

1991

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

NATIONAL ROAD TRANSPORT COMMISSION BILL 1991

EXPLANATORY MEMORANDUM

(Circulated by authority of  
the Minister for Transport and Communications,  
the Hon Kim C Beazley, MP)



## NATIONAL ROAD TRANSPORT COMMISSION BILL 1991

### OUTLINE

The purpose of this Bill is to establish the National Road Transport Commission. Heads of Government at the July 1991 Special Premiers' Conference agreed to the establishment of a National Road Transport Commission to facilitate reform of the road transport industry.

The legislation sets in place the framework under which the Commission will operate. The Commission will be established by Commonwealth legislation as an independent statutory authority responsible to a Ministerial Council.

The Ministerial Council will consist of a Minister representing each of the States, the Australian Capital Territory and the Commonwealth Government. Each Minister has equal representation on the Council.

The legislation provides for three independent part-time commissioners to be appointed to the Commission by the Governor-General for a term of up to three years. From the three commissioners, one will be appointed as Chairperson of the Commission and another as Deputy Chair. Appointment of Commissioners will be subject to the approval of the Ministerial Council.

Provision has been made for the appointment by the Commission of a Chief Executive Officer and for the acquisition by the Commission of other staff and the engaging of consultants as required.

Remuneration for the Commissioners and the Chief Executive Officer will be subject to a determination by the Remuneration Tribunal or by the Ministerial Council. Other staff can be employed under a range of conditions depending on whether they are transferring or being seconded to the Commission from Commonwealth or State authorities, or employed under contract or consultancy.

In addition to those set out in the legislation, the Commission will have the functions and powers set out in the Heads of Government Agreement which is a Schedule to the legislation.

The Commission will be required to investigate and make recommendations to the Ministerial Council regarding the establishment of a national heavy vehicle registration scheme and the introduction of nationally consistent heavy vehicle regulations and charging.

Should the recommendations of the Commission be approved by the Ministerial Council, legislation to bring the recommendations into effect will be enacted by the Commonwealth to apply to the Australian Capital Territory. The participating States will pass complementary legislation.

The Commission is also required under this Bill to consult with government, industry, representatives of rural and remote Australians and any other relevant parties in the course of preparing its recommendations.

The Commission will be funded by the Commonwealth and by the States and Territories.

The Commission will also be required to provide reports to the Council on the performance of its functions and finances.

This legislation establishing the Commission will cease to be in force after six years. At least six months prior to this, the Commission is required to make a recommendation as to whether the legislation should be re-enacted.

#### FINANCIAL IMPACT STATEMENT

The establishment and running costs of the NRTC will be jointly funded by the Commonwealth and the States and Territories party to the Heads of Government Agreement. At the first Ministerial Council meeting it was agreed that the Commonwealth would contribute a 35 per cent fixed share of costs with the remainder being shared by the States and Territories based on heavy vehicle registrations. It is anticipated that the NRTC's annual budget will total \$3 - 4 million. The Commonwealth has included a provision of \$1 million in this year's Budget as its contribution to the establishment and maintenance of the Commission in 1991-92.

## NOTES ON CLAUSES

### PART 1 - PRELIMINARY

#### Clause 1 - Short title

The short title of the Act will be the *National Road Transport Commission Act 1991*.

#### Clause 2 - Commencement

The proposed Act will commence on the day on which it receives the Royal Assent.

#### Clause 3 - Interpretation

This clause defines a number of terms for purposes of the proposed Act.

### PART 2 - ESTABLISHMENT AND MEMBERSHIP OF THE NATIONAL ROAD TRANSPORT COMMISSION

Part 2 of the Bill (clauses 4 - 6) provides for the establishment and membership of the National Road Transport Commission (NRTC).

#### Clause 4 - Establishment of National Road Transport Commission

This clause provides for the establishment of the NRTC which will be a body corporate with the usual attributes (perpetual succession, a common seal, capacity to acquire and dispose of property and capacity to sue and be sued in its corporate name). The NRTC will be responsible for its common seal.

Courts, judges and other persons authorised to receive evidence must:

- (a) take judicial notice of the common seal of the NRTC
- (b) presume that any imprint of the seal was properly affixed.

#### Clause 5 - Membership of the Commission

This clause provides that the NRTC is to consist of three members. The NRTC will be able to perform its functions and exercise its powers provided there is not more than one vacancy in the Commission's membership.

#### **Clause 6 - Appointment of members**

This clause provides that members of the NRTC are to be appointed by the Governor-General on a nomination of the Ministerial Council. The nomination requires the agreement of two-thirds or more of the members of the Ministerial Council. A member of the NRTC is not eligible to be reappointed if he or she has previously been appointed as a member on two occasions.

#### **Clause 7 - Chairperson and Deputy Chairperson of Commission**

This clause provides that the Chairperson and Deputy Chairperson of the NRTC are to be appointed from the members of the NRTC by the Governor-General on a nomination of the Ministerial Council. The nomination requires the majority agreement of the Ministerial Council. Such appointees will hold office for as long as they are members of the NRTC.

#### **PART 3 - FUNCTIONS AND POWERS OF COMMISSION**

Part 3 of the Bill (clauses 8 - 11) provides for the functions and powers of the NRTC.

#### **Clause 8 - Functions and powers of Commission**

This clause provides that the NRTC is to have such functions and powers as conferred on it by the Agreement which is a schedule to the Bill. In accordance with the Agreement, the NRTC's powers will include the making of recommendations to the Ministerial Council for new laws or for amendment to existing laws relating to heavy vehicle regulation, registration or charging. This proposed Act can only confer functions and powers insofar as those functions and powers are within the scope of the Commonwealth's legislative powers.

The NRTC will also have such functions and powers as are conferred on it by:

- the Bill;
- by other Commonwealth laws;
- by or under a law of a State or Territory that is a party to the Agreement;
- by the Minister on the recommendation of the Ministerial Council;
- by a State or Territory Minister on the recommendation of the Ministerial Council and with the Minister's written consent.

The NRTC will be empowered to do whatever is necessary for the performances of its functions or reasonably incidental thereto. It will be required to perform its functions and exercise its powers in accordance with the Agreement.

The NRTC is specifically empowered to do acts in the Australian Capital Territory and the Jervis Bay Territory in performing powers or exercising functions conferred on it.

#### **Clause 9 - Reports and Advice to be provided to the Ministerial Council**

This clause provides for the provision by the NRTC of reports to the Ministerial Council as required or directed by the Council.

#### **Clause 10 - Consultation**

This clause provides that, in the performance of its functions and the exercise of its powers, the NRTC must wherever appropriate and practicable consult with all interested parties. In particular, it must consult with:

- governments and government bodies at all levels;
- representatives of industries, including the road transport industry; and
- representatives of people who live in rural and remote areas.

#### **Clause 11 - Committees**

This clause provides the NRTC with the power to set up committees to examine specific aspects of its functions or powers which will assist it in the performance of its functions or the exercise of those powers. Such committees may consist wholly of NRTC members or non-NRTC members or a combination of both.

The NRTC can determine as necessary the terms and conditions of appointment of members of committees and committee operating procedures. Any remuneration or allowances payable to a member of a committee is to be paid out of NRTC funds.

### **PART 4 - ADMINISTRATIVE PROVISIONS**

#### ***Division 1 - Provisions relating to members***

Division 1 of Part 4 (clauses 12 - 20) deals with provisions relating to members of the NRTC.

**Clause 12 - Members hold office on part-time basis**

This clause provides that members of the NRTC are to be part-time.

**Clause 13 - Term of appointment not to exceed 3 years.**

This clause provides that a member of the NRTC will hold office for such period not exceeding 3 years as is specified in the instrument of his or her appointment. A member may be reappointed at the conclusion of his or her period of membership unless, in accordance with subclause 6(3), that person has previously been appointed as a member on 2 occasions.

**Clause 14 - Remuneration and allowances of members**

This clause provides that an NRTC member is to be paid such remuneration as is determined by the Remuneration Tribunal or if no Tribunal determination is operative, such remuneration as the Ministerial Council determines. Members are to be paid such allowances as the Ministerial Council determines.

A determination of either remuneration or allowances by the Ministerial Council must be in writing and is a disallowable instrument. Remuneration and allowances to members are to be paid out of the NRTC's funds.

Section 14, other than subsection (4), is to have effect subject to the *Remuneration Tribunal Act 1973*.

**Clause 15 - Members may receive other benefits**

This clause provides that the Ministerial Council may determine additional benefits to be provided to NRTC members. These benefits will include benefits that in the opinion of the Ministerial Council are necessary or desirable to assist the members or place the members in a position that may facilitate the performance of their functions. In addition NRTC members will be able to be reimbursed for any loss of expenditure incurred by reason of, or in the course of, the performance of their functions. The determination must be in writing and is a disallowable instrument. Benefits determined to be payable to members are to be paid out of the NRTC's funds.

**Clause 16 - Leave of absence**

This clause provides that the Ministerial Council, by a majority vote, may grant a member leave of absence from a meeting of the NRTC.

#### Clause 17 - Resignation

This clause provides that an NRTC member may resign in writing signed and delivered to the Governor-General. By virtue of clause 7, where a member who is either the Chairperson or the Deputy Chairperson resigns as a member, that person automatically ceases to be the Chairperson or Deputy Chairperson.

#### Clause 18 - Termination of appointment

This clause provides that the Governor-General may, on the recommendation of the Ministerial Council, requiring a two-thirds or more majority vote in favour, terminate the appointment of an NRTC member because of misbehaviour or physical or mental incapacity or where the member:

- is absent without leave granted under clause 16 from 3 consecutive meetings of the NRTC; or
- fails, without reasonable excuse, to comply with his or her obligations to disclose pecuniary interests or conflicts of interest as required by clause 25.

#### Clause 19 - Terms and conditions not provided for by Act

This clause provides that the Ministerial Council may determine additional terms and conditions to apply to an NRTC member.

#### Clause 20 - Acting appointments

This clause provides that when the position of Chairperson is vacant or the Chairperson is absent from duty, the Deputy Chairperson will act as Chairperson. The Ministerial Council, based on a vote of a two-thirds or more majority, will be able to appoint acting members when there are less than 3 members or when members are absent. The appointment of a person acting as member, Chairperson or Deputy Chairperson during a vacancy of office will not be able to continue for more than 12 months.

The actions of acting appointees would not be invalid on the ground that:

- the occasion for the person's appointment to act had not arisen; or
- there is a technical defect or irregularity in connection with the person's appointment; or
- the person's appointment had ceased to have effect; or
- the occasion for the person to act had not arisen or had ceased.



### ***Division 2 - Meetings***

Division 2 of Part 4 of the Bill (clauses 21 - 25) deals with provisions for meetings of the NRTC.

#### **Clause 21- Convening of meetings**

This clause provides that the NRTC is to hold meetings as required for the efficient performance of its functions. The Chairperson is to convene such meetings as he or she thinks necessary or as requested in writing by the other 2 members.

#### **Clause 22- Procedure at meetings**

This clause provides that the Chairperson is to preside at all NRTC meetings at which he or she is present. If the Chairperson is not present at a meeting, the Deputy Chairperson is to preside. The Commission may regulate the conduct of proceedings and is to keep minutes of those proceedings.

#### **Clause 23 - Quorum**

This clause provides that a quorum for a meeting will be 2 NRTC members.

#### **Clause 24 - Voting at meetings**

This clause provides that questions arising at a meeting will be determined by a majority of members present and voting.

#### **Clause 25 - Disclosure of interests**

This clause provides where a member has a pecuniary or other interest in a matter that is being considered, or is about to be considered, by the NRTC, the member is to disclose the interest at a meeting of the NRTC. The disclosure should be recorded in the minutes of the meeting and unless determined otherwise by the Ministerial Council the member should not take part, or continue to take part in the matter (in which case the member must withdraw from determining the matter) or continue to be present during determination of the matter.

### **PART 5 - CHIEF EXECUTIVE OFFICER, STAFF AND CONSULTANTS**

#### ***Division 1 - Chief Executive Officer***

Division 1 of Part 5 of the Bill (clauses 26 - 30) deals with the provisions for the Chief Executive Officer of the NRTC.

#### Clause 26 - Chief Executive Officer

This clause provides that the NRTC will appoint a Chief Executive Officer to manage the affairs of the NRTC according to the directions and policies determined by the NRTC. All undertakings by the Chief Executive Officer in the name of, or on behalf of the NRTC will be taken to have been done by the NRTC.

#### Clause 27 - Remuneration and allowances

This clause enables the Chief Executive Officer to be paid such remuneration as is determined by the Remuneration Tribunal or if no Tribunal determination is operative, such remuneration as the NRTC determines. The NRTC will determine allowances to be paid to the Chief Executive Officer. A determination of remuneration or allowances by the NRTC must be in writing under its common seal and must be approved by the Ministerial Council in accordance with Agreement.

All remuneration and allowances payable to the Chief Executive Officer are to be paid out of the NRTC's funds.

Section 27, other than subsection (4) is to have effect subject to the *Remuneration Tribunal Act 1973*.

#### Clause 28 - Chief Executive Officer may receive other benefits

This clause provides that the NRTC may determine additional benefits to be provided to the Chief Executive Officer. These benefits will include benefits that in the opinion of the NRTC are necessary or desirable to assist the Chief Executive Officer or place the Chief Executive Officer in a position that may facilitate the performance of his or her functions. Benefits determined to be payable to Chief Executive Officer are to be paid out of the NRTC's funds. The determination does not have effect unless approved by the Ministerial Council by resolution. The resolution requires the majority vote of the Ministerial Council.

#### Clause 29 - Leave of absence

This clause enables the Chief Executive Officer to receive such recreation leave entitlements as are determined by the Remuneration Tribunal, subject to section 87E of the *Public Service Act 1922*. The NRTC may, in writing under its common seal, grant the Chief Executive Officer leave of absence from duty, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the NRTC specifies.

**Clause 30 - Terms and conditions not provided for by Act**

This clause provides that the NRTC may determine additional terms and conditions to apply to the Chief Executive Officer.

***Division 2 - Staff and consultants***

Division 2 of Part 5 of the Bill (clauses 31 - 34) deals with provisions for staff and consultants.

**Clause 31 - Public service staff of the Commission**

This clause provides that, subject to Division 2, NRTC staff will be Commonwealth public servants or Commonwealth public office holders appointed or employed under the Public Service Act 1922. The Chief Executive Officer will have the same powers as a Secretary of a Commonwealth Department over NRTC staff employed under the Public Service Act.

**Clause 32 - Non-public service staff**

This clause provides that the NRTC may also employ persons on contract under terms and conditions of employment as the NRTC determines.

**Clause 33 - Staff seconded to the Commission**

This clause provides that the NRTC may make arrangements with Commonwealth Departments and authorities or with State and Territory Departments and authorities to have their staff seconded to the NRTC.

**Clause 34 - Consultants**

This clause provides that the NRTC will be able to engage special consultants to assist it under terms and conditions determined by the NRTC.

**PART 6 - FINANCE**

Part 6 of the Bill (clauses 35 - 40) deals with the finance provisions of the NRTC.

**Clause 35 - Payments to Commission by Commonwealth**

This clause provides that the NRTC is to be paid such money as the Parliament appropriates for the NRTC's purposes. The Minister for Finance will be able to give directions about the amounts in which, and the times at which, appropriated funds are to be paid to the NRTC.

**Clause 36 - Payments to Commission by States and Territories**

This clause provides that the NRTC will be able to receive money paid to it by a State or Territory.

**Clause 37 - Money of the Commission**

This clause provides that the NRTC's money will consist of money appropriated by an Act of Parliament, paid to it by a State or Territory and any other money paid to the NRTC.

**Clause 38- Application of money of the Commission**

This clause provides that the NRTC's money is to be applied to pay the expenses, charges, obligations or liabilities of the NRTC and any remuneration, allowances or benefits payable under this Act.

**Clause 39 - Estimates**

This clause requires the NRTC to prepare estimates of receipts and expenditure for each financial year in such form as the Ministerial Council directs. The NRTC will also have to submit estimates to the Ministerial Council for other periods if the Ministerial Council so directs. Those estimates are to be submitted on the date that the Ministerial Council directs.

The moneys of the NRTC will only be able to be expended in accordance with estimates approved by the Ministerial Council unless the Council agrees otherwise.

A direction or approval of the Ministerial Council in this section is to be given by resolution. The resolution requires a majority vote of the Ministerial Council.

**Clause 40 - Application of Division 3 of Part XI of the Audit Act**

This clause provides that the NRTC will be a public authority to which Division 3 of Part XI of the Audit Act 1901 applies. That Division requires an authority to:

- open bank accounts with approved banks;
- keep proper accounts and records of its transactions and affairs;
- have those accounts audited by the Auditor-General; and
- submit an annual report and financial statement to the responsible Minister.

**Clause 41 - Special provisions relating to reports etc.  
prepared under the Audit Act**

The effect of this is that the NRTC will be required to provide an annual report to the Ministerial Council as soon as practicable after 30 June in each year. That annual report should also include information required by the Agreement.

All members of the Ministerial Council must be provided with copies of the annual report as soon as practicable after the end of the financial year to which it relates.

**PART 7 - MISCELLANEOUS**

Part 7 of the Bill (clauses 42 - 47) deals with various miscellaneous matters.

**Clause 42 - Delegation by Commission**

This clause provides the NRTC with the power to delegate its functions to a member of the NRTC or an officer or employee of the NRTC (covering public servants working for the NRTC, persons employed under contract and staff seconded to the NRTC from other Government agencies). The NRTC must not delegate a function to a person other than outlined above unless the Ministerial Council has consented to the delegation by resolution. The resolution requires the agreement of the majority of the Ministerial Council. The NRTC's powers under this provision to delegate functions and powers are limited to those within the scope of Commonwealth legislative power.

**Clause 43 - Delegation by Ministerial Council**

This clause provides that the Ministerial Council may delegate all or any of the its functions and powers to a member of the Ministerial Council. A delegation must be agreed to unanimously by members of the Ministerial Council in writing. A delegation by the Ministerial Council can be varied or revoked by unanimous agreement of members of the Ministerial Council in writing at any time.

Where the Ministerial Council has agreed to a delegation, the delegation will continue in force even if there is a change in the membership of the Ministerial Council.

Any Ministerial Council delegation that is to be performed or exercised by resolution must be performed by the delegate in writing.

**Clause 44 - Acts done by Ministerial Council**

Production of a certificate signed by or on behalf of the Ministerial Council stating an action or opinion of the Council will be evidence of the Ministerial Council's action or opinion.

Production of a certificate endorsed by the Ministerial Council, that a specified person is authorised to sign certificates on behalf of the Council will be evidence of the bearer's authority.

The determinations of the Ministerial Council will not be rendered invalid by a change in the Council's membership.

**Clause 45 - Regulations**

This clause provides that the Governor-General may make regulations for the purposes of the proposed Act.

**Clause 46 - Act ceases to be in force 6 years after commencement**

This clause provides that the proposed Act will cease to be in force 6 full years after its commencement. Before the Act ceases to be in force, the assets and liabilities of the NRTC should be dealt with as determined by the Ministerial Council in accordance with a resolution of all members of the Ministerial Council.

**Clause 47 - Commission to consider whether this Act should continue in force or be re-enacted**

This clause provides that at least 6 months before the proposed Act is due to cease, the NRTC must provide each head of government party to the Agreement with a report in writing recommending either that:

- the proposed Act should cease to be in force and should not be re-enacted; or
- the proposed Act should continue in force, or should be re-enacted, for a further period not exceeding 6 years, in such manner as the NRTC considers appropriate.



