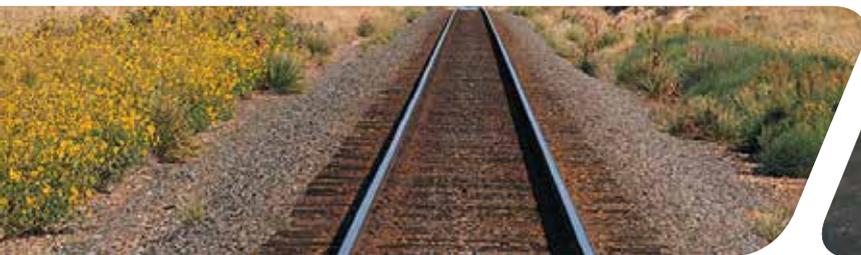




MAY 2015

COMPETITION POLICY REVIEW FEEDBACK TO TREASURY



THIS SUBMISSION HAS BEEN PREPARED WITH THE
ASSISTANCE OF KM CORKE AND ASSOCIATES, CANBERRA.

PO Box 20 DEAKIN WEST ACT 2600

P: +61 2 6273 0755 F: +61 2 6273 3073 E: admin@austlogistics.com.au

www.austlogistics.com.au

© Australian Logistics Council
May 2015

ALC VIEW IN A NUTSHELL

Road Reform

ALC believes the Harper Review has identified the steps that need to be taken to develop what could be a stable and predictable revenue stream for suitable roads of national significance.

Many of these roads will be contained in the Key Freight Routes recently mapped by the Commonwealth Department of Infrastructure and Regional Development.

ALC is aware that in May 2014 the COAG Transport and Infrastructure Council (**TIC**) agreed to commence work to implement a series of initial investment and access reform measures aimed at increasing transparency and improving the quality of services that road agencies provide to heavy vehicle operators (**the TIC process**).

ALC endorses the current preparatory work being conducted (which is in relation to road pricing for heavy vehicles), but believes:

- A team of Treasury officers, with a background in and strong understanding of industry and the impacts of implementing revenue neutral tax changes, should be added to the TIC process as soon as is practicable; and
- That process should publish as soon as practicable (and preferably by the last TIC meeting conducted in 2015) a clear timetable setting when the various implementation steps set out in the Harper Review are expected to be implemented.

Coastal trading

The Government has announced the outcome of the Coastal Trading Review in the 2015-16 Budget Papers. ALC believes that the next logical step, after implementing these announced reforms¹, would be to conduct the 'public interest' test proposed by Harper so that cabotage are removed from those routes for which the process provides no net public benefit.

Changes to the declaration criteria for the National Access Regime

A majority of ALC members opposes changes to the access declaration criteria suggested in recommendation 42 of the Harper Review. If anything, the criteria should be reviewed with an eye to facilitating declarations that would enhance the efficient economic use of significant national infrastructure.

Regulatory functions

A majority of ALC members believe that there should be national, and nationally consistent, economic regulation of all utilities, including road and rail. If it is unlikely that such a regulator will be created in the short term, consideration be given to the creation of a national economic regulator for the transport sector, commencing with a single rail regulator for interstate routes.

Structural Separation of the freight rail sector

ALC encourages decision makers to maintain a measured and reasonable approach when considering the issue of the structural separation of the Australian freight rail sector.

¹ Which may take place after a transition period so that policy adjustments that gives consideration to the downstream economic impacts on supply chains and business operations of domestic freight on land transport can be made.

COMPETITION POLICY REVIEW FEEDBACK TO TREASURY

The Australian Logistics Council (**ALC**) welcomes the opportunity to provide input to the Treasury on the Government's response to the Competition Policy Review (**The Harper Review**).

ALC wishes to make comment on four discrete matters discussed in the Review.

Road Pricing

Recommendation 3 of the Harper Review was:

Governments should introduce cost reflective road pricing with the aid of new technologies, with pricing subject to independent oversight and revenues used for road construction, maintenance and safety.

To avoid imposing higher overall charges on road users, governments should take a cross jurisdictional approach to road pricing. Indirect charges and taxes on road users should be reduced as direct pricing is introduced. Revenue implications for different levels of government should be managed by adjusting Australian Government grants to the States and Territories.

The Review suggested the following implementation pathway:

Introducing road pricing to fund road provision is a long-term reform that requires community confidence in the benefits to be gained.

Governments should make a long-term commitment to transform the road transport sector to operate more like other infrastructure sectors. Infrastructure providers should bill users directly for usage and base investment decisions on their economic value, supplemented by government CSO payments where necessary.

As an initial step, road funds could be set up separately to governments' general budgets to increase transparency around road funding. Fuel taxes and other indirect taxes levied on road users should be hypothecated to these road funds. Over time, as direct road charges increase, these taxes should be reduced. Australian Government grants to the States and Territories should also be adjusted in line with the fall in Australian Government revenue from fuel excise.

Within 12 months of agreeing to this recommendation, a working group of Australian Government and state and territory transport and treasury officials should be commissioned to develop pilots and trials. This working group will advise governments around: choosing technologies to allow mass time-of-use and location-based charging; creating road funds and directing revenues to these funds; and reforming road authorities to restructure their operations along the lines of other infrastructure network providers.²

ALC believes the Harper Review has identified the steps that need to be taken to develop what could be a stable and predictable revenue stream for suitable roads of national significance.

Many of these roads will be contained in the Key Freight Routes recently mapped by the Commonwealth Department of Infrastructure and Regional Development.³

ALC is aware that in May 2014 the COAG Transport and Infrastructure Council (**TIC**) agreed to commence work to implement a series of initial investment and access reform measures aimed at increasing transparency and improving the quality of services that road agencies provide to heavy vehicle operators (**the TIC process**).

ALC endorses this work (which is in relation to road pricing for heavy vehicles) but believes:

- A team of Treasury officers, with a background in and strong understanding of industry and the impacts of implementing revenue neutral tax changes, should be added to the TIC process as soon as is practicable; and
- That process should publish as soon as practicable (and preferably by the last TIC meeting conducted in 2015) a clear timetable setting when the various implementation steps set out in the Harper Review are expected to be implemented.

² Harper Review: 216

³ http://www.transportinfrastructurecouncil.gov.au/publications/freight_route_maps.aspx

Coastal Trading

Recommendation 5 of the Harper Review is:

Noting the current Australian Government Review of Coastal Trading, cabotage restrictions on coastal shipping should be removed, unless it can be demonstrated that the benefits of the restrictions to the community as a whole outweigh the costs, and the objectives of the government policy can only be achieved by restricting competition

with the Review suggesting that cabotage restrictions on coastal shipping that are not in the public interest should also be removed following the outcome of the Coastal Trading Review.⁴

ALC has made submissions to the Coastal Trading Review favouring the repeal of the coastal trading legislation.

The 2015-16 Budget Papers reveal that the Government will introduce a number of reforms for foreign flagged vessels operating in Australian waters, including:

- introducing a single Coastal Trading Permit for all ships to replace the current tiered system;
- amending legislation to allow the carriage of petroleum products;
- applying a minimum Australian senior crewing requirement for foreign ships remaining on the coast for more than 183 days in a permit period;
- reducing monthly trade reporting requirements to annual reporting;
- removing exemptions for large ships from the Coastal Trading Permit requirements;
- better aligning employment conditions for ships based in Australia with international standards; and
- making amendments to the Australian International Shipping Register to improve competition amongst foreign flagged ships

with the intention being to:

foster a more competitive coastal shipping industry that better supports the Australian economy by maximising the use of available shipping capacity on the Australian coast.⁵

ALC believes that the next logical step after implementing these announced reforms⁶ would be to conduct the 'public interest' test proposed by Harper so that cabotage is removed from those routes for which the process provides no net public benefit.

Declaration Criteria

Chapter 24 of the Harper Review deals with the National Access Regime established by Part IIIA of the *Competition and Consumer Act 2010*.

State governments have given long term leases (or propose offering leases over) Port Botany, Port Kembla and the ports of Newcastle, Melbourne, Darwin and Fremantle.

The ALC position is that the sale or long-term lease of an asset should not merely convert a public monopoly to a private monopoly. That is, sale price maximisation should not be pursued to the detriment of competition and efficient outcomes.

It follows that any analysis conducted to support either the sale or long-term lease of an infrastructure asset should consider:

- whether the proposed sale will promote competition and efficiency; and
- the need as to whether the subsequent operation of the asset should be the subject of economic regulation, so as to permit the efficient use of the asset to the benefit of the Australian community as a whole.

Unfortunately, it is increasingly clear that some governments are indeed structuring sales in a manner designed to maximise the proceeds of privatisation instead of maximising dynamic competition and productivity outcomes.

ALC members have been disappointed that some lease arrangements have had hidden provisions that have led to hidden price increases that are passed onto users post sale (such as occurred at the Port of Newcastle where users suffered 60% increases post privatisation)⁷.

ALC members have also expressed concern that the port of Melbourne attempted to raise DP World's rent by up to 800% in the run-up to the effective privatisation of the Port of Melbourne.

The Harper review said:

..... For the most part, the bottleneck infrastructure assets cited by the Hilmer Review as requiring access regulation have been regulated by industry-specific access regimes. Those regimes are either established under a co-operative legislative scheme of the States and Territories (for example, the National Electricity Law and the National Gas Law) or under a legislative scheme of individual States and Territories (for example, port regulation).

However, Part IIIA continues to provide a legislative framework upon which industry-specific access regimes are based, acting as both a model and a 'back stop'. Its legislative provisions are a model upon which industry specific access regimes have been developed. It also operates as a back stop to access regimes implemented through access undertakings accepted under Part IIIA (such as the ARTC rail track) or access regimes implemented under state and territory laws and certified as effective under Part IIIA. The undertaking and certification

4 Harper Review:210

5 2015-16 Budget Paper 2: 132

6 Which may take place after a transition period so that policy adjustments that gives consideration to the downstream economic impacts on supply chains and business operations of domestic freight on land transport can be made.

7 And has led to Glencore Coal to seek a Part IIIA access declaration for the Port of Newcastle.

processes exempt the relevant facility from declaration under Part IIIA.⁸

A majority of ALC members believe that Part IIIA is more than a mere backstop.

ALC members are mainly national operations, many using a number of Australian ports.

There can be significant regulatory costs arising if members are expected to engage with different subnational governments, each with its own unique economic regulation package designed to achieve unique policy outcomes or using unique methodologies when jurisdictional regulators making access and/or pricing decisions under local laws.

It is therefore important that Part IIIA is retained and:

- designed in a manner that facilitates the economically efficient operation of infrastructure; and
- provides a **consistent** approach to access regulation in each industry

that is, deliver the object of Part IIIA.⁹

ALC therefore notes the proposal to changes in access declaration criteria contained in:

- criteria (a), which requires a decision maker to compare access against existing terms of access (if any) rather than assuming no access is being provided, that the application would promote a *substantial* increase in competition (rather than a *material* increase) in a market that is *nationally significant* (a change which has the potential to exclude consideration of increases in competition in smaller or regional markets; and
- criteria (f), which is changed from a test that the decision maker needs to be satisfied an access declaration would *not be contrary to the public interest* to one in which the decision maker would need to be satisfied the test would *promote* the public interest – that is, the imposition of a positive onus.

The Harper Review says:

The Panel agrees with the conclusion of the recent Productivity Commission (PC) inquiry that the National Access Regime is likely to generate net benefits to the community, but that its scope should be confined to ensure its use is limited to the exceptional cases, where the benefits arising from increased competition in dependent markets are likely to outweigh the costs of regulated third-party access.

Unfortunately, most ALC members cannot agree that the Regime should be restricted to 'exceptional cases'. It should be used to ensure the economically efficient operation of bottleneck infrastructure.

The objects of Part IIIA should be advanced by the access declaration criteria – not frustrated.

A majority of ALC members therefore opposes changes to the access declaration criteria suggested in recommendation 42 of the Harper Review. If anything, the criteria should be reviewed with an eye to facilitating declarations that would enhance the efficient economic use of significant national infrastructure.

Regulatory functions

Recommendation 50 of the Harper Review suggests that a number of functions currently performed by the ACCC should be transferred to a single national Access and Pricing Regulator:

ALC said in its submission to Harper:

In the submission to the Harper Review, ALC notes the Panel's recommendation on pages 295-297 of the Draft Report for a single national access regulator for utilities. ALC has long supported the idea of national institutions being responsible for the seamless administration of services essentially provided within a national market.

For that reason, it has supported the establishment of institutions such as the National Heavy Vehicle Regulator and the Office of National Rail Safety, and is attracted to the establishment of a body suggested by the Panel. ALC notes that the Productivity Commission considered such an idea in its Draft Report on Public Infrastructure, before recommending that roads be funded using the 'building block' methodology with funds drawn from state based road funds. As a first step, a single economic rail regulator could be established.

A majority of ALC members believe there should be national economic regulation of all utilities, including road and rail, and reaffirms its view that if it is unlikely that such a regulator will be created in the short term, consideration be given to the creation of a national economic regulator for the transport sector, commencing with a single rail regulator for interstate routes.

Structural Separation of the freight rail sector¹⁰

Finally, ALC members have differing views on the structural separation of the Australian freight rail sector.

ALC encourages decision makers to maintain a measured and reasonable approach when considering this issue.

Australian Logistics Council

May 2015

8 Page 426

9 See section 44AA of the Competition and Consumer Act 2010

10 Discussed in the Harper Review at pages 211-12



ALC MEMBERS

Corporate Members



Associates



National Sponsors



Honorary Fellows

- Ingilby Dickson, March 2015
- Ian Murray AM, March 2012
- Paul Little AO, February 2011

- Peter Gunn AM, February 2011
- Ivan Backman AM, May 2010
- David Williams OAM, May 2010

Current at May 2015