



# National Road Transport Commission Act 1991

No. 8 of 1992

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## AGREEMENT



# **National Road Transport Commission Act 1991**

**No. 8 of 1992**

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## **An Act to establish a National Road Transport Commission**

*[Assented to 15 January 1992]*

The Parliament of Australia enacts:

### **PART 1—PRELIMINARY**

#### **Short title**

- 5     1. This Act may be cited as the *National Road Transport  
Commission Act 1991*.

#### **Commencement**

2. This Act commences on the day on which it receives the Royal Assent.

## **Interpretation**

3. In this Act, unless the contrary intention appears:
- “Agreement”** means the agreement made on 30 July 1991 between the Commonwealth, the States and the Australian Capital Territory, a copy of which is set out in the Schedule; 5
- “Chairperson”** means the Chairperson of the Commission;
- “Chief Executive Officer”** means the Chief Executive Officer of the Commission;
- “Commission”** means the National Road Transport Commission established by section 4; 10
- “Deputy Chairperson”** means the Deputy Chairperson of the Commission;
- “head of government”**, in relation to a party to the Agreement, means:
- (a) in the case of the Commonwealth—the Prime Minister; or
  - (b) in the case of a State—the Premier of the State; or 15
  - (c) in the case of a Territory—the Chief Minister of the Territory;
- “member”** means a member of the Commission;
- “Ministerial Council”** means the Ministerial Council for Road Transport established by the Agreement;
- “staff member”** means: 20
- (a) the Chief Executive Officer; or
  - (b) a member of the staff referred to in section 31; or
  - (c) a person employed under section 32; or
  - (d) any of the officers, employees and persons who, under section 33, are to assist the Commission. 25

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

### **Establishment of National Road Transport Commission**

- 4.(1)** A National Road Transport Commission is established.
- (2)** The Commission: 30
- (a) is a body corporate with perpetual succession; and
  - (b) is to have a common seal; and
  - (c) may acquire, hold and dispose of real and personal property; and
  - (d) may sue and be sued. 35
- (3)** The common seal of the Commission is to be kept in such custody as the Commission directs, and is not to be used except as authorised by the Commission.

- (4) All courts, judges and persons acting judicially must:
  - (a) take judicial notice of the imprint of the common seal of the Commission appearing on a document; and
  - (b) presume the imprint was duly made.

## **5 Membership of Commission**

**5.(1)** The Commission consists of 3 members.

(2) The Commission may perform its functions and exercise its powers unless there is more than one vacancy in the Commission's membership.

## **10 Appointment of members**

**6.(1)** The members of the Commission are to be appointed by the Governor-General on the nomination of the Ministerial Council.

(2) A nomination of a person for appointment as a member is to be made by resolution of the Ministerial Council carried in accordance with the Agreement.

(3) A person must not be appointed as a member if he or she has previously been appointed as a member on 2 occasions.

## **Chairperson and Deputy Chairperson of Commission**

**7.(1)** The Governor-General is to appoint, on the nomination of the Ministerial Council, a Chairperson and a Deputy Chairperson of the Commission from among the members.

(2) A nomination of a member for appointment as the Chairperson or Deputy Chairperson is to be made by resolution of the Ministerial Council carried in accordance with the Agreement.

(3) The member who is the Chairperson or Deputy Chairperson ceases to be the Chairperson, or the Deputy Chairperson, as the case may be, if he or she ceases to be a member.

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

### **Functions and powers of Commission**

- 8.(1)** The Commission has the following functions and powers:
- (a) the functions and powers that the Agreement provides for it to have;
  - (b) functions and powers conferred on it by or under this Act (other than this section);
  - (c) functions and powers conferred on it by or under other laws of the Commonwealth;
  - (d) functions and powers expressed to be conferred on it by or under a law of a State or Territory that is a party to the Agreement;

- (e) functions and powers that are, with the consent of the Ministerial Council, conferred on the Commission by writing signed by the Minister;
  - (f) functions and powers that are, with the consent of the Ministerial Council, expressed to be conferred on the Commission by writing signed by:
    - (i) a Minister of the Crown of a State that is a party to the Agreement; or
    - (ii) a Minister of a Territory that is a party to the Agreement.
- (2) A consent for the purposes of paragraph (1)(e) or (f) is to be given by resolution of the Ministerial Council carried in accordance with the Agreement.
- (3) The Commission has power to do whatever is necessary for or in connection with, or reasonably incidental to, the performance of its functions.
- (4) The Commission also has power to do acts in the Australian Capital Territory or the Jervis Bay Territory in the performance or exercise of a function or power expressed to be conferred as mentioned in paragraph (1)(d) or (f).
- (5) The Commission is to perform its functions and exercise its powers in accordance with the Agreement (so far as applicable) and is to comply in all respects with the provisions of the Agreement that are applicable to it.

#### **Reports and advice to be provided to the Ministerial Council**

- 9.(1) The Commission is to provide to the Ministerial Council such reports relating to the performance or exercise of the Commission's functions or powers as the Ministerial Council directs.
- (2) The Ministerial Council may direct the Commission to provide advice about any matter related to the functions or powers of the Commission or of the Ministerial Council.
- (3) A direction under subsection (1) or (2) is to be given by resolution of the Ministerial Council carried in accordance with the Agreement.

#### **Consultation**

10. In the performance of its functions and the exercise of its powers, the Commission must, where it is appropriate and practicable to do so, consult with:
- (a) governments and government bodies; and
  - (b) representatives of industries, including the road transport industry; and
  - (c) representatives of people who live in rural or remote areas of Australia; and

- (d) other interested people, bodies and organisations.

### **Committees**

5      11.(1) The Commission may constitute committees for the purpose of assisting the Commission in the performance of its functions and the exercise of its powers.

(2) A committee may be constituted:

- (a) wholly by members; or
- (b) wholly by persons who are not members; or
- (c) partly by members and partly by other persons.

10      (3) The terms and conditions of appointment of members of a committee, and the procedures under which a committee is to operate, are to be as determined by the Commission from time to time.

15      (4) Remuneration and allowances (if any) to which a member of a committee is entitled as such a member are to be paid out of the money of the Commission.

## **PART 4—ADMINISTRATIVE PROVISIONS**

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

#### **Members hold office on part-time basis**

12. The members hold office on a part-time basis.

#### **20      Term of appointment not to exceed 3 years**

13. A member holds office for such period, not exceeding 3 years, as is specified in the instrument appointing the member.

#### **Remuneration and allowances of members**

25      14.(1) The members are to be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration is in force, are to be paid such remuneration as is determined by the Ministerial Council.

(2) A member is to be paid such allowances as are determined by the Ministerial Council.

30      (3) A determination by the Ministerial Council under subsection (1) or (2):

- (a) must be made by writing signed by a majority of the members of the Ministerial Council; and
- 35      (b) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

(4) Remuneration and allowances payable to a member under this section are to be paid out of the money of the Commission.

(5) This section, other than subsection (4), has effect subject to the *Remuneration Tribunal Act 1973*, but subsection (4) has effect despite that Act.

**Members may receive other benefits**

15.(1) In addition to remuneration and allowances under section 14, a member is to be provided with such other benefits (if any) as the Ministerial Council determines. 5

(2) A determination under subsection (1):

- (a) must be made by writing signed by a majority of the members of the Ministerial Council; and 10
- (b) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

(3) The benefits in respect of which the Ministerial Council may make a determination under subsection (1) are such benefits as the Ministerial Council considers are necessary or desirable to assist a member in, or place the member in a position that may facilitate, the performance of his or her functions. 15

(4) Benefits provided to a member under this section are to be provided, or paid for, out of the money of the Commission.

**Leave of absence** 20

16. The Ministerial Council may, by resolution carried in accordance with the Agreement, grant a member leave of absence from a meeting of the Commission.

**Resignation**

17. A member may resign by writing signed by the member and delivered to the Governor-General. 25

**Termination of appointment**

18.(1) The Governor-General may terminate the appointment of a member for misbehaviour or physical or mental incapacity.

(2) If a member: 30

- (a) is absent from 3 consecutive meetings of the Commission, except on leave granted under section 16; or
- (b) contravenes section 25 without reasonable excuse;

the Governor-General may terminate the appointment of the member.

(3) The Governor-General must not terminate the appointment of a member unless the Ministerial Council has, by resolution carried in accordance with the Agreement, recommended the termination of the member's appointment. 35



**Terms and conditions not provided for by Act**

- 5     **19.** A member holds office on such terms and conditions (if any) in relation to matters not provided for by this Act as are determined, from time to time, by the Ministerial Council by resolution carried in accordance with the Agreement.

**Acting appointments**

- 20.(1)** The Deputy Chairperson is to act as the Chairperson:
- 10     (a) during a vacancy in the office of Chairperson, whether or not an appointment has previously been made to that office; or
- (b) during any period, or during all periods, when the Chairperson is absent from duty or from Australia or is, for any reason, unable to perform the duties of that office.
- (2)** The Ministerial Council may appoint a person to act in the office of a member:
- 15     (a) during a vacancy in that office, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the member is absent from Australia, or is, for any reason, unable to perform the duties of that office.
- 20     **(3)** An appointment for the purposes of subsection (2) is to be made by resolution carried by at least two thirds of the members of the Ministerial Council.
- (4)** A person acting under this section during a vacancy is not to continue to act for more than 12 months.
- 25     **(5)** Nothing done by or in relation to a person purporting to act under this section is invalid on the ground that:
- (a) the occasion for the person's appointment to act had not arisen; or
- 30     (b) there is a technical defect or irregularity in connection with the person's appointment; or
- (c) the person's appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

***Division 2—Meetings***

**Convening of meetings**

- 35     **21.(1)** The Commission is to hold such meetings as are necessary for the efficient performance of its functions.
- (2)** The Chairperson:
- (a) may, at any time, convene a meeting of the Commission; and
- 40     (b) must convene a meeting of the Commission if requested to do so by writing signed by the other 2 members.

**Procedure at meetings**

22.(1) The Chairperson is to preside at all meetings at which he or she is present.

(2) If the Chairperson is not present at a meeting but the Deputy Chairperson is present, the Deputy Chairperson is to preside. 5

(3) Subject to this Division, the Commission may regulate the conduct of proceedings at its meetings as it thinks fit and is to keep minutes of those proceedings.

**Quorum**

23. At a meeting, 2 members constitute a quorum. 10

**Voting at meetings**

24. At a meeting, all questions are to be decided by a majority of votes of the members present and voting.

**Disclosure of interests**

25.(1) A member who has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the Commission must, as soon as possible after the relevant facts come to the member's knowledge, disclose the nature of the interest at a meeting of the Commission. 15

(2) The disclosure is to be recorded in the minutes of the meeting and, unless the Ministerial Council otherwise determines by resolution carried in accordance with the Agreement, the member must not: 20

(a) be present during any deliberation of the Commission in relation to the matter; or

(b) take part in any decision of the Commission in relation to the matter. 25

**PART 5—CHIEF EXECUTIVE OFFICER, STAFF AND CONSULTANTS**

***Division 1—Chief Executive Officer***

**Chief Executive Officer 30**

26.(1) There is to be a Chief Executive Officer of the Commission, who is to be appointed by the Commission.

(2) The Chief Executive Officer is to manage the affairs of the Commission subject to the directions of, and in accordance with policies determined by, the Commission. 35

(3) All acts and things done, for the purposes of this Act, in the name of, or on behalf of, the Commission by the Chief Executive Officer are to be taken to have been done by the Commission.

**Remuneration and allowances**

27.(1) The Chief Executive Officer is to be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration is in force, is to be paid such remuneration as is  
5 determined in writing by the Commission.

(2) The Chief Executive Officer is to be paid such allowances as are determined in writing by the Commission.

(3) A determination by the Commission does not have effect unless it has been approved by the Ministerial Council by resolution carried  
10 in accordance with the Agreement.

(4) Remuneration and allowances payable to the Chief Executive Officer under this section are to be paid out of the money of the Commission.

(5) This section, other than subsection (4), has effect subject to the  
15 *Remuneration Tribunal Act 1973*, but subsection (4) has effect despite that Act.

**Chief Executive Officer may receive other benefits**

28.(1) In addition to remuneration and allowances under section 27, the Chief Executive Officer is to be provided with such other  
20 benefits (if any) as the Commission determines in writing.

(2) A determination does not have effect unless it has been approved by the Ministerial Council by resolution carried in accordance with the Agreement.

(3) The benefits in respect of which the Commission may make a determination under subsection (1) are such benefits (including benefits by way of financial or other assistance in connection with housing, transport, insurance, long service leave and superannuation) as the Commission considers are necessary or desirable to assist the Chief Executive Officer in, or place the Chief Executive Officer in a position  
25 that may facilitate, the performance of his or her functions.  
30

(4) Benefits provided to the Chief Executive Officer under this section are to be provided, or paid for, out of the money of the Commission.

**Leave of absence**

29.(1) Subject to section 87E of the *Public Service Act 1922*, the  
35 Chief Executive Officer has such recreation leave entitlements as are determined by the Remuneration Tribunal.

(2) The Commission may grant the Chief Executive Officer leave of absence, other than recreation leave, on such terms and conditions as  
40 to remuneration or otherwise as the Commission determines.

**Terms and conditions not provided for by Act**

30. The Chief Executive Officer holds office on such terms and conditions (if any) in relation to matters not provided for by this Act as are determined by the Commission from time to time.

***Division 2—Staff and consultants***

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**Public service staff of Commission**

31.(1) Subject to this Division, the Commission's staff are to be persons appointed or employed under the *Public Service Act 1922*.

(2) The Chief Executive Officer has all the powers of, or exercisable by, a Secretary under the *Public Service Act 1922*, so far as those powers relate to the branch of the Australian Public Service comprising the staff referred to in subsection (1), as if that branch were a separate Department of the Australian Public Service.

10

**Non-public service staff**

32.(1) In addition to the staff referred to in subsection 31(1), the Commission may employ under written agreements such persons as the Commission thinks necessary for the performance or exercise of any of its functions or powers.

15

(2) The terms and conditions of employment of persons employed under subsection (1) are such as the Commission determines from time to time.

20

**Staff seconded to the Commission**

33.(1) The Commission is to be assisted by:

- (a) officers and employees of Departments of the Australian Public Service, and of authorities of the Commonwealth, whose services are made available to the Commission in connection with the performance or exercise of any of its functions or powers; and
- (b) persons whose services are so made available under arrangements made under subsection (2).

25

(2) The Commission may make with the appropriate authority or officer of a State or Territory that is a party to the Agreement an arrangement under which the State or Territory may make officers or employees available to the Commission to perform services in connection with the performance or exercise of any of the Commission's functions or powers.

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**Consultants**

34.(1) The Commission may engage persons with suitable qualifications and experience as consultants to the Commission.

(2) The terms and conditions of engagement of a consultant are such as the Commission determines from time to time.

40

## **PART 6—FINANCE**

### **Payments to Commission by Commonwealth**

35.(1) There is payable to the Commission such money as is appropriated by the Parliament for purposes of the Commission.

- 5       (2) The Minister for Finance may give directions about the amounts in which, and the times at which, money payable under subsection (1) is to be paid to the Commission.

### **Payments to Commission by States or Territories**

- 10       36. The Commission may receive money paid to it by a State or Territory.

### **Money of Commission**

37. The money of the Commission consists of:

- 15       (a) money paid to the Commission under section 35; and  
      (b) money received by the Commission under section 36; and  
      (c) any other money paid to the Commission.

### **Application of money of Commission**

38. The money of the Commission is to be applied only:

- 20       (a) in payment or discharge of the costs, expenses and other obligations incurred by the Commission in the performance of its functions and the exercise of its powers; and  
      (b) in payment of any remuneration or allowances payable under this Act; and  
      (c) in providing, or paying for, any other benefits that are to be provided under this Act.

### **Estimates**

25       39.(1) The Commission is to prepare estimates, in such form as the Ministerial Council directs, of the Commission's receipts and expenditure for each financial year and, if the Ministerial Council so directs, for any other period specified by the Ministerial Council.

- 30       (2) The Commission must submit estimates so prepared to the Ministerial Council not later than such date as the Ministerial Council directs.

- 35       (3) Except with the consent of the Ministerial Council, the money of the Commission must not be spent otherwise than in accordance with estimates of expenditure approved by the Ministerial Council.

      (4) A direction, consent or approval for the purposes of this section is to be given by resolution of the Ministerial Council carried in accordance with the Agreement.

**Application of Division 3 of Part XI of the Audit Act**

**40.** The Commission is a public authority to which Division 3 of Part XI of the *Audit Act 1901* applies.

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

**41.(1)** Subsection 63M(1) of the *Audit Act 1901* applies to the Commission as if the reference in that subsection to a form approved by the Minister administering that Act were a reference to a form approved by the Ministerial Council by resolution carried in accordance with the Agreement. 5

**(2)** A report prepared by the Commission under section 63M of the *Audit Act 1901* must also contain such other information as is required by the Agreement to be included in annual reports of the Commission. 10

**(3)** A copy of each report and of each set of financial statements given to the Minister under section 63M of the *Audit Act 1901* must also be given to each of the other members of the Ministerial Council as soon as practicable after the end of the financial year to which they relate. 15

**PART 7—MISCELLANEOUS**

**Delegation by Commission**

**42.** Subject to subsection (2), the Commission may, by writing under its common seal, delegate all or any of its functions and powers to a person who is: 20

- (a) a member; or
- (b) a staff member; or
- (c) an officer or employee of the Commonwealth; or 25
- (d) an authority of the Commonwealth or an officer or employee of such an authority; or
- (e) an officer or employee of a State or Territory; or
- (f) an authority of a State or Territory or an officer or employee of such an authority. 30

**(2)** The Commission must not delegate a function or power to a person, other than a member or a staff member, unless the Ministerial Council has consented to the delegation by resolution carried in accordance with the Agreement.

**Delegation by Ministerial Council** 35

**43.(1)** The Ministerial Council may delegate to a member of the Ministerial Council all or any of the Ministerial Council's functions and powers under this Act.

**(2)** A delegation is to be made by a resolution carried by all the members of the Ministerial Council. 40

(3) A delegation may be varied or revoked by a resolution carried by all the members of the Ministerial Council.

(4) If the Ministerial Council delegates a function or power that is to be performed or exercised by resolution, the delegate is to perform or exercise the function or power by writing signed by the delegate.

#### Acts done by Ministerial Council

44.(1) A certificate that:

- (a) purports to be signed by a member of the Ministerial Council, or by a person authorised by the Ministerial Council by resolution carried in accordance with the Agreement, to sign certificates for the purposes of this subsection; and
- (b) states that the Ministerial Council has done any act or thing (for example, carried a particular resolution) or formed any opinion;

is, upon mere production, receivable as *prima facie* evidence that the Ministerial Council has done the act or thing or formed the opinion.

(2) A certificate that:

- (a) purports to be signed by a member of the Ministerial Council; and
- (b) states that a specified person is authorised by the Ministerial Council, by resolution carried in accordance with the Agreement, to sign certificates for the purposes of subsection (1);

is, upon mere production, receivable as *prima facie* evidence that the person is so authorised.

(3) An act or thing done by the Ministerial Council (whether by resolution, instrument or otherwise) does not cease to have effect merely because of a change in the Council's membership.

#### Regulations

45. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

#### Act ceases to be in force 6 years after commencement

46.(1) This Act ceases to be in force at the end of 6 years after its commencement.

(2) It is the intention of the Parliament that, before this Act ceases to be in force because of subsection (1), the assets and liabilities of the Commission should be dealt with as determined by the Ministerial Council by resolution carried by all its members.

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

**47.(1)** At least 6 months before this Act is due to cease to be in force because of subsection 46(1), the Commission must:

- (a) prepare a written report that contains a recommendation in accordance with subsection (2) and that sets out the Commission's reasons for making that recommendation; and 5
- (b) give a copy of the report to the head of government of each of the parties to the Agreement.

**(2)** The report must contain either: 10

- (a) a recommendation that this Act should cease to be in force under subsection 46(1) and should not be re-enacted; or
- (b) a recommendation that this Act should continue to be in force, or should be re-enacted, for a further period not exceeding 6 years, subject to the making of such modifications (if any) as are set out in the report. 15

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**SCHEDULE**

Section 3

**AGREEMENT**

**THIS AGREEMENT** is made the thirtieth day of July 1991

**BETWEEN:**

**THE COMMONWEALTH OF AUSTRALIA,  
THE STATE OF NEW SOUTH WALES,  
THE STATE OF VICTORIA,  
THE STATE OF QUEENSLAND,  
THE STATE OF WESTERN AUSTRALIA,  
THE STATE OF SOUTH AUSTRALIA,  
THE STATE OF TASMANIA, and  
THE AUSTRALIAN CAPITAL TERRITORY.**

**RECITALS:**

A. The Heads of Government of the Parties to this Agreement have endorsed a Report prepared by their officers which contains certain recommendations ("the Report").

B. The Parties agree that it is the policy and intent of this Agreement that it should operate to implement and further those recommendations.

C. The principles endorsed by the Parties to this Agreement are that there should be improvements to both road safety and transport efficiency and reductions in the costs of administration of road transport.

D. The Parties to this Agreement are agreed that the principles referred to in Recital C necessitate uniform or consistent road transport legislation throughout Australia, and they are further agreed that this will be achieved by establishing and implementing a co-operative scheme, the objectives of which are to ensure in respect of road transport legislation that:

- (a) legislation is made, and continues to be, uniform or consistent throughout Australia at all times except as otherwise provided for in this Agreement;
- (b) legislation is administered so as to achieve, at least, a minimum standard of outcome;
- (c) the Commonwealth, the States, the Australian Capital Territory and the Northern Territory of Australia are able to co-operate with each other in regard to the matters to be provided in the legislation, the way in which the legislation is administered, and the fostering of innovation;
- (d) the legislation is capable of effective administration throughout

**SCHEDULE—continued**

Australia with the minimum of procedural requirements and is so administered; and

- (e) changes in the legislation are proposed for consideration as appropriate from time to time and amendments made when the need for reform arises.

E. The Parties to this Agreement have reached agreement on a scheme to achieve the objectives referred to in Recital D.

F. The essential element of the scheme is an agreement between the Commonwealth, the States, the Northern Territory of Australia and the Australian Capital Territory to provide for the introduction and bringing into force of legislation, the establishment and operation of a Ministerial Council, National Commission and, pending the latter, an Interim Body and for other matters as appear hereafter.

G. The matters mentioned in Recital F, involve the following sequence:

- (a) Firstly, the conclusion of an agreement between the Commonwealth and the Australian Capital Territory under which the former, with consent of the latter, will seek to enact or make the Commonwealth Act and the Commonwealth Road Transport Legislation for the Australian Capital Territory which law will be the model on which the pertinent law of the Parties to this Agreement, other than the Commonwealth, and the Australian Capital Territory, will be based.
- (b) Secondly, the establishment by the Parties to this Agreement of a Ministerial Council and an Interim Body with functions and powers set out herein.
- (c) Thirdly, the enactment by the Commonwealth Parliament of legislation which establishes a National Road Transport Commission and describes its powers and functions.
- (d) Fourthly, the making by the Appropriate Authority of Commonwealth Road Transport Legislation and its coming into force.
- (e) Fifthly, the passage by the Participating Parties, other than the Commonwealth, through their respective Parliaments, of legislation which will provide that, when the last mentioned legislation is made by the Appropriate Authority and comes into force, the then existing road transport legislation of those Participating Parties is repealed, amended or modified so as to avoid any conflict with that Commonwealth legislation and in its place there is on the same date for all Participating Parties (being the date on which the Commonwealth Road Transport Legislation comes into force) applied the legislation referred to in Recital G (d) and there is conferred on the National Commission in relation to each Participating Party the functions

**SCHEDULE—continued**

and powers conferred on it by the Commonwealth legislation referred to in Recital G (c).

- (f) Thereafter, the review of the Commonwealth Act and Commonwealth Road Transport Legislation and re-enactment of that Act and Legislation in a modified form, as provided for in this Agreement.

NOW IT IS AGREED by the parties as follows:

**PART I—INTERPRETATION**

1. In this Agreement, except where a contrary intention appears:

- (a) **“Australian Capital Territory”** means, save where a geographic meaning is intended, the body politic established by the Australian Capital Territory (Self-Government) Act 1988;
- (b) **“Commonwealth”** means the Commonwealth of Australia as a Party to this Agreement;
- (c) **“Northern Territory”** means, save in sub-clause 4(1), the Northern Territory of Australia while a Party to this Agreement; and
- (d) **“State”** means, save in sub-clause 4(1) a State of the Commonwealth of Australia that is at the relevant time a Party to this Agreement.

2. In this Agreement, unless the contrary intention appears or the context otherwise requires:

**“Access Charge”** is a charge for access to the road system;

**“Application Order”** means an order which, because of geographical or regional conditions, suspends or varies the operation of Commonwealth Road Transport Legislation as it would otherwise apply in a Zone in relation to:

- (a) standards and other regulatory measures whether or not those measures are introduced as innovations on a trial basis;
- (b) enforcement levels above a national minimum standard;
- (c) the level of penalties above a national minimum; or
- (d) Road Charges;

**“Appropriate Authority”** means in the case of:

- (a) legislation proposed hereunder other than regulations, the Commonwealth Parliament;
- (b) regulations, the Federal Executive Council including the Governor-General; or
- (c) orders or instruments under that legislation, the Commonwealth Minister appointed under sub-clause 11(1) or his delegate;

**“Attributed Road Cost”** means a Vehicle’s share of total road costs imputed pursuant to this Agreement;

**SCHEDULE—continued**

**“AUSTROADS”** means the national association of road and traffic authorities of the Commonwealth, States, the Northern Territory and the Australian Capital Territory and other bodies and persons which may be members from time to time;

**“Charging Principles”** means:

- (a) those principles endorsed at the Special Premiers’ Conference of July 1991 namely, that collectively Road Charges and Road Use Charges will always be set:
  - (i) to fully recover distributed road costs while minimising over-recovery from any vehicle class, thereby achieving full recovery of all road costs;
  - (ii) adopting a common methodology;
  - (iii) to determine and collect charges in a way that achieves a reasonable balance between administrative simplicity, efficiency and equity in the charging structure;
  - (iv) to improve pricing, leading to a better allocation of resources, with investment decisions on equipment and infrastructure being based on more relevant demand signals; and
  - (v) to minimise the incentive for operators to “shop around” for lower charges and undermine the integrity of the national charging system;
- (b) any other principles for Road Charges proposed by the National Commission and not disapproved by the Ministerial Council in relation to Vehicles operating within or across the boundary of a Zone;

**“Commonwealth Act”** means the legislation of the Parliament of the Commonwealth that is provided for by clause 6 as amended from time to time consistent with this Agreement;

**“Commonwealth Minister”** means the Commonwealth Minister appointed under clause 11;

**“Commonwealth Road Transport Legislation”** means the legislation referred to in paragraph (a) of the definition of Road Transport Legislation;

**“Emergency Order”** means an Order of the kind made under sub-clause 8(5);

**“Financial Year”** means a period of twelve months ending on a thirtieth day of June or, where the relevant provision of this Agreement is applicable during part only of any such period, means the portion of the period during which the provision applies;

**“Interim Body”** means the interim national body to be established by the Parties to this Agreement pending the establishment of the National Commission by the Commonwealth Act;

**SCHEDULE—continued**

**“Mass-distance Charge”** means, so far as constitutionally possible, a charge equal to the amount of the Attributed Road Cost less the amount of the Road Use Charge and any Access Charge as imputed pursuant to this Agreement;

**“Ministerial Council”** means the Ministerial Council for Road Transport established by Part VI;

**“National Commission”** means the National Road Transport Commission to be established by the Commonwealth Act;

**“Participating Party”** means any Party, other than the Australian Capital Territory, which has both secured the passage or the making, of the legislation relevant in its case, provided for by Part IV and caused that legislation to come into force;

**“PAYGO”** means a methodology for determining Road Charges and a Road Use Charge based on the average of the most recent of two years’ actual and the next year’s budgeted expenditure on road construction and maintenance (all indexed) but excluding expenditure on roads financed by means such as fuel franchise fees and road tolls where so nominated by the Participating Party imposing the fees or tolls or the Australian Capital Territory;

**“Road Charge”** means:

- (a) until otherwise resolved by the Ministerial Council, an annual Access Charge;
- (b) a Mass-distance Charge;
- (c) permit fees relating to the use of over-dimension or overweight Vehicles or Vehicles in higher mass or distance categories; and
- (d) so far as constitutionally possible, a fee for payment of travel between zones that reflects full cost recovery and is administratively simple and enforceable,

but does not include a nominal or other administration charge associated with registration of a Vehicle, a Road Use Charge, stamp duties, compulsory third party insurance premiums, injury protection charges, fuel franchise fees, road tolls and, other than to the extent set out in (c) and (d), permit, licence or other fees;

**“Road Transport”** means:

- (a) design, construction and use of Vehicles including operating requirements as to drivers’ records, driving hours, and other matters in relation to the drivers of Vehicles;
- (b) registration of Vehicles and matters relating thereto including the means by which any registration may be cancelled, suspended or its operation affected;
- (c) standards of driver licensing with respect to Vehicles and matters relating thereto including the means by which any licence may be cancelled, suspended or its operation affected;

**SCHEDULE—continued**

- (d) any provision of a traffic code, directed solely to the use of Vehicles; and
- (e) nationally consistent Charging Principles and Road Charges, but does not include economic regulation of the transport industry, e.g., Part VI of the Transport Act 1983, as amended, of Victoria;

**“Road Transport Legislation”** means:

- (a) the Commonwealth legislation in relation to Road Transport applying in the Australian Capital Territory and the Jervis Bay Territory; or
- (b) the provisions of that Commonwealth legislation applied pursuant to clause 8 by a Participating Party other than the Commonwealth,

in either case extending to Vehicles whilst within the Australian Capital Territory, the Jervis Bay Territory or the territory of such a Participating Party although they emanate from either a State or the Northern Territory that is not a Participating Party;

**“Road Use Charge”** means a charge equal to the part of the diesel fuel tax levied by the Commonwealth for the use of a Vehicle on a road being the part fixed by the National Commission from time to time, in accordance with this Agreement;

**“State and Territory Acts”** means legislation as amended from time to time consistent with this Agreement of the Parliament of each Participating Party, other than the Commonwealth, that is provided for by this Agreement;

**“Vehicle”** means a road vehicle which has a manufacturer’s rated gross vehicle mass of more than 4.5 tonnes;

**“Voting Member”** means:

- (a) in relation to a Road Charge:
  - (i) for a Zone defined in sub-paragraph (a)(i)(A) of the definition of Zone, the members of the Ministerial Council representing the States there mentioned, the Australian Capital Territory and the Commonwealth; or
  - (ii) for a Zone defined in sub-paragraph (a)(i)(B) of the definition of Zone, the members of the Ministerial Council representing the States there mentioned and the Northern Territory; or
  - (iii) for a Zone replacing another as defined in paragraph (a)(i)(A) or (a)(i)(B), the members of the Ministerial Council whose territory lies wholly or partly within the replacing Zone, but only including the Commonwealth if the territory of the Australian Capital Territory lies within the replacing Zone;
- (b) in relation to the replacement of a Zone referred to in paragraph

**SCHEDULE—continued**

- (a)(ii) or (b)(ii) of the definition of Zone, which is proposed, all members of the Ministerial Council;
  - (c) in relation to any matter not mentioned in paragraph (a) or (b), all members of the Ministerial Council;
- “Zone” means:**
- (a) in relation to a Road Charge:
    - (i) until replaced by another Zone or other Zones pursuant to paragraph 20(2)(b),
      - (A) the area within the States of New South Wales, Victoria, Tasmania and the Australian Capital Territory and the Jervis Bay Territory; or
      - (B) the area within the States of Queensland, Western Australia and South Australia and the Northern Territory;
    - (ii) upon either area being replaced by another Zone or other Zones, pursuant to paragraph 20(2)(b), that other Zone or those other Zones in place of the relevant area;
  - (b) in relation to any other purpose:
    - (i) until replaced by another Zone or other Zones pursuant to paragraph 20(2)(a), the area within Australia excluding the external territories; or
    - (ii) upon that area being replaced by other Zones pursuant to paragraph 20(2)(a), those other Zones.

**3. In this Agreement, unless a contrary intention appears:**

- (a) a reference to a Recital is a reference to the relevant Recital of this Agreement;
- (b) a reference to a Part is a reference to the relevant Part of this Agreement;
- (c) a reference to a clause, sub-clause or paragraph is a reference to the relevant clause, sub-clause or paragraph of this Agreement;
- (d) words importing the singular shall include the plural and vice versa; and
- (e) words importing any gender shall include each of the other genders.

**PART II—OPERATION OF AGREEMENT**

**4.(1)** This Agreement shall come into force when it has been executed by the Commonwealth and a majority of all the States, of the Northern Territory and of the Australian Capital Territory.

**(2)** This Agreement may, after its coming into force, be amended only by the unanimous decision of Participating Parties and the Australian Capital Territory.

**SCHEDULE—continued**

**PART III—ESTABLISHMENT OF SCHEME**

**5.(1)** The Parties to this Agreement will take such action as is provided for by this Agreement, and as is otherwise requisite on their respective parts, to observe the principles set out in Recital C. and to achieve the objectives set out in Recital D. by initiating and operating the scheme of legislative and administrative acts and procedures provided for by this Agreement.

**(2)** Without limiting the provisions of sub-clause 5(1), pending the coming into force of the Commonwealth legislation the subject of clauses 6 and 7, the Parties to this Agreement are, from the date this Agreement comes into force, as the opportunity arises, to take such action as is available to them, including the submission to their respective Parliaments of legislation and the making of regulations, to expedite the achievement of the principles and objectives of this Agreement.

**PART IV—INITIAL LEGISLATION**

**6.(1)** The Commonwealth will, as soon as is practicable, submit to the Commonwealth Parliament legislation referred in sub-clause 6(3), which has been proposed by the Interim Body, and take such steps as are appropriate to secure the passage and bringing into force of that legislation.

**(2)** The Commonwealth shall only submit to the Commonwealth Parliament any legislation specified in sub-clause 6(3), which has:

- (a) been proposed by the Interim Body;
- (b) been submitted to the Ministerial Council for its consideration for at least two months or such lesser period as may be unanimously agreed by the Ministerial Council; and
- (c) not been disapproved by the Ministerial Council within that period.

**(3)** The legislation provided for by sub-clause 6(1) shall:

- (a) confer on the Ministerial Council such powers as may be appropriately conferred to give effect to its functions under, and in accordance with, this Agreement;
- (b) establish the National Commission and make provision for, and in relation to, its members;
- (c) confer on the National Commission such functions and powers as will enable it, in conjunction with functions and powers which are conferred on it by the State and Territory Acts, to carry out its functions under, and in accordance with, this Agreement;
- (d) make provision for, and in relation to, the staff of the National Commission; and



**SCHEDULE—continued**

- (e) include provisions relating to the financial management, proceedings, reports and records of the National Commission and for matters that are necessary or incidental to the performance of its functions.

**7.(1)** After the passage of the Commonwealth Act, the Commonwealth shall submit to the Appropriate Authority as soon as is practicable, the Commonwealth Road Transport Legislation which has been proposed by the National Commission.

**(2)** The Commonwealth shall only submit to the Appropriate Authority any Commonwealth Road Transport Legislation, which has:

- (a) been proposed by the National Commission;
- (b) been submitted to the Ministerial Council for its consideration for at least two months or such lesser period as may be agreed unanimously by the Ministerial Council; and
- (c) not been disapproved by the Ministerial Council within that period.

**(3)** The Commonwealth Road Transport Legislation provided for by sub-clause 7(1) shall constitute the substantive law as to Road Transport:

- (a) in the Australian Capital Territory; and
- (b) in the Jervis Bay Territory.

**(4)** The Commonwealth Act and the Commonwealth Road Transport Legislation submitted to the Appropriate Authority shall be limited in the term of its application to a period of six years.

**8.(1)** Each Party, other than the Commonwealth and the Australian Capital Territory, will take such steps as are appropriate to secure the passage or making, as the case may be, of legislation which, as from the date on which the Commonwealth Road Transport Legislation comes into force and to the extent necessary for the purposes of this Agreement, provides, that:

- (a) the existing Road Transport legislation of the State or Northern Territory shall be automatically repealed, amended or modified in operation to the extent necessary to avoid any conflict with the Commonwealth Road Transport Legislation and the Commonwealth Act;
- (b) the provisions of the Commonwealth Road Transport Legislation, as amended from time to time, are automatically applied as the law of that State or the Northern Territory, as the case may be, in place of the legislation so repealed, amended or modified in operation;
- (c) the relevant Minister of each such Party may make Application Orders and Emergency Orders; and

**SCHEDULE—continued**

- (d) there is conferred on the National Commission and the Ministerial Council in relation to the State or Territory the functions and powers respectively conferred on them by the Commonwealth Act.
- (2) The Commonwealth will take such steps as are appropriate to seek the passage of legislation authorising a Minister of the Australian Capital Territory, or in the case of Jervis Bay Territory, a Commonwealth Minister, to make Application Orders and Emergency Orders.
- (3) The relevant Minister of a Participating Party, the Australian Capital Territory or of the Commonwealth, in the case of the Jervis Bay Territory, shall only make an Application Order which:
  - (a) has been recommended in relation to the territory of that Participating Party, the Australian Capital Territory or Jervis Bay Territory, as the case may be, by the National Commission; and
  - (b) has not been disapproved by the Ministerial Council within two months.
- (4) A Participating Party, the Australian Capital Territory or the Commonwealth in the case of Jervis Bay Territory shall make:
  - (a) any Emergency Order which the National Commission recommends for that Party, the Australian Capital Territory, or Jervis Bay Territory respectively; or
  - (b) any Application Order which the National Commission recommends for that Party, the Australian Capital Territory, or Jervis Bay Territory respectively and of which the Ministerial Council does not so disapprove.
- (5) If the National Commission considers, on being notified by a Participating Party, the Australian Capital Territory or the Commonwealth for Jervis Bay Territory or on such other information as it considers relevant that there is a need for urgent emergency measures relating to public health and safety or the furtherance of some other public interest to be made then without reference to the Ministerial Council, on the Commission so making a recommendation, any Minister of a Participating Party or the Australian Capital Territory may make an Emergency Order to that effect. The making of the Emergency Order shall have the effect of suspending or varying the operation of the Commonwealth Road Transport Legislation in relation to whichever of that Party, the Australian Capital Territory or the Commonwealth, in the case of Jervis Bay Territory, makes that Order.
- (6) An Emergency Order is to continue for a period of six months unless two months before the end of the six months period:
  - (a) the National Commission recommends; and

**SCHEDULE—continued**

- (b) before the end of the period the Ministerial Council does not disapprove,

the matter dealt with by that Order being dealt with in the same manner in the Road Transport Legislation or in relation to a part of Australia in an Application Order, in which case the Emergency Order shall continue in force until the date on which that Legislation or Application Order comes into force.

(7) An Emergency Order may be terminated by the Ministerial Council at any time within the period referred to in sub-clause (6).

(8) Each State or the Northern Territory which has passed and caused to come into force the legislation referred to in sub-clause 8(1), and thereby becomes a Participating Party, hereby agrees to adopt the level of penalties and such other sanctions as are embodied in the Commonwealth Road Transport Legislation.

**PART V—ROAD USE CHARGE**

9. The Commonwealth shall take all reasonable steps to ensure that there is levied and collected a tax on diesel fuel, being a tax at no less a rate than that of the Road Use Charge recommended by the National Commission and not disapproved by a simple majority of all the members of the Ministerial Council within two months after that recommendation.

**PART VI—ESTABLISHMENT OF MINISTERIAL COUNCIL**

10. For the purposes of the scheme there shall be a Council of Commonwealth, State, Northern Territory and the Australian Capital Territory Ministers to be known as the Ministerial Council for Road Transport.

11.(1) The Ministerial Council shall consist of a member, representing:

- (a) in the period from the execution of this Agreement until the date of the coming into force of the Commonwealth Road Transport Legislation, each Party to this Agreement; and
- (b) after that date, each Participating Party and the Australian Capital Territory,

who shall be a Minister appointed by the Prime Minister, Premier, or Chief Minister, of that Participating Party or the Australian Capital Territory, as the case may be.

(2) A member of the Ministerial Council may appoint a delegate to attend a meeting of the Ministerial Council in place of that member.

**SCHEDULE—continued**

(3) References in this Agreement (other than in clause 11(1)) to a member of the Ministerial Council shall include a delegate in respect of attendance at any such meeting.

**PART VII—FUNCTIONS OF MINISTERIAL COUNCIL**

12. The functions of the Ministerial Council shall, having regard to the principles and objectives stated in Recitals C. and D., be to:

- (a) consider policy questions relating to the Road Transport Legislation and any recommendations of the National Commission not otherwise mentioned in this clause as to be considered;
- (b) refer any question to the National Commission for consideration and report;
- (c) consider and approve or disapprove annual or supplemental budgets and programs of the National Commission or the Interim Body in relation to their operations submitted by that Commission or Body;
- (d) agree, pursuant to clause 31, the proportion of the budget of the National Commission to be borne by each Participating Party and the Australian Capital Territory;
- (e) consider whether to disapprove the text of:
  - (i) the proposed Commonwealth Act submitted to it by the Interim Body; and
  - (ii) Road Transport Legislation submitted to it by the National Commission;
- (f) consider whether to disapprove the level of Road Charges and the rate of Road Use Charges, recommended by the National Commission for Vehicles operating within or across the boundary of a Zone;
- (g) consider whether to disapprove changes to the Charging Principles recommended by the National Commission;
- (h) consider whether to disapprove the replacement of a Zone, for purposes other than a Road Charge, with other Zones recommended by the National Commission;
- (i) consider whether to approve the replacement of a Zone relating to a Road Charge with another Zone or Zones recommended by the National Commission;
- (j) nominate the appointment, or recommend the removal, of members of the National Commission;
- (k) approve the form of the financial statements, as specified in clause 33, and the annual report of the National Commission;
- (l) approve the uniform reporting and audit regime developed pursuant to sub-clause 30(4);

**SCHEDULE—continued**

- (m) oversee the administration by Participating Parties and the Australian Capital Territory of Road Transport Legislation;
- (n) approve the guidelines for the preparation of regulatory impact statements produced by the National Commission pursuant to paragraph 20(1)(e);
- (o) disapprove Application Orders; and
- (p) terminate Emergency Orders.

**PART VIII—PROCEEDINGS OF MINISTERIAL COUNCIL**

**13.(1)** Ordinary meetings of the Ministerial Council shall be held at such times and places as are from time to time decided by the Ministerial Council but, in any event, not less than once in each calendar year.

**(2)** A special meeting of the Ministerial Council may be convened by any member by giving 28 days (or such other shorter period as may be accepted by all members for the purpose of the meeting) notice in writing to all other members.

**(3)** A special meeting shall not, except with the agreement of all members of the Ministerial Council, consider a matter which has not been specified in, or at the time of, the notice of the special meeting.

**14.** The quorum for consideration of a resolution at a meeting of the Ministerial Council shall be that number of Voting Members equal to the integer immediately above 50 percent of the total number of Voting Members.

**15.(1)** The Chairperson of a meeting of the Ministerial Council shall be decided by the Ministerial Council prior to or, if not previously decided, at the meeting.

- (2)** At a meeting of the Ministerial Council the Chairperson shall:
  - (a)** in the case where the Chairperson is a Voting Member, have a deliberative, but not a casting, vote; and
  - (b)** in all other cases, have no vote.

**16.** The Ministerial Council will carry a resolution by a simple majority of Voting Members in favour of the resolution except in relation to:

- (a)** a matter referred to in paragraphs 6 (2)(b), 7(2)(b) and clause 31 where the vote of all Voting Members in favour of the resolution shall cause the resolution to be carried;
- (b)** a matter referred to in paragraph 12(f) where a vote in favour of the resolution to disapprove the level of Road Charges, of 50% or more of all the Voting Members shall cause the resolution to be carried;

**SCHEDULE—continued**

- (c) a matter referred to in paragraph 12(g) where the vote of more than one third of the Voting Members in favour of the resolution to disapprove the changes recommended to Charging Principles by the National Commission shall cause the resolution to be carried;
- (d) a matter referred to in paragraph 12(i) where a vote, in favour of a resolution to approve replacing a Zone relating to a Road Charge with another Zone or Zones, of three-quarters or more of all the Voting Members shall cause the resolution to be carried; and
- (e) a matter referred to in paragraph 12(j), where the vote of two-thirds or more of the Voting Members in favour of the resolution to nominate the appointment, or recommend the removal, of members to the National Commission shall cause the resolution to be carried.

17. A resolution which, without being considered at a meeting of the Ministerial Council, is referred to all Voting Members of the Ministerial Council who indicate in writing whether transmitted by electronic or other means, to the National Commission, that they are in favour, shall be as valid and effective as if the resolution had been passed at a duly convened meeting of the Ministerial Council.

18.(1) Subject to the provisions of sub-clauses 18(2), and 18(3), the Australian Local Government Association shall be entitled to nominate in writing to the Chairperson of the National Commission a person who shall be entitled to receive notices of meetings of the Ministerial Council and to attend meetings of the Ministerial Council as an observer but not as a member.

(2) Upon receipt of the nomination referred to in sub-clause 18(1), the Chairperson of the National Commission shall advise in writing each member for the time being of the Ministerial Council of the person nominated.

(3) No meeting of the Ministerial Council shall be deemed to be improperly held by reason of:

- (a) there being no person nominated pursuant to sub-clause 18(1);  
or
- (b) the person nominated pursuant to sub-clause 18(1) not having been sent, or not having received, a notice of a meeting of the Ministerial Council or not being in attendance at any meeting of the Ministerial Council.

19. Subject to the previous provisions of this Part, the Ministerial Council may determine its own procedure and for that purpose may make rules of procedure, including rules relating to notices of meetings

**SCHEDULE—continued**

and conduct of business at meetings, and may from time to time alter such rules.

**PART IX—NATIONAL ROAD TRANSPORT COMMISSION**

**20.(1)** Subject to this Agreement and to the responsibility of the States and the Territories for day-to-day administration, having regard to the principles and objectives stated in Recitals C. and D., the functions of the National Commission shall be to have and to exercise responsibility both for the policy development in relation to Road Transport and for overseeing the administration by Participating Parties and the Australian Capital Territory of Road Transport Legislation and for the provision of information with respect to such Legislation and the preparation and issuing of guidelines and principles of administration to the Participating Parties and the Australian Capital Territory, and the recommending to the Ministerial Council of:

- (a) the proposed Road Transport Legislation;
- (b) proposed Road Charges, and a Road Use Charge relating to Vehicles operating within or across the boundary of a Zone;
- (c) Charging Principles;
- (d) uniform reporting and audit regime pursuant to sub-clause 30(4);
- (e) guidelines for the preparation of regulatory impact statements concerning proposed Road Transport Legislation;
- (f) one of the options set out in sub-clause 38(1); and
- (g) Application Orders,

and recommending Emergency Orders to the Participating Parties and the Australian Capital Territory.

**(2)** The National Commission may recommend:

- (a) the replacement of a Zone for any purpose, other than the imposing of a Road Charge, with another Zone or other Zones; and
- (b) the replacement of a Zone for the imposition of a Road Charge with another Zone or other Zones,

which:

- (c) in the case of any replacement Zone referred to in paragraph (a), if not disapproved by the Ministerial Council within a period of at least two months or any lesser period agreed by the Ministerial Council, shall constitute a Zone for all members of the Ministerial Council whose territory in whole or part lies within that Zone until any further recommendation, not so disapproved is made; or
- (d) in the case of any replacement Zone referred to in paragraph (b) if approved by the Ministerial Council within a period of at

**SCHEDULE—continued**

least two months or any lesser period agreed by the Ministerial Council, shall constitute a Zone for all members of the Ministerial Council whose territory in whole or in part lies within that Zone until any further recommendation, so approved is made.

**(3)** The National Commission in recommending Road Charges, and a Road Use Charge to the Ministerial Council shall ensure that by no later than 1 July 1995 the charges it recommends comply with the Charging Principles, and recover fully the road costs of all Vehicles based on average annual distances travelled except for road trains, which are to receive concessions of up to 50% of full cost recovery Mass-distance Charges. Road train charges should achieve full cost recovery by 1 July 2000 at the latest. In arriving at its recommended charges the Commission is to:

- (a) use PAYGO for determining what expenditure is to be recovered until an improved method of cost recovery becomes available;
- (b) use a common methodology, initially based on the model employed by the Inter-State Commission in its 1990 Report but enhanced with further research currently being undertaken by the Australian Road Research Board;
- (c) initially adopt the expenditure allocation template to be endorsed by AUSTROADS in the PAYGO process; and
- (d) make use of the Australian Bureau of Statistics Survey on Motor Vehicle Use road task data (with appropriate upgrading) as the source of this data.

**(4)** The National Commission in determining expenditure on roads for the purposes of PAYGO is to:

- (a) use the average of the most recent two years' actual and the next year's budgeted expenditure on road construction and maintenance (all indexed), by Commonwealth, State, Territory and local government road authorities; and
- (b) exclude road expenditure financed by means such as fuel franchise fees and road tolls where so nominated by a State or Territory.

**(5)** In recommending charges to apply no later than 1 July 1995 the National Commission is to consider whether more refined distance-based charging methods are warranted. The manner in which this might be done, the classes of Vehicles to be covered and when more refined distance-based charges should apply are matters on which the Commission shall report to the Ministerial Council.

**(6)** To assist the National Commission in discharging the responsibility set out in sub-clause 20(1), the National Commission shall consult with interested persons and may, from time to time,



**SCHEDULE—continued**

appoint committees. The number of members of, manner of appointment to and removal from, and terms and conditions of appointment to such committees, are to be determined by the National Commission.

(7) Proposed Commonwealth Road Transport Legislation submitted to the Ministerial Council shall be accompanied by a regulatory impact statement.

(8) The National Commission shall prepare regulatory impact statements.

(9) The National Commission shall report within three months after the expiry of each financial year to the Commonwealth Parliament on the administration and enforcement by Participating Parties and the Australian Capital Territory of the Commonwealth Road Transport Legislation.

**21.(1)** The National Commission shall:

- (a) be a body corporate with the corporate name of the National Road Transport Commission;
- (b) consist of three part-time members who shall be known as members; and
- (c) be under the administrative control of the Commonwealth Minister who from time to time has responsibility for the Road Transport Legislation.

(2) The members shall be appointed by the Governor-General on the nomination of the Ministerial Council.

(3) A Chairperson and a Deputy Chairperson of the National Commission shall, on the nomination of the Ministerial Council, be appointed by the Governor-General from the members for the time being of the National Commission.

(4) In the event of a vacancy in the office of Chairperson or the absence of the Chairperson from duty or from Australia, the Deputy Chairperson shall act as Chairperson.

(5) A member shall, subject to the provisions of the Commonwealth Act, hold office for such period not exceeding three years as is specified upon appointment and shall be eligible for re-appointment once only.

**22.(1)** The business of the National Commission shall be conducted at meetings of members and in such other manner as is provided by the Commonwealth Act.

(2) The quorum for a meeting of the National Commission shall be two members, of whom one shall be the Chairperson or, in the absence

**SCHEDULE—continued**

of the Chairperson from duty or from Australia, the Deputy Chairperson.

(3) The Chairperson of the National Commission or, in the absence of the Chairperson, the Deputy Chairperson, will preside at meetings.

(4) The member presiding at a meeting shall have a deliberative, but not a casting, vote.

**23.(1)** The National Commission shall have power to delegate any of its administrative functions to an administration, or to an officer of an administration, of the Commonwealth, a State or a Territory.

(2) In performing its functions and exercising its powers, including the power of delegation, the National Commission shall have regard to the principle of the maximum development of a decentralized capacity to carry out the uniform policy and administration of the scheme.

**24.** The staff of the Commission shall consist of such persons as are employed by it in accordance with the Commonwealth Act and may include persons who, by arrangement between the Commonwealth and a State or Territory, are provided for the performance of services for the National Commission.

**25.** The Participating Parties, the Australian Capital Territory and the Australian Local Government Association shall in writing:

- (a) record; and
- (b) report,

to the National Commission road expenditure under a method to be developed by AUSTROADS.

**PART X—STATE AND TERRITORY ADMINISTRATIONS**

**26.** The administration of Commonwealth Road Transport Legislation within the Australian Capital Territory and Jervis Bay Territory and within each State and the Northern Territory which applies the Commonwealth Road Transport Legislation in accordance with the scheme established under this Agreement shall, to the maximum extent practicable, be carried out by the entities and personnel of the administration of the relevant Participating Party or the Australian Capital Territory, and the Commonwealth, as the case may be, but the National Commission shall oversee in accordance with clause 20, those entities in the performance of those functions.

**27.(1)** The exercise by the National Commission of responsibility for the administration of Road Transport Legislation shall not extend to matters relating to:

- (a) the Australian Public Service;

**SCHEDULE—continued**

- (b) the Public Service of a State or Territory;
- (c) the management and provision of facilities or services or both of a State or Territory administration; or
- (d) any functions of a State or Territory administration that are not included within the scope of operation of the scheme established under this Agreement.

28. Members of the Ministerial Council or their delegates shall be entitled to be notified of, and to be given information concerning, any matter being dealt with by the National Commission and shall have the right to refer any matter arising out of or in connection with their responsibilities directly to the National Commission for consideration.

29. Each Participating Party and the Australian Capital Territory will provide the funds and other resources necessary for its administration to carry out the functions of that administration in accordance with the scheme established under this Agreement.

**PART XI—INTERIM ARRANGEMENTS**

30.(1) As soon as practicable after this Agreement comes into force, the Parties to this Agreement will establish an Interim Body which, pending the establishment of the National Commission, shall provide services in relation to:

- (a) the carrying out of any function for the purposes of clause 5; and
- (b) advice to the Ministerial Council on the proposed legislation referred to in clause 6.

(2) Subject to sub-clause 20(3), until 30 June 1995 Road Charges imposed by a Participating Party, and the Australian Capital Territory and the Road Use Charge imposed by the Commonwealth are to be recommended by the National Commission in accordance with the Charging Principles and:

- (a) the first set of those charges to apply from a date no later than 1 January 1993 is to be determined and recommended by March 1992; and
- (b) the phasing-in of full-cost recovery of those Road Charges based on the average distance travelled by Vehicles is to be determined by the National Commission and take account of:
  - the impact of varied Mass-distance Charges on the road transport industry and industry generally,
  - the effects of varied Mass-distance Charges on particular regions, such as some in remote Australia, and
  - the different levels of charges that currently exist in each jurisdiction.

**SCHEDULE—continued**

- (3) For the purposes of sub-clauses 30(1) and 30(2), the Parties:
- (a) may jointly retain the services of persons whom they consider should be retained;
  - (b) may make available the services of appropriate officers for the same purpose; and
  - (c) shall share the costs of the Interim Body in such proportions as may be agreed between them.

(4) The Interim Body established pursuant to sub-clause 30(1) shall develop a uniform reporting and audit regime which, subject to subsequent endorsement by the National Commission and approval by the Ministerial Council, shall apply to the information, including that relating to expenditure on road construction and maintenance, which may be required, from time to time, from the Participating Parties and the Australian Capital Territory by the National Commission upon its establishment.

(5) The audit regime referred to in sub-clause 30(4) shall, to the maximum extent practicable, rely upon the certification of the relevant information by the Auditors-General of the Participating Parties.

**PART XII—FUNDING OF NATIONAL COMMISSION**

31. The funds required for the establishment and functioning of the National Commission shall be provided by the Parties until 30 June 1992 and thereafter by the Participating Parties and the Australian Capital Territory in such shares as may be agreed unanimously by the Ministerial Council.

32. The Participating Parties and the Australian Capital Territory shall take all practicable measures to ensure that, once the National Commission has been established, any increase in the level of its expenditure brought about by an increase in staff or by extension of its functions will result in a combined saving in aggregate of the costs previously incurred by the Participating Parties and the Australian Capital Territory in respect of those functions conferred on the National Commission by Commonwealth legislation of at least twice the amount of that increase incurred by the National Commission.

**PART XIII—REPORTS AND STATEMENTS**

33.(1) The National Commission shall be required by the Commonwealth Act to prepare, as soon as practicable after each Financial Year, an annual report and financial statements in respect of that year in such form as is approved from time to time by the Ministerial Council. Those statements would include the expenditure reported to the National Commission pursuant to clause 25.

**SCHEDULE—continued**

(2) The annual report and financial statements in respect of each Financial Year shall be submitted to:

- (a) the responsible Minister of the Commonwealth for presentation to the Commonwealth Parliament;
- (b) each member of the Ministerial Council for presentation to their Parliaments; and
- (c) the Ministerial Council.

(3) The principles and procedures on which the National Commission recommends Road Charges and a Road Use Charge shall, together with the relevant data used for these recommendations, be made public.

**PART XIV—AMENDMENT OF LEGISLATION**

**34.(1)** The Commonwealth will not:

- (a) submit to the Commonwealth Parliament any Bill to amend the Commonwealth Act; or
- (b) cause to be submitted to the Appropriate Authority any proposed legislation which would amend the Road Transport Legislation, unless the amendment which will be made by the Bill or by the proposed legislation, as the case may be, has been recommended by the National Commission and, having been submitted to the Ministerial Council for its consideration for at least two months, has not been disapproved within that period by the Ministerial Council.

(2) If any proposed amendment to legislation is not disapproved by the Ministerial Council, the Commonwealth will submit that proposed amendment to the Appropriate Authority and take such steps as are appropriate to secure its enactment or making.

**35.** A State or the Northern Territory will not submit to its Parliament legislation or take action for the making of regulations which will, upon coming into force, conflict with the legislation referred to in clause 8.

**PART XV—ADMINISTRATIVE AND LIKE LAWS**

**36.** Each Participating Party, other than the Commonwealth, shall do all that is practicable to ensure that its legislation if any, relating to the review of administrative decisions, review by an Ombudsman, privacy, freedom of information and archives applies to decisions made by the administration of that Participating Party.

**PART XVI—DISPUTE RESOLUTION**

**37.(1)** Should the National Commission resolve that a Participating Party or the Australian Capital Territory is acting contrary to, or failing to otherwise comply with, a provision of this Agreement or there is a

**SCHEDULE—continued**

failure to pass legislation required to be passed through its Parliament, then it shall inform the relevant member of the Ministerial Council representing that Party of its resolution and of its intention to refer the matter to the Ministerial Council unless the alleged act or failure is remedied or satisfactorily explained.

(2) If the matter is not settled, the National Commission shall inform the member of the Ministerial Council representing such Participating Party that it is referring the matter to the Ministerial Council to determine whether further action should be taken including fixing of a further period within which the matter shall be remedied by the Participating Party.

(3) If the matter is not remedied to the satisfaction of the Ministerial Council within the period referred to in sub-clause 37(2) then the matter may be referred by the Ministerial Council to the next Premiers' Conference for resolution.

**PART XVII—REVIEW**

**38.(1)** Six months before the first or any subsequent expiry of the Commonwealth Act and the Commonwealth Road Transport Legislation, the National Commission shall have completed a review of such legislation and have recommended to the Heads of Government of the Participating Parties and the Australian Capital Territory whether the legislation should:

- (a) be allowed to expire;
- (b) be re-enacted or re-made for a further period of six years or a lesser period in its existing form; or
- (c) be re-enacted or re-made in a modified form.

(2) Those Heads of Government shall make their decision on any recommendation as to either the Commonwealth Act or the Commonwealth Road Transport Legislation made to them pursuant to sub-clause 38(1) by majority vote and if the decision is in relation to paragraphs (b) and (c) of sub-clause 38(1) take all practicable steps to ensure re-enactment or re-making before the expiry of that Legislation.

(3) The Heads of Government may at any time before the expiry of six years after this Agreement first comes into force, review the operation of the Road Transport Legislation and if they unanimously resolve to terminate that Legislation and this Agreement, do all that is practicable to terminate them.

**PART XVIII—ACCESSION**

**39.(1)** Any State or the Northern Territory, not being a Party to this Agreement, may elect so to become by notice in writing to the Participating Parties and shall thereafter be bound by the provisions of this Agreement; and

**SCHEDULE—continued**

(2) Any Party to this Agreement, not being a Participating Party, may so become by the passage or making of legislation of the kind referred in clause 8.

**PART XIX—MOTOR VEHICLES STANDARDS ACT 1989**

**40.(1)** This Agreement is not to extend to any matter the subject of the Motor Vehicles Standards Act 1989, an Act of the Commonwealth Parliament.

(2) The Commonwealth undertakes to:

- (a) take all practicable steps to amend the Motor Vehicles Standards Act 1989 in any respect which the National Commission recommends, being a recommendation not disapproved by a majority of all the persons who are members of the Ministerial Council within two months after that recommendation;
- (b) adopt as the standards relating to Vehicles those recommended by the National Commission and not disapproved by a majority and within a period of the kind referred to in paragraph 40(2)(a); and
- (c) consult with the National Commission and the Ministerial Council at the earliest opportunity on the most appropriate way of dealing with the operation of the Commonwealth Road Transport Legislation and the Motor Vehicles Standards Act 1989 while this Agreement continues to be confined to Vehicles as that word is defined in this Agreement.

IN WITNESS WHEREOF this Agreement has been respectively signed for and on behalf of the parties as at the day and year first above written.

SIGNED by the Honourable ROBERT  
JAMES LEE HAWKE, Prime Minister  
of the Commonwealth of Australia,

in the presence of—

J. KERIN

BOB HAWKE

SIGNED by the Honourable  
NICHOLAS FRANK GREINER,  
Premier of the State of New South  
Wales,

in the presence of—

R. T. PERRY

NICK GREINER

**SCHEDULE—continued**

**SIGNED by the Honourable JOAN  
ELIZABETH KIRNER, Premier of  
the State of Victoria,**

**in the presence of—**

**R. T. PERRY**

**JOAN E. KIRNER**

**SIGNED by the Honourable WAYNE  
KEITH GOSS, Premier of the State of  
Queensland,**

**in the presence of—**

**R. T. PERRY**

**WAYNE GOSS**

**SIGNED by the Honourable  
CARMEN MARY LAWRENCE,  
Premier of the State of Western  
Australia,**

**in the presence of—**

**R. T. PERRY**

**CARMEN LAWRENCE**

**SIGNED by the Honourable JOHN  
CHARLES BANNON, Premier of the  
State of South Australia,**

**in the presence of—**

**R. T. PERRY**

**JOHN BANNON**

**SIGNED by the Honourable  
MICHAEL WALTER FIELD, Premier  
of the State of Tasmania,**

**in the presence of—**

**R. T. PERRY**

**M. FIELD**



**SCHEDULE—continued**

**SIGNED by ROSEMARY FOLLETT,**  
**Chief Minister of the Australian**  
**Capital Territory,**

**in the presence of—**

**R. T. PERRY**

**ROSEMARY FOLLETT**

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*[Minister's second reading speech made in—  
Senate on 14 November 1991  
House of Representatives on 19 December 1991]*