporate entities. These include the Productivity Commission, Geoscience, ANAO, Grants Commission, Family Studies institute, Accounting Standards Board.

The ‘explanation’ given for Infrastructure Australia’s unique status among 1218 entities is unusually lengthy but limited in content to changes in 2014 for constitution of a board; it appears to be a case of form being determined independent of function. See: <http://www.finance.gov.au/resource-management/governance/agor/>. [↑](#endnote-ref-99)
101. http://www.thredbo-conference-series.org/ [↑](#endnote-ref-100)