

DECISION MAKING (VOTING) PROTOCOL

On matters under the *Intergovernmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport*.

1. Preamble

Transport Ministers agreed in November 2011 to a review of the National Transport Commission (NTC) and other relevant transport bodies in the context of the commencement of the new national transport regulatory systems in January 2013. A further impetus for reconsidering the roles of these national organisations in the transport sector was the significant change to ministerial council arrangements under the Council of Australian Governments (COAG), which commenced in mid 2011. The review was undertaken by the Transport and Infrastructure Senior Officials' Committee. The finalised review report was agreed by the Standing Council on Transport and Infrastructure (the forerunner of the Transport and Infrastructure Council) at its May 2013 meeting, including that:

The voting arrangements for national laws should require consensus agreement for all model and national laws. In order to achieve consensus on model laws, the mechanism for voting for reforms covered by the Intergovernmental Agreement for Regulatory and Operational reform in Road, Rail and Intermodal Transport (NTC IGA) should be in-session at (Council) meetings unless there are extreme and urgent circumstances; and If a jurisdiction proposes not to support a model law reform, it should provide a statement of reasons for consideration by (Council) members.

COAG's terms of reference for ministerial councils also sets out the requirement for decision making:

Councils will make decisions on the basis of consensus wherever possible, unless specific voting rules are included in relevant governing instrument(s).

Where necessary, the principle of one vote per jurisdiction would apply.

The requirement for unanimous agreement in relation to the national heavy vehicle regulator and national rail safety regulator reforms are set out in the *Intergovernmental Agreement on Heavy Vehicle Regulatory Reform* and the *Intergovernmental Agreement on Rail Safety Regulation and Investigation Reform* respectively ('the land transport regulator IGAs'). These IGAs expired in December 2013, necessitating an update of the NTC IGA voting arrangements for the national as well as model law reforms for land transport.

2. Scope

This protocol sets out the decision making (voting) arrangements consistent with the arrangements specified under the COAG terms of reference for the Transport and Infrastructure Council (the Council) and replaces the voting arrangements contained in the land transport regulator IGAs and the NTC IGA.



3. Definitions and interpretation

(a) References to national laws mean:

- (i) the *Rail Safety National Law (South Australia) Act 2012* and its regulations; and
- (ii) the *Heavy Vehicles National Law (Queensland) Act 2012* and its regulations;

and adopted by template or reference (as distinct from model) by the remaining States and Territories as the law of their parliaments, as amended from time to time.

(b) References to model laws mean:

- (i) regulations under section 7 to the *National Transport Commission (Commonwealth) Act 2003*, setting out model legislation or road transport legislation, as amended from time to time.

4. Council decision-making

(a) Excepting in extreme and urgent circumstances, proposed recommendations for consideration by Ministers are to be conveyed to the Council through a meeting of the Senior Officials (Transport and Infrastructure Senior Officials Committee).

(b) The Council will make decisions on the basis of consensus as specified in the COAG terms of reference, unless specific voting rules state otherwise in this protocol (a summary of voting rules other than 'by consensus' is in the Schedule to this protocol).

(c) The mechanism for voting should be in-session in a Council meeting unless there are extreme and urgent circumstances.

- (i) If a Minister will be absent from a Council meeting, he or she may authorise in writing an alternate person who, for the purposes of that meeting, may vote on his or her behalf.
- (ii) If a Minister will be absent from a Council meeting, he or she may submit a vote on the matter in writing to the Chair for the purposes of that meeting.
- (iii) At a meeting of the Council, Ministers who do not vote in person or by written vote will be counted as having voted to approve a recommendation.

(d) In the event that circumstances require an out-of-session decision by the Council, Ministers should submit a vote on the matter in writing to the Chair by the deadline prescribed for that matter.

- (i) A Minister who does not submit his or her vote by the deadline for the matter will be counted as having voted to approve a recommendation.

(e) If a Minister on the Council proposes not to support a recommendation relating to a model law or national law reform, he or she must provide a statement of reasons for consideration by the Council.



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- (f) Agencies proposing recommendations for the Council's deliberation are to provide those proposals consistent with Section 2.5.3 of the *Handbook for COAG Councils* (at the establishment of the Councils).
 - (i) Proposed recommendations are to be provided to the Council Secretariat at least four weeks before a Council meeting, unless urgent circumstances apply.
 - (ii) Ministers are to be given the opportunity to consider the proposed recommendations for at least two weeks prior to a meeting, unless urgent circumstances apply.
 - (iii) It is expected that appropriate consultation will have been conducted during the preparation of recommendations so that officials are able to sufficiently brief their Council Minister.
 - (g) Minor and non-controversial amendments to agreed reforms will not require referral to the Council if there is unanimous agreement by the Senior Officials.



SUMMARY OF VOTING RULES

Council voting is by consensus, subject to the following voting rules in regard to matters arising under the *Intergovernmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport*.

New voting requirements

Matter	Majority required	Superseded NTC IGA clause
Model and national law reforms in: Rail Safety and Heavy Vehicles regulation.	Unanimous	9.5
Other model and national laws and national reforms.	Unanimous	9.5
Council procedures about NTC matters.	Unanimous	9.1

Continuing voting requirements

Matter	Majority required	Relevant NTC IGA Clause
Agreement to the NTC or a Minister putting forward a proposal to change the NTC's funding arrangements.	Simple	4.3
Agreement to change the NTC's funding arrangements.	Unanimous	4.4
Agreement to a jurisdiction conferring a function or power on the NTC under its law.	Simple	5.3
Recommendation to the Minister to appoint or terminate the appointment of an Ordinary Member of the NTC.	Two-thirds	6.5
Consideration of matters relating to the Chair and Deputy Chair and other matters relating to ordinary members of the NTC.	Simple	6.5
Agreement to road use charging principles.	Two-thirds	9.5(b)
Delegation to a Minister of the Council's functions and powers under the NTC Act.	Unanimous	9.5 (c)
Agreement by jurisdiction ministers responsible for areas of Australia in which the NTC has recommended differing rules apply to a proposed reform (except for road use charging).	Simple majority (of the affected ministers)	9.6(a)(i) and 5.1(d)
Amendment of the NTC IGA.	Unanimous	22.2