



SUBMISSION

# Independent price regulation of heavy vehicle charges

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The Business Council of Australia is a forum for the chief executives of Australia's largest companies to promote economic and social progress in the national interest.

## About this submission

This is the Business Council of Australia's submission to the Department of Infrastructure and Regional Development's 'Independent price regulation of heavy vehicle charges' discussion paper. The Business Council supports the implementation of Heavy Vehicle Road Reform by Australia's governments, which will lead to more efficient provision and use of road transport infrastructure.

To this effect, the Business Council's submission makes the following four key recommendations:

1. The introduction of direct heavy vehicle charging should occur within five years, and the scheme should be extended to all other vehicles in line with the Infrastructure Australia recommended time line.
2. The independent price regulation for heavy vehicle charges should be carried out through a national framework. In the absence of a national pricing and access regulator, the ACCC is currently the preferred body for this function.
3. The independent price regulation for heavy vehicle charges should include access to both merits review and judicial review.
4. The framework for the independent price regulation for heavy vehicle charges should be designed so that it can eventually be expanded to all vehicles on Australian roads.

## Background on Heavy Vehicle Road Reform

As Infrastructure Australia has correctly noted, the existing approach to charging for road use is not generally well-understood. Many road users regard roads as a free resource, or at least free at the point of use<sup>1</sup>. At present, heavy vehicle operators pay a combination of an annual vehicle registration charge and fuel-based road user charges. The revenue raised by registration charges is collected by state and territory governments, while the revenue from the fuel excises is collected by the federal government.

While this framework is relatively simple to administer, it suffers from limitations:

- The system makes it difficult for governments to make road investment decisions because, in the absence of price signals, road investment decisions cannot draw upon road network demand data that would indicate where increased capacity is warranted<sup>2</sup>,
- Annual vehicle registration charges fail to properly distinguish between heavy and light road users and poorly align with the costs imposed or the benefit obtained by users of Australia's road network, and
- The fuel excise revenue base will continue to be eroded as vehicles become more fuel-efficient and as the electrification of Australia's vehicle fleet gathers pace. Inequity among road users will grow because users of electric vehicles will not pay fuel excise.

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<sup>1</sup> Infrastructure Australia, Australia's Infrastructure Plan, February 2016, p. 87

<sup>2</sup> Productivity Commission 2014, Public Infrastructure, Canberra, p. 145.

Despite recognition of the above limitations, road funding is one of the least reformed of all infrastructure sectors, with the policy framework relatively unchanged over the past few decades. That is why the Heavy Vehicle Road Reform body of work that is being undertaken by the National Transport Council is so important.

With fiscally constrained governments and an infrastructure deficit hurting our national productivity, the Business Council supports the reform road map agreed by the Transport and Infrastructure Council in May 2015 and the work that has already been done to improve transparency around expenditure, investment and service delivery. As explained below, the Business Council believes that this reform momentum must be continued through the implementation of a framework for the independent price regulation of heavy vehicle charges.

## Policy discussion

### 1. The transition to the new system should progress quickly

Over the past decade, the Productivity Commission<sup>3</sup>, Infrastructure Australia<sup>4</sup>, the Henry Review<sup>5</sup> and the Harper Review<sup>6</sup> have all come out in favour of introducing road user charges in Australia. Since the Intergovernmental Agreement on Heavy Vehicle Regulatory Reform in August 2011<sup>7</sup>, there has been in place broad political agreement between federal, state and territory governments to reform the way in which heavy vehicle user charges are set and collected.

It is rare that a policy proposal of this nature will attract such broad agreement amongst so many stakeholders and so it is vital that this momentum is not lost implementing a properly designed framework.

In early 2016, Infrastructure Australia recommended that the introduction of direct heavy vehicle charging within five years, and direct user charging for all vehicles within 10 years, alongside the removal of existing taxes and charges, should be a priority for Australia's governments.<sup>8</sup> The Business Council agrees that such a timeline is desirable and the independent price regulation of heavy vehicle charges is an important first step.

While there are some key design questions that policy makers need to decide upon before independent price regulation for heavy vehicle charges is implemented, there are numerous industries where similar reform processes have been undertaken and the lessons learnt from these experiences should be drawn upon.

***Policy recommendation 1:*** *The introduction of direct heavy vehicle charging should occur within five years, and the scheme should be extended to all other vehicles in line with the Infrastructure Australia recommended time line.*

### 2. The ACCC is the appropriate regulatory body for this role

In terms of which entity should be responsible for the independent price regulation for heavy vehicle charges, the Business Council supports Option 1, the ACCC.

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<sup>3</sup> Productivity Commission 2014, Public Infrastructure, Inquiry Report No. 71, Canberra. p. 150

<sup>4</sup> Infrastructure Australia, Australia's Infrastructure Plan, February 2016, p. 84

<sup>5</sup> Australia's future tax system: Report to the Treasurer (Part Two), December 2009, p. 373

<sup>6</sup> Competition Policy Review, Final Report, March 2015, p. 38

<sup>7</sup> Council of Australian Governments, Intergovernmental Agreement on Heavy Vehicle Regulatory Reform, August 2011

<sup>8</sup> Infrastructure Australia, Australia's Infrastructure Plan, February 2016, p. 84

Independent price regulation for heavy vehicle charges should be carried out through a national framework and administered by a national regulator.

The Competition Policy Review recommended the introduction of a separate national pricing and access regulator that would support functional separation, create a centre of excellence for access regulation and, in time, lead to greater national consistency for businesses operating across jurisdictions.

While this proposal has merit, the government has yet to decide if it will adopt the Review's recommendation. If a new national pricing and access regulator were to be established then it would be the preferred body for the independent price regulation for heavy vehicle charges. But in the absence of such a body, the ACCC should be responsible for performing the role.

As outlined by the government in the discussion paper, entrusting the ACCC with this function has numerous advantages. There is potential to establish a dedicated entity focussed on road pricing with access to the ACCC's resources and expertise (such as the role played by the Australian Energy Regulator in the energy industry).

***Policy recommendation 2:*** *The independent price regulation for heavy vehicle charges should be carried out through a national framework. In the absence of a national pricing and access regulator, the ACCC is currently the preferred body for this function.*

### **3. An appeal process should be established at the outset**

As with any form of economic regulation there is a risk that regulatory errors will occur in the setting of road user charges. A merits review process should be established to allow decisions made by the regulator to be reviewed.

When a policy decision is made by a minister, merits review is not generally considered appropriate because elected officials (the executive branch of government) are held to account by the parliament.

However, merits review plays an important role when pricing decisions are being made by statutory authorities like the ACCC. These bodies are delegated their authority by parliament and are not subject to the same parliamentary accountability as Ministers. It is therefore considered best practice for the decisions of statutory authorities to be subject to merits review. This distinction was clearly articulated by the Productivity Commission in 2013:

The argument for limiting review rights to judicial review does not apply when the decision is made by a delegate (and the decision is not able to be reconsidered), or made by an independent body or an assessment manager, since these bodies are not elected officials and are not accountable to Parliament in a way that a Minister is.

Thus, there is no in-principle reason why another independent body (such as a tribunal or court) should not be able to review these decisions through limited merits review. Limited merits review (along with judicial review) is a desirable way of holding decision makers to account.<sup>9</sup>

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<sup>9</sup> Productivity Commission Research Report. Major Project Development Assessment Process, November 2013, p. 266

The ability to seek independent review of regulatory decisions is the cornerstone of an accountable, transparent and efficient regulatory regime. The Business Council has expressed its concerns at recent policy announcements that will limit the ability of asset owners in the energy sector to seek independent merits review of regulatory decisions.<sup>10</sup>

***Policy recommendation 3:*** *The independent price regulation for heavy vehicle charges should include access to both merits review and judicial review.*

#### **4. The ability of the framework to evolve must be considered now**

In designing a policy framework to ensure heavy vehicle charges are efficient and transparent, it is vital that policy makers design a road user charging framework that can eventually be expanded to apply to all vehicles on Australia's roads.

In February 2016, Infrastructure Australia recommended that the Australian Government should initiate a public inquiry into the existing funding framework for roads and development of a road user charging reform pathway.<sup>11</sup> The Business Council agrees that such a public enquiry is required, as road user pricing is a major microeconomic reform and it is crucial that it is done properly.

***Policy recommendation 4:*** *The framework for the independent price regulation for heavy vehicle charges should be designed that so that can eventually be expanded to all vehicles on Australian roads.*

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<sup>10</sup> Media Release, "Energy policies must support new investment" Business Council of Australia, 20 June 2017

<sup>11</sup> Infrastructure Australia, Australia's Infrastructure Plan, February 2016, p. 87

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