COAG Background Paper:

COAG National Competition Policy Review

FEBRUARY 2006

This paper provides further context for COAG's decisions on National Competition Policy (NCP) as included in the Communique of the 10 February 2006 COAG meeting. The paper is closely based on the report to COAG of the National Competition Policy (NCP) Review Working Group. Small modifications have been made to reflect outcomes from the COAG meeting. The NCP Review Working Group was established by the Council of Australian Governments and comprised officials from the Commonwealth, all States and Territories and the Australian Local Government Association. It was chaired by the Commonwealth.

EXECUTIVE SUMMARY

Australia has benefited significantly from the structural reforms governments have implemented over the past two decades. However, a major ongoing reform program in infrastructure and other areas will be fundamental to sustaining Australia's strong economic performance through productivity growth and more competitive, well-functioning markets. Emerging challenges including expected infrastructure constraints in some sectors, skills shortages, the ageing population, the current account deficit and globalisation make this task more urgent.

The report recommends COAG endorse a new National Competition Policy (NCP) reform agenda encompassing the transport and energy sectors, infrastructure regulation and the reduction of the burden of regulatory red tape on business. These reforms aim to ensure Australia provides a supportive policy framework for productive investment in infrastructure, including importantly private sector investment, and for the efficient use of infrastructure by improving pricing and investment signals and establishing competitive markets.

The proposed reforms will require a commitment from all levels of government to build on the successes of NCP. Successful implementation of this agenda will improve the productivity of the Australian economy, increase market confidence and enhance the climate for continued investment in Australia, including in the vital infrastructure sector, which supports business and the community in their everyday endeavours.

Review of National Competition Policy

The report recommends that governments recommit to the principles contained in the original Competition Principles Agreement and to make new statements concerning the application of the principles to local governments (Recommendation 1.1, page 7); to continue, and if necessary strengthen, the regulation gate-keeping arrangements established in the NCP arrangements to prevent the introduction of unwarranted restrictions on competition; and to complete outstanding priority legislation reviews; (Recommendation 1.2, page 8). The Commonwealth also recommends amendments to the Conduct Code Agreement (Recommendation 1.3, page 10).

Energy

Structural reforms undertaken under NCP and other COAG initiatives since the early 1990s have significantly improved the efficiency of the energy sector. While Australians enjoy low electricity and gas prices in comparison to much of the developed world, further reform would yield significant efficiency and security benefits.

The report recommends governments commit to targeted initiatives to complement and build on reforms already being pursued under COAG auspices by the Ministerial Council on Energy (Recommendation 2.1, page 12). The recommended reforms include improving demand price signals for energy consumers and investors, including through a national roll out of smart meters (Recommendation 2.2, page 13), ensuring the transmission system supports an efficient national electricity market (Recommendation 2.3, page 14) and fostering national energy market structures that promote competition (Recommendation 2.4, page 15).

A high level Energy Reform Implementation Group will develop a detailed reform and implementation strategy for COAG's consideration (Recommendation 2.5, page 16).

Transport

The dispersed nature of Australia's population and markets underlines the importance of efficient transport infrastructure to improving productivity. Transport already generates approximately five per cent of GDP and Australia's freight task is expected to almost double over the next 20 years. Governments have invested substantial public resources in transport infrastructure and tackling urban congestion. However, ensuring transport infrastructure service markets and supporting regulations operate efficiently is at least as important as adequate public investment.

The report recommends governments address high priority national transport market reforms including asking the Productivity Commission to develop proposals for COAG's consideration for efficient pricing of road and rail freight infrastructure through consistent and competitively neutral pricing regimes, in a manner that maximises net benefits to the community, in particular rural, regional and remote Australia (Recommendation 3.1, page 20), harmonising and reforming rail and road regulation (Recommendation 3.2, page 22), strengthening and coordinating transport planning and project appraisal processes (Recommendation 3.3, page 22) and tackling urban congestion (Recommendation 3.4, page 23). These reforms should enhance significantly the efficiency of freight transport and promote productive and timely investment in the most appropriate transport modes and projects.

Infrastructure regulation

Achieving a consistent national approach to economic regulation of significant infrastructure services is a key objective of the original NCP reforms. Notwithstanding the progress made over the last decade, concerns still exist that inconsistent and time consuming infrastructure regulation imposes significant costs on business and hampers the efficient use of national infrastructure.

The report recommends that governments conclude a new competition and infrastructure reform agreement to implement COAG's June 2005 in-principle agreement to a 'simpler and consistent national system of regulation for ports and export-related infrastructure'. The proposed reforms are intended to improve the functioning of markets by: building on the significant progress made in implementing competitive neutrality; enhancing the application of competitive neutrality principles between publicly owned and private businesses that compete in the same market (Recommendation 4.1, page 27); facilitating efficient commercially determined outcomes; and improving the national consistency of the economic regulation of services provided by significant infrastructure (Recommendations 4.2 to 4.4, pages 30 to 34). The implementation of these arrangements (Recommendation 4.5, page 34) should reduce costs and regulatory uncertainty for infrastructure owners, users and investors.

Best Practice Regulation

While effective economic regulation is essential to ensure markets operate efficiently and fairly, protect consumers and the environment and enforce corporate governance standards, the benefits from each regulation should outweigh its compliance and implementation costs.

The report recommends governments implement appropriate gate-keeping arrangements to maximise the efficiency of new and amended regulation and avoid unnecessary compliance costs and restrictions on competition (Recommendation 5.1, page 37). It is also recommended that governments undertake targeted annual reviews of existing regulation to identify priority areas where regulatory reform would provide significant immediate gains to business and the community (Recommendation 5.2, page 37), and agree in principle to adopt a common framework for measuring the regulatory burden across jurisdictions (Recommendation 5.3, page 38). Specific reforms also are identified to resolve priority cross-jurisdictional 'hot spot' areas where overlapping and inconsistent regulatory regimes are impeding economic activity (Recommendation 5.4 to 5.10, pages 39 to 44).

REVIEW OF NATIONAL COMPETITION POLICY

At its meeting on 3 June 2005 the Council of Australian Governments (COAG) agreed:

- that continuing reform is needed to sustain and enhance Australian living standards in light of an ageing population and there are significant potential gains from further reform;
- to proceed immediately with a review of National Competition Policy (NCP) with the review to report to COAG by the end of 2005;
- that the review assess the effectiveness of the existing NCP arrangements, but focus on a possible new national reform agenda;
- that the review identify practical options for the implementation, monitoring and assessment of any new reform agenda; and
- that the review draw from, but not be limited by, the recommendations of the Productivity Commission report on the *Review of National Competition Policy Reforms*.

In relation to infrastructure, COAG agreed, in principle, to a simpler and consistent national system of regulation for ports and export-related infrastructure and that this be considered in the COAG Review of NCP.

COAG also agreed, in principle, to:

- hasten the long-term planning being undertaken under Auslink;
- extend Auslink planning and coordination to ports and associated shipping channels;
- each jurisdiction providing a report to COAG every five years on infrastructure;
- the Commonwealth facilitating the establishment of groups to coordinate logistics chains of national importance;
- reinvigorate the agenda for harmonising road and rail regulations; and
- establish “one-stop shops” in each jurisdiction for project facilitation and approvals.

Senior Officials were tasked with advising COAG, by the end of August 2005, on the implementation of these agreed measures.

COAG also agreed at its June meeting to establish separate Commonwealth-State working groups who were required to report back to COAG in December 2005 on:

- how to address the barriers across the vocational education and training (VET) system to achieving a national approach; and
- ways to improve Australia's health system.

Subsequently, a separate National Reform Initiative (NRI) Working Group, chaired by Victoria, was established to consider human capital reforms to

increase productivity and participation in a manner that is consistent with but does not duplicate the work of the Health, Skills and NCP Working Groups.

Review of National Competition Policy, 1995-2005

In preparation for COAG's review of NCP, the Australian Government asked the Productivity Commission (PC) to conduct an inquiry into the impacts of NCP to date, and report on possible areas for future reform. In its final report, the PC concluded that the NCP has delivered net substantial benefits to the Australian economy. The Organisation for Economic Co-operation and Development (OECD) and the International Monetary Fund (IMF) have also affirmed that wide ranging structural reforms and sound macroeconomic policies were the main reasons Australia's economic performance has strengthened significantly in recent decades.

The PC concluded that the benefits from NCP were spread across high and low income earners and that NCP and related reforms have delivered benefits across the community, including most of rural and regional Australia - not just to those in Australian cities. In particular, the PC found that of 57 regions across Australia all but one experienced net income gains and all income groups also benefited. Notwithstanding the overall conclusion that the NCP has delivered substantial benefits, the PC noted that some households have been adversely affected by higher prices for particular services.

In terms of translating the benefits into tangible outcomes, analysis undertaken by the PC for its inquiry indicated that observed productivity and price changes in key infrastructure sectors in the 1990s – to which NCP and related reforms have directly contributed – have permanently increased Australia's GDP by 2.5 per cent (or $20 billion).

Broad structural reforms underpinned the one percentage point surge in labour productivity in the last productivity growth cycle, which in turn drove Australia's faster economic growth. While the information and communications technology (ICT) revolution also contributed to faster growth, structural reforms appear to have facilitated our rapid ICT up-take.

Lessons learned

Several factors have underpinned the success of the NCP as an exercise in national economic reform. Some of the important lessons that the PC drew from Australia's experience with NCP include:

- a broad-based reform program enhances efficiency gains across sectors and increases the likelihood that any individual or group disadvantaged by a particular reform will benefit overall;

- a reform program that embodies agreed principles and provides flexibility in implementation is well-suited to a multi-jurisdictional reform agenda;
- reform is likely to progress more effectively if jurisdictions commit to and prioritise the reform task in advance;
- providing jurisdictions with financial incentives to follow through with agreed reforms can be crucial to achieving reform outcomes;
- independent and transparent review and assessment processes employing public interest tests are critical to secure effective reform outcomes, prevent backsliding and promote public and governmental understanding of reform benefits;
- governments should take a lead role in explaining to the community the benefits of reform, and consulting with those parties directly affected by reform;
- potential adjustment and distributional implications of reforms should be considered from the outset; and
- where reforms result in new regulatory arrangements, these arrangements should be scrutinised in advance and reviewed periodically to ensure their effectiveness in meeting agreed objectives.

The institutional arrangements also contributed to the overall success of implementing the NCP reform agenda. Whatever the specific frameworks employed to progress the new reform agenda, it is important that they:

- spell out objectives and principles to underpin reform programs (including effective public interest tests and provisions for the assessment of adjustment and distributional issues at the outset);
- facilitate the analysis required to develop well-founded specific reform options and provide public input to that process;
- provide for independent monitoring of progress in implementing changes according to agreed timetables; and
- embody mechanisms to lock-in the gains of past reforms and prevent backsliding.

Detailed reform agreements for each sector included in any future reform program should cover reform objectives, expected outcomes, responsibilities and timeframes. This will ensure a nationally consistent approach to the implementation of the reform program. Regular detailed assessments of when and whether jurisdictions have reached agreed milestones will also be important to assist governments and the public to understand the reform process and lessen the risk of reform slippage.

It is evident that Australia has benefited significantly from the structural reforms that governments have implemented over the past two decades. However, ongoing reform will be fundamental to sustaining Australia's strong economic performance.

Initiating a major new set of competition and productivity enhancing reforms to build on the successes of NCP will be necessary to improve the performance of the Australian economy, increase market confidence and enhance the climate for continued investment in Australia.

In moving forward it is important not to lose sight of the reform agenda and underlying principles agreed to in 1995. While most NCP reforms have been, or are being, implemented, there are some areas of unfinished business, most of which involve the legislative review program.

Ongoing commitment to CPA principles

Governments can recommit to the principles contained in the original CPA. These principles include the assessment of legislation that restricts competition against net community benefits, the application of prices oversight of government business enterprises, the application of competitive neutrality to government businesses, principles for the structural reform of public monopolies and arrangements to provide third party access to essential infrastructure facilities.

While local government is not a party to the CPA, it is subject to the principles set out in the agreement, with state governments having responsibility for the application of the principles to particular local government activities and functions. State and territory governments, could, in consultation with local government, update the statements published in 1996 which clarified the application of the principles to local governments.

Recommendation 1.1

COAG agree that:

(a) all jurisdictions recommit to the principles contained in the Competition Principles Agreement; and

(b) State and territory governments publish a new statement, prepared in consultation with local government, specifying the application of the principles to particular local government activities and functions.

Legislative Review Program

Over the past ten years there has been significant reform of the stock of existing legislation affecting competition, and this has contributed to the gains made by the Australian economy over this period. Clause 5 of the CPA established as the guiding principle that legislation should not restrict competition unless it can be demonstrated that the benefits to the community outweigh the costs and that the policy objective of the legislation can only be achieved by restricting competition. Each jurisdiction agreed that proposed new regulations that restrict competition should be accompanied by evidence that the proposed legislation comply with the guiding principle. Continuing efforts are necessary to preserve the benefits of past achievements and to ensure new laws remain consistent with NCP principles.

The Legislation Review Program has played an important role in winding back barriers to competition and efficiency across a wide range of economic activities. While significant progress has been made in this area, some key pieces of anti-competitive legislation have yet to be reviewed. Governments can commit to the completion of the existing legislation review program.

Gate-keeping arrangements

To ensure the ongoing NCP agenda continues to deliver reforms, it is important that governments commit to continuing, and in some areas strengthening, the gate-keeping arrangements established in the NCP agreements. Effective mechanisms need to be in place to monitor the efficacy of new and amended legislation and regulations that contain restrictions against competition, both to prevent the introduction of unwarranted new competition restrictions and to preserve earlier legislation reforms. This issue is addressed later in this report together with proposals to reduce the regulatory burden on business.

Recommendation 1.2

COAG agree that each jurisdiction:

(a) continues and strengthens gate-keeping arrangements established in the NCP arrangements to prevent the introduction of unwarranted competition restrictions in new and amended legislation and regulations; and

(b) completes outstanding priority legislation reviews from the current NCP Legislation Review Program in accordance with the NCP public benefit test.

Some jurisdictions argued that a commitment to complete outstanding legislation reviews should be dependent on the availability of competition payments or be confined to those reviews for which penalties are applied in the National Competition Council 2005 assessment.

Appointments and Modifications to Part IV of the TPA

Clause 4 of the Conduct Code Agreement outlines the procedures for appointments to the Australian Competition and Consumer Commission (ACCC).[1] The Commonwealth considers that the current processes for making

[1] Under these arrangements, where there is a vacancy in the office of Chairperson, Deputy Chairperson, Commissioner or Associate Commissioner for the ACCC the Commonwealth is required to send written notice to the states inviting suggestions as to suitable persons to fill the vacancy. States have 35 days in which to respond. The Commonwealth will then give notice of persons whom it desires to put forward to the Governor-General for appointment. States have 35 days to notify, in writing, as to whether they support the proposed appointment. If notification is not received within this time period, support is deemed to be given. The Commonwealth must have majority support from the states before putting forward to the Governor-General a person for appointment. The requirement of majority state agreement is also contained within the relevant sections of the TPA itself (s7(3)(c), s8A(1A) and s10(1A)).

amendments to Part IV of the *Trade Practices Act 1974* (the TPA) and the Competition Code are also lengthy given the initial three month consultation period and then subsequent 35 day voting period and should be streamlined.[2]

The states and territories (states) agree to consider options for streamlining processes with a view to enhancing timelines and certainty, however they do not support changes that could be seen to restrict consultation.

- *Appointments*

The appointments' process would benefit from streamlining to enable more timely and efficient arrangements. The Commonwealth considers the process is slow and unwieldy and does not reflect the significance of the Commonwealth's financial commitment to fully fund the ACCC. However, the states note that the primary motivation for the consultation with the states was not the Commonwealth's financial commitment to fully fund these bodies but the agreement by these jurisdictions to accept the 1995 changes to the TPA and to apply the Competition Code within their jurisdictions which, amongst other things, removed the shield of the Crown from many aspects of state-controlled activity.

The Commonwealth considers the Agreement could be amended to replace the requirement for consultation with the states prior to the nomination of candidates for each position (the initial 35 day consultation period) with a requirement for the Commonwealth to write to the states annually indicating which appointments will expire within the next 12 months and seeking suggestions from the states for these positions. The Commonwealth considers this will significantly increase the efficiency of the appointments process while maintaining the states' ability to nominate potential candidates for appointment.

In addition, consistency between the voting procedures for appointments and those relating to amendments to Part IV of the TPA would also streamline processes. The Commonwealth proposes amending the Conduct Code Agreement so that each state has one vote and the Commonwealth has two votes and a casting vote. A majority of votes would be required before an appointment or amendments to Part IV of the TPA can be made. This is not supported by the states.

[2] The Commonwealth is required to consult with the states prior to putting forward any amendments for parliamentary consideration. The states have three months in which to respond. Once consultation is complete the Commonwealth calls a vote on the proposed amendments. For the purposes of voting the Commonwealth has two votes, each jurisdiction has one vote and in the event of a tied round the Commonwealth has a casting vote. Each jurisdiction has 35 days in which to vote; if no vote is received that jurisdiction is taken as having voted in support of the amendment. A majority of votes is required before an amendment can be put before parliament.

- *Amendment to Part IV of the TPA*

The Commonwealth considers that Clauses 6 and 7 of the Conduct Code Agreement could be amended to replace the initial consultation round of three months with an arrangement whereby states continue to be provided with proposed amendments prior to the voting period (and the Commonwealth is available to provide advice); and to allow the Commonwealth to draft and implement regulations under Part IV of the TPA, as required, without the need for state consultation.

Under the Commonwealth's proposed process, states would continue to have the opportunity to comment on proposed amendments prior to voting. In addition, there would typically be sufficient time between policy change announcements and drafting of the Bill to make further drafting changes if states' proposed changes are accepted by the Commonwealth. The framework for regulations is provided by Part IV of the TPA, therefore applying the same consultation arrangements that apply to the primary legislation is unnecessary and delays implementation of the regulations.

The states consider that a requirement to consult on proposed changes to the TPA should continue but that this initial consultation period could be reduced to 6 weeks. Once the agreed amendments have been drafted, the Commonwealth would circulate these, with accompanying explanations, for advice and voting within two months. This would then allow the states to concentrate their efforts on internal consultation and Cabinet approval once the proposals are clearly drafted.

The states also suggest changing the voting process for amendments to the TPA so that each jurisdiction has one vote, and there is no casting vote for the Commonwealth. A majority of votes would be required before the amendment or appointment can be made.

Recommendation 1.3

COAG request Senior Officials to review the Conduct Code Agreement with a view to making recommendations for streamlining and introducing greater certainty to the processes for appointments and amendments to Part IV of the TPA, while retaining a cooperative approach.

STRENGTHENING THE NATIONAL ENERGY MARKET

Structural reforms undertaken under NCP and other COAG initiatives since the early 1990s have significantly improved the efficiency of the energy sector. The reforms achieved to date include the establishment of a competitive national electricity market in south eastern Australia and the development of a gas market with more competitive supply arrangements.

The economic benefits of these reforms have been significant. Average real electricity prices have fallen by 19 per cent since the early 1990s. The business sector has been the major beneficiary and households also have gained. Australians enjoy among the lowest electricity and gas prices in the developed world but there is more to be achieved. Comparatively cheap, reliable and secure energy makes an important contribution to sustaining our national prosperity and helps underpin our industrial base.

The MCE reform agenda

In 2004, COAG endorsed a major energy market reform program proposed by the Ministerial Council on Energy (MCE). This drew on an independent review (Parer Review) which identified strategic issues for Australian energy markets and proposed policy directions. ACIL-Tasman indicated that reforms to the electricity and gas sectors in line with the recommendations of the 2002 Parer Review would cumulatively increase Australia's real GDP by around $8 billion between 2005 and 2010.

Implementation of the MCE energy market reform program is expected to be finalised by 2008. The MCE reform agenda (summarised in more detail in Appendix A) focuses on improving regulatory and governance arrangements, electricity transmission planning and regulation, gas market development and operation and end-user participation in the energy market.

These reforms are taking place against a background of sustained growth in demand for energy services. The Australian Bureau of Agriculture and Resource Economics (ABARE) forecasts that by 2030, electricity generation will need to grow by 73 per cent to meet demand and gas demand will more than double. Hence, market arrangements must provide an environment conducive to efficient and timely investment.

It is proposed that governments build on and reinforce the MCE reforms through further targeted initiatives. These reforms collectively will deliver significant productivity gains and substantial additional economic benefits. These initiatives have the objectives of improving price signals for energy consumers and investors, ensuring that the transmission system supports an

efficient national electricity market and ensuring policy settings encourage national market structures that foster competition.

Recommendation 2.1

COAG agree that governments work collectively to strengthen the national energy market by recommitting to the COAG reforms currently being progressed by the Ministerial Council on Energy and the timelines for their implementation as outlined in Appendix A.

Demand-side reforms

Most energy market reform over recent decades has focussed on improving supply efficiency. Insufficient emphasis has been placed on changing consumption patterns. In particular, the growth in the use of air conditioning in the community has required that additional electricity infrastructure be built so that the system can cater for infrequent demand spikes on very hot or cold days. Although this infrastructure may rarely be used to its full capacity, consumers must pay for it. This growing trend threatens to raise overall power prices substantially.

Recent trials of smart meters have demonstrated the effectiveness of price signals in influencing consumption patterns. Victoria has already committed to make them generally available to electricity users. The widespread availability of smart meters would provide more accurate information both to consumers, enabling them to adjust their consumption, and to energy service providers, allowing them to make more informed investment decisions which better match the needs of electricity users.

It is proposed that the MCE develop a national implementation plan for the roll-out of smart meters beginning in 2007. To ensure the roll out is progressed in an efficient and competitive market framework, it will be important that this plan be based on common technical standards agreed by MCE. It is difficult to factor all the cost and benefits into an assessment of an initiative of this kind. The major gains are likely to be of a dynamic nature and to occur over time, although ultimately they will accrue to electricity consumers. It is necessary, however, that in rolling out of smart meters the MCE take into account the costs and benefits and the implications of the market circumstances in each state and territory.

There is also a need to introduce comprehensive measures to substantially improve demand management in addition to introducing smart meters. A comprehensive MCE work program could be implemented from 2006 to establish effective demand side response mechanisms in the electricity market.

This could address network owner incentives, the effective valuation of demand side responses, the regulation and pricing of distributed and embedded generation, and end user education.

Demand management which is able to shift or reduce demand peaks can be an economically efficient substitute for building new network and generation assets. Demand management may be achieved through commercial initiatives in the electricity market. Improved demand responsiveness may also be achieved by creating financial incentives through the regulatory framework where regulatory arrangements do not adequately reward network owners for the avoided cost of new network assets.

Local demand may be more efficiently satisfied from local distributed or embedded generation rather than from large remote generators. Consumers may generate power for their own needs but send the surplus into the grid. This can assist in meeting peak loads and reduce the need to build additional distribution lines. Complex technical and regulatory requirements and the price received for energy surplus exported to the grid are seen as impediments to the wider penetration of distributed and embedded generation.

There is still further potential for demand management through the greater penetration of energy efficient appliances, lighting and buildings, particularly if these are combined with improved end user education and more accurate pricing. For customers, the benefits of these alternatives to more generation and network expansion include lower energy bills, better energy services, the improved utilisation of resources and fewer environmental costs.

Recommendation 2.2

COAG agree to improve the price signals for energy investors and customers by:

(a) committing to the progressive roll out of electricity smart meters to allow the introduction of time of day pricing and to allow users to respond to these prices and reduce demand for peak power;

(b) requesting the MCE to agree on common technical standards for smart meters and implement the roll out as may be practicable from 2007 in accordance with an implementation plan that has regard to costs and benefits and takes account of different market circumstances in each state and territory; and

(c) implementing a comprehensive and enhanced MCE work program, from 2006, to establish effective demand side response mechanisms in the electricity market, including network owner incentives, effectively valuing demand-side responses, regulation and pricing of distributed and embedded generation, and end user education.

A national electricity transmission grid

The national electricity transmission grid provides a transportation service from generation source to load centre, facilitates competition, and ensures secure and reliable supply. The transmission grid is a piece of national infrastructure which is essential for the operation of an efficient, competitive and reliable electricity market. The planning, operation and regulation of the transmission grid requires a more national perspective which offers greater certainty to investors and security to customers. In particular, additional measures directed at strengthening the national orientation of transmission grid planning, operation and investment will ensure that the grid is developed to support network and generation investment that is efficient and relevant to Australia's growing demand for energy. This initiative will complement the extensive work being conducted by the MCE in areas such as the transmission revenue and pricing rules, congestion management and regional structure.

Recommendation 2.3

COAG agree to strengthen the national character of the electricity transmission system to support an efficient national energy market by:

(a) agreeing to further develop the national electricity transmission grid in a manner that provides energy users with the most efficient, secure and sustainable supply of electricity from all available fuels and generation sources in the National Electricity Market;

(b) establishing a truly national approach to the future development of the national electricity transmission grid by adopting suitable policy settings, governance and institutional arrangements and taking other actions necessary to improve the framework for planning, network investment decisions, enhancing transparency and independence and streamlining regulation; and

(c) endorsing the current MCE transmission work program taking forward reforms on transmission pricing and revenues, regional structures, congestion management, and planning.

Market Structures

Energy market structures have evolved rapidly over the past decade since reforms commenced. It is necessary to maintain the current structural separation of transmission networks from the competitive generation and retail sectors. Several electricity generation and retail activities have integrated vertically as a legitimate commercial response to manage market risks. Horizontal integration between energy businesses, including electricity generators and gas and electricity retailers has provided cost savings through initiatives such as common billing arrangements. However, it is timely to

consider the implications of ongoing structural change for current regulatory arrangements for market competitiveness and efficiency.

While some energy market participants can manage risk through their commercial structures and artificial hedging arrangements, market participants should also be able to use financial instruments to manage risks, particularly in relation to electricity spot market operations. Effective financial markets provide an efficient mechanism to assist non-integrated market participants to compete with other players. Some industry participants and financial market participants have expressed concern that energy-related financial markets are not sufficiently liquid and price transparency is inadequate. Higher transaction costs in illiquid markets can flow through to higher customer prices. Inadequate price transparency also may discourage efficient and timely investment.

Recommendation 2.4

COAG reaffirm its commitment to implement national energy market structures that foster competition by:

(a) endorsing the ongoing structural separation of the competitive generation and retailing activities from the natural monopoly transmission functions in the National Energy Market to protect and promote the benefits of competition;

(b) requesting the MCE to develop specific recommendations under the National Electricity Law to maintain such separation of generation and transmission activities in a form that complements the provisions of the TPA that prohibit the substantial lessening of competition;

(c) considering the operation of and structure of government owned businesses with a view to ensuring that there is equivalence between government owned and private sector businesses in terms of the policy, legal and market arrangements under which they operate; and

(d) removing any barriers to the evolution of fully efficient financial markets affecting energy by:

  (i) fostering transparent and effective financial markets to support energy markets; and

  (ii) committing to maintain and increase reliance on market-based risk mitigation and hedging measures, and to remove barriers to full retail competition.

The Energy Reform Implementation Group

It is recommended that a high level Energy Reform Implementation Group be established by COAG to advise on further reform of the energy market by developing detailed implementation strategies for consideration by COAG.

The Energy Group should be chaired by an eminent person and comprised of individuals drawn from the private sector and government on the basis of their expertise. It could be supported by a secretariat drawn from Commonwealth, State and Territory officials. The Group would address the following issues:

- The principal task of the Group would be to consider measures to strengthen the national character of the transmission grid. This would encompass initiatives to promote a more national approach to grid planning, operation and augmentation and have regard to governance and institutional arrangements with a view to promoting greater transparency and investment certainty.
- The Group would also consider structural issues and trends in the energy market and their implications for investment, competition and the electricity wholesale market. It would identify any measures in regulatory or other settings that may be desirable to foster investment and competition in an efficient and reliable energy sector.
- It would also identify any measures that may be required to improve the operation of financial markets in the energy sector including with respect to liquidity, pricing, costs, transparency and risk management, with a view to facilitating efficient energy trade and infrastructure investment.

The Chair of the Energy Group should report its implementation proposals to COAG before the end of 2006. To this end the Energy Group will need to liaise with industry and commission specialist advice as required. The Energy Group will liaise closely with the MCE.

Recommendation 2.5

(a) COAG establish a high level COAG Energy Reform Implementation Group chaired by an eminent independent person and comprising industry experts and senior officials appointed on the basis of their expertise to develop detailed implementation arrangements for the further reforms to the energy market in Recommendations 2.3 and 2.4 above, drawing on expert studies that may be required; and

(b) COAG request the Chair of the COAG Energy Reform Implementation Group to report to COAG before the end of 2006 with the Group's proposals for:
   (i) achieving a fully national transmission grid including the most suitable governance and transitional arrangements having regard to COAG's objective of achieving a truly national approach to the future development of the electricity grid, the legitimate commercial interests of asset owners, and the need to promote investment that supports the efficient provision of transmission services;
   (ii) any measures that may be necessary to address structural issues affecting the ongoing competitiveness and efficiency of the electricity sector; and

(iii) any measures that may be necessary to ensuring there are transparent and effective financial markets to support energy markets.

TRANSPORT REFORM AGENDA

Transport facts

- Transport generates approximately five per cent of GDP and is a key contributor to all sectors of the economy.
- Australia's freight task is expected to almost double over the next 20 years.
- Articulated truck traffic in metropolitan areas is forecast to grow by 90 per cent over the next 15 years.
- The proportion of land freight carried by rail has fallen from 70 per cent to 30 per cent over the last 30 years.
- Current road and rail infrastructure charges do not reflect the economic costs of providing freight infrastructure.
- Operators of inter-state trains must comply with seven rail safety regulators, three transport accident regulators, six rail access regimes, 15 pieces of OH&S legislation and 75 pieces of environmental legislation.
- The total cost of traffic congestion in Australia's major cities was around $13 billion a year and is predicted to rise to almost $30 billion a year by 2015 if nothing is done.

The dispersed nature of Australia's population and markets underlines the importance of transport infrastructure to our economic performance. Transport already generates approximately five per cent of GDP and Australia's freight task is expected to almost double over the next 20 years. The role of efficient transport infrastructure and service markets will grow commensurately.

Governments have committed additional public resources to transport infrastructure and tackling urban congestion. However, ensuring transport infrastructure markets and regulation operate efficiently is at least as important as adequate public investment. Industry representatives maintain private investors are keen to invest in transport and other infrastructure but pricing and regulatory concerns reduce the number of commercially viable projects available. Recent reports by the Business Council of Australia, the Productivity Commission, and the Exports and Infrastructure Taskforce highlight the importance of COAG prioritising major nationally coordinated transport reforms.

The reforms consistently identified as having the highest priority are: efficient, competitively neutral road and rail pricing; removing regulatory, competition and other efficiency constraints on road, rail and inter-modal interfaces; improving planning and project appraisal processes; and tackling the impact of urban congestion. COAG, acting through a new NCP agenda, is the appropriate vehicle to drive necessary transport market reforms.

Pricing reforms

With the rapid expansion in the freight task predicted over coming decades, it is important to adopt efficient pricing arrangements for road and rail freight transport infrastructure. Pricing reforms have the potential to enhance the efficiency and productivity of the freight transport task and investment choices by governments and the private sector. More efficient pricing will help direct infrastructure investment to the most appropriate modes and projects. Ensuring more efficient sharing of the freight transport task within and across modes should also help to reduce road accidents, greenhouse emissions and noise pollution in urban areas.

Pricing that reflects the costs of providing and using road and rail infrastructure will allow rail and road to compete on a more equal footing and ensure the growing freight task is carried on the most appropriate and efficient mode.

Heavy vehicle road charges are presently set by governments under a national approach which seeks to recover the share of road construction and maintenance costs attributable to heavy vehicles. It is generally recognised that the current charging methodology is becoming limited as an effective and equitable cost allocation tool and that consequently alternate methodologies should be examined. However, this requires detailed and careful examination of alternative approaches and a better understanding of the economic costs of infrastructure provision in both road and rail freight.

The implementation of any different pricing models would need to be phased in to reduce and manage adjustment costs that may arise for industry, governments and communities, particularly those communities in rural, regional and remote Australia. While changing the pricing model may result in 'winners and losers', it is not possible at this stage to predict with any accuracy how this will impact on different freight infrastructure users and locations.

The objective of this independent analysis is not to increase government revenue. It is difficult to assess at this stage what impact an efficient pricing system will have on revenue. It will be necessary for governments to work through the fiscal implications of any changes following the pricing review proposed below.

In the first instance, it is proposed that the Productivity Commission (PC) be asked to develop proposals for efficient pricing of road and rail freight infrastructure through consistent and competitively neutral pricing regimes, in a manner that maximises net benefits to the community, in particular rural, regional and remote Australia (terms of reference at Appendix B). The PC would be requested to report to COAG by the end of 2006. The PC's inquiry processes provide scope for it to consult closely with stakeholders, including governments, and to brief governments in the days immediately preceding the

release of the draft report. The Commonwealth will provide the final inquiry report to COAG members under embargo prior to its public release. COAG could consider the inquiry's findings at its first meeting in 2007 and agree the next actions. The inquiry may also identify worthwhile reforms relevant to the road and rail regulatory reform agenda described below.

Recommendation 3.1

(a) COAG agree to ask the Productivity Commission to undertake an inquiry (with terms of reference at Appendix B) to be presented to COAG by end 2006 which will, *inter alia*:-
   (i) identify the optimal methods and timeframes for introducing efficient road and rail freight infrastructure pricing in a manner that maximises net benefits to the community,
   (ii) determine the full financial, economic, social and environmental costs of providing road and rail infrastructure,
   (iii) identify other barriers to competition in road and rail transport, and
   (iv) recognise transport operators and users and remote and rural communities will need sufficient time to transition and adjust to pricing arrangements.

Regulatory reforms

The efficient pricing of road and rail infrastructure will not, by itself, ensure Australian freight travels on the most efficient mode or that productivity in the sector is maximised. This will also require a comprehensive agenda of reforms to road and rail regulation. Reforms in pricing and regulation implemented as a complementary package will provide benefits to industry and the community through more efficient use of, and investment in, freight transport infrastructure.

In recent years, the Australian Transport Council (ATC) has made much progress in road and rail regulation harmonisation. However users still face a range of different regulatory regimes and regulators within and between different jurisdictions, raising operating and compliance costs and limiting potential productivity. Inflexible and prescriptive road regulations, while appropriate in some circumstances, also limit the use of innovative vehicles and do not allow maximum use of infrastructure where it is safe to do so. For example, more flexible and objective criteria and systems could be developed to increase networks available to heavier trucks while still protecting critical points. Regulatory issues also impact on rail operators. For example, a submission to the Exports and Infrastructure Taskforce noted that operators of inter-state trains must comply with seven rail safety regulators, three transport accident regulators, six rail access regimes, 15 pieces of occupational health

and safety legislation and 75 pieces of environmental legislation. Such overlapping regulation significantly increases compliance costs for rail operators. Road and rail regulation should be as efficient and low cost for users as possible, while still achieving policy objectives.

At its 3 June meeting, COAG endorsed reinvigorating the road and rail regulation reform agenda in light of the Exports and Infrastructure Taskforce recommendations. In this context, Senior Officials proposed that ATC report to COAG in early 2006 on: progress against existing reform efforts; a timetable for the implementation of model safety legislation; and priorities for further productivity reforms.

Building on this, it is recommended that COAG agrees a comprehensive agenda of regulation reforms over five years to give added emphasis to the work being undertaken by the ATC in harmonising road and rail regulation. This agenda is detailed at Appendix C. The agenda includes progressing reforms already agreed by the ATC, such as the implementation of performance based standards and the enactment of model rail safety legislation, plus the development of new reforms such as a network for B-triples, a strategy for nationally monitoring and reporting on heavy vehicle regulatory compliance, and improving access to under-utilised road networks. Further additional reforms may arise from the findings of the review on efficient pricing described above. Streamlining of rail safety regulation is recommended for attention as a high priority cross-jurisdictional 'hot-spot' and is dealt with in the best practice regulation section of this report.

The benefits of these reforms will be reflected in safety and productivity gains to the community. For the transport industry, these gains will improve productivity, provide more flexibility and choice, and deliver an offset to those operators affected by the introduction of more efficient pricing arrangements.

At its June meeting COAG also agreed in principle to a consistent national system of regulation for ports and other export-related infrastructure. Recommended approaches to achieve this objective for ports and railways are outlined in the section in this report on infrastructure regulation.

Recommendation 3.2

(a) COAG agree to a range of actions to harmonise and reform rail and road regulation (outlined in Appendix C) for implementation on specific timeframes within five years, including productivity enhancing reforms such as higher mass limits, improved and nationally consistent road and rail safety regulation and performance based standards for licensing innovative vehicles that do less road damage;
(b) COAG request Senior Officials to work with the Australian Transport Council (ATC) and the National Transport Commission to develop by mid 2006 the specific performance indicators and milestones for the reform program referred to above for agreement by COAG;
(c) COAG consider the findings of the pricing review referred to in Recommendation 3.1 to guide implementation of the policy commitments in (a) above; and
(d) COAG request the ATC to oversee implementation of these reforms and provide regular progress reports to COAG.

Tasmania supports the adoption of the productivity and higher mass related road reforms but considers that this should occur once the competitive standing of Tasmania's rail system has been rebalanced.

Better value public investment

In addition, all governments could enhance the productivity of their transport investments by employing the national project appraisal guidelines endorsed by the ATC in 2004. These require the evaluation of all new transport projects' financial and economic benefits and costs, including the impacts on travel time, safety and environmental outcomes. Cooperating in long term planning of national transport corridors and ports also will be essential to ensure efficient investment outcomes across modes. At its June meeting, COAG agreed, in principle, to hasten the long-term planning being undertaken under Auslink and to extend Auslink planning and coordination to ports and associated shipping channels.

Recommendation 3.3

COAG agree to strengthen land transport investment appraisal approaches to ensure the best use of public investment by:
(a) adopting ATC-endorsed national guidelines for evaluating new public road and rail infrastructure projects by December 2006; and
(b) requesting the ATC to provide regular progress reports to COAG.

Urban congestion solutions

The final element of the proposed transport reform agenda involves developing a COAG approach to addressing the impact of urban congestion, possibly including greater use of market based solutions, with a particular emphasis on national freight transport corridors. In Australia's major cities rapidly growing passenger and freight tasks, the dominance of road-based transport and urban sprawl is placing transport infrastructure under increasing pressure, producing significant transport bottlenecks. Some of the most serious long term challenges to more efficient freight transport lie in urban areas. In 2000, the Bureau of Transport Economics estimated the total cost of traffic congestion in Australia's major cities was around $13 billion a year, predicting if nothing were done to address this problem the cost could rise to almost $30 billion a year by 2015.

The review will examine and assess the key characteristics and impact of successful urban congestion management approaches and initiatives in Australia and overseas. This examination may include improved infrastructure and land use planning across tiers of government and reforming travel behaviour incentives, transport regulation and infrastructure pricing. Such approaches could produce significant productivity gains by reducing bottlenecks on national freight corridors, urban transit times and greenhouses emissions as well as improving urban amenity.

It is proposed that COAG commission a joint Commonwealth-State review of urban congestion causes and solutions in cooperation with local government. The focus of the review will be on national corridors, however it will also need to examine local networks where they interact with, and impact on, national corridors.

The steering group for the review should comprise senior representatives of relevant Commonwealth and state government agencies and the Australian Local Government Association. The steering group should take a whole-of-government approach, at least encompassing transport, infrastructure and planning interests. It would direct the work of consultants who may be contracted to contribute to the review.

The review would be finalised by the end of 2006 with COAG considering further action at its first meeting in 2007.

Recommendation 3.4

COAG commit to reduce current and projected urban transport congestion, within current jurisdictional responsibilities, by:
(a) commissioning a Commonwealth-State review, in co-operation with local government, into the main causes, trends, impacts and options for managing

the impact of urban transport congestion in Australia's major cities, focusing on national freight corridors, but also examining local networks only where they interact with, and impact on, national corridors (with terms of reference at Appendix D); and

(b) based on the review's findings, considering further action at the first meeting of COAG in 2007.

Where could we be in 2010 if transport recommendations are implemented?

- Freight carriers will be paying the financial, and possibly economic, cost of transport infrastructure services they use, encouraging efficient new private and public investment, overcoming potential bottlenecks on growth and better guiding infrastructure users in their transport choice within and across modes.
- Road and rail regulations will be harmonised and streamlined providing productivity and efficiency benefits to transporters and their customers.
- Public investment in transport infrastructure will be guided by nationally consistent and rigorous cost benefit guidelines, increasing transparency and best-value buys.
- State governments and local governments will be armed with better tools to combat urban congestion, with benefits to both freight transporters and the metropolitan community.

INFRASTRUCTURE REGULATION REFORM

A consistent approach to the regulation of nationally significant infrastructure was a key objective of the 1995 NCP reforms. A national access regime was established by the addition of Part IIIA to the *Trade Practices Act 1974* (TPA), and principles to guide the operation of state and territory access regimes were included in clause 6 of the Competition Principles Agreement (CPA). As part of the NCP reforms, the Australian Competition and Consumer Commission (ACCC) and the National Competition Council (NCC) were established and given responsibility, inter alia, for administering these arrangements. The Australian government has recently introduced to the House of Representatives amendments to Part IIIA to reflect the outcome of a review of the national access regime which drew on an independent report by the Productivity Commission (PC) and involved consultation with state and territory governments.

The PC's review of NCP identified concerns with the regulatory framework applying to infrastructure and proposed implementation of clear and nationally consistent principles to guide regulators. The Exports and Infrastructure Taskforce also recommended that greater emphasis be given to commercial negotiation in setting infrastructure access terms and conditions, and that jurisdictions adopt a nationally consistent approach to regulation. Recent reports by the Business Council of Australia on infrastructure and regulation expressed concern that inconsistent and inefficient regulatory regimes operating across jurisdictions raise costs for business and discourage new investment.

At its 3 June meeting, COAG agreed in principle to a 'simpler and consistent national system of regulation for ports and export-related infrastructure' and that this be considered in the review of NCP.

A core expectation underlying the implementation of NCP is that, in most cases, allowing well functioning markets to meet consumers' needs is the best way to enhance national productivity and prosperity. Well functioning markets allow commercial negotiations between asset owners and users to determine infrastructure access charges and other terms.

Consistent with NCP, the Commonwealth, state and territory governments have taken a number of steps to improve the functioning of markets. Legislation restricting competition has been reviewed and amended unless the benefits of the restriction outweigh the costs.

Government Owned Infrastructure

The CPA also included principles to address conflicts of interest between the ownership and regulation of infrastructure businesses. These were intended to ensure competitive neutrality between publicly owned and private businesses that competed in the same market. Significant progress has been made in ensuring competitively neutral policies are in place. Some governments have dealt with this issue by structuring the operation of significant government business enterprises (GBEs) in accordance with these principles. Some governments have also dealt with it by privatising businesses.

Over the past decade the implementation of the principles in the CPA have helped to improve competition outcomes and investor confidence. However, the reports by the BCA, the PC, the Exports and Infrastructure Taskforce all gave examples of private sector concerns regarding the operation of GBEs. It is therefore timely to build on the progress already made over the past decade, and recommit to the implementation of competitive neutrality. It is proposed that the operation of enhanced competitive neutrality principles be monitored by Heads of Treasuries who would provide a high-level report to COAG on their general application, noting any issues that may require discussion.

Much nationally significant infrastructure, including most infrastructure networks and many ports, exhibits natural monopoly characteristics and hence cannot operate in competitive market structures. Where governments are considering developing, leasing or selling such monopoly infrastructure, they can foster competition *for* these markets and promote cost efficient service delivery for consumers through a process of competitive tendering. (Decisions about the sale or lease of infrastructure are for each jurisdiction to take in the light of their particular circumstances.) Competitive tendering allows the market to establish the terms and conditions for supplying these infrastructure services, reducing the need for subsequent regulation. The basis of such tendering typically is the price at which the bidder is willing to provide the infrastructure service to the community, as well as meeting a range of other specified service quality and financial obligations, such as servicing debts incurred in developing the infrastructure.

With regard to access matters, the TPA is being amended to provide that government owned infrastructure will not be declared under Part IIIA if it has been developed by way of a competitive tender approved by the ACCC. Once competitive tendering processes have been applied, governments need not regulate the infrastructure services involved apart from by applying economy wide competition laws and by ensuring the parties abide by their contractual obligations.

Recommendation 4.1

COAG agree that governments will:

(a) enhance the application of competitive neutrality principles to government business enterprises engaged in significant business activities in competition with the private sector by committing to the following principles:

Objectives

(i) that the enterprise has clear commercial objectives;
(ii) that any non commercial objectives or obligations established for the enterprise are clearly specified and publicly reported;
(iii) that the enterprise does not exercise regulatory or planning approval functions in circumstances in which it competes with private sector enterprises;

Governance

(iv) that the responsibilities of the governing board of the enterprise and the performance measures against which the board will be held accountable are published;
(v) that the governing board is appointed on the basis of particular skills needed by the board;
(vi) that having received strategic guidance from the government about the achievement of its objectives, the enterprise has operational autonomy in the day to day management of its affairs;
(vii) that the dividend policy applicable to the enterprise should be clearly and publicly specified;
(viii) that any payments to the government as shareholder or for the purposes of competitive neutrality, such as taxes, tax equivalent payments, special dividends, capital repayments, are identified in a transparent manner;

Reporting

(ix) that at least annually the enterprise will report publicly on its commercial performance and on its performance of any non commercial activities;
(x) that any directions given to the enterprise by the government are published; and
(xi) that where the legislation establishing an enterprise derogates from competitive neutrality the derogation has been published;

(b) agree to consider the use of competitive tendering to establish the terms and conditions for the supply of significant new services provided by government owned monopoly infrastructure;

(c) note the Commonwealth has introduced amendments to Part IIIA of the *Trade Practices Act 1974* to provide that declaration will not apply to

government owned infrastructure developed by way of a competitive tender approved by the Australian Competition and Consumer Commission; and
(d) for the purposes of (c), agree to work together to develop a consistent set of criteria for access related elements of tenders covering the provision of nationally significant infrastructure facility services.

Simpler and consistent infrastructure regulation

COAG agreed in principle to a 'simpler and consistent national system of regulation for ports and export-related infrastructure' and that this be considered in the review of NCP.

Well functioning markets provide for commercial considerations to determine prices efficiently and to minimise the need for regulation by government. It is not possible, however, that access to significant infrastructure can always be determined by commercial processes and economic regulation may be required. It is important, however, that economic regulation not add to the costs of business and other users by requiring them to deal with inconsistent arrangements.

Where it can be applied effectively, price monitoring offers a light-handed and cost effective approach to regulation when an infrastructure service provider has significant market power. Price monitoring requires businesses to report their prices, costs and profitability on a regular basis and puts businesses on notice that additional price regulation may be applied if they take unfair advantage of their market power. Victoria and South Australia have applied price monitoring to port user charges in the Port of Melbourne and the privatised South Australian ports. Price monitoring also applies to some major Australian airports and stevedoring providers.

The national access regime under Part IIIA of the TPA provides for third party access to services provided by means of significant infrastructure facilities where, inter alia:
(a) it would not be economically feasible to duplicate the facility;
(b) access to the service is necessary in order to permit effective competition in a downstream or upstream market;
(c) the facility is of national significance having regard to the size of the facility, its importance to constitutional trade or commerce or its importance to the national economy; and
(d) the safe use of the facility by the person seeking access can be ensured at an economically feasible cost and, if there is a safety requirement, appropriate regulatory arrangements exist.

The national access regime encourages commercial negotiation between the access owner and third parties to settle access terms. This approach is supported by arrangements for owners of monopoly infrastructure to provide undertakings to the ACCC, the national regulator, establishing the terms on which infrastructure services will be offered. This arrangement can provide certainty to an infrastructure owner in relation to third parties access terms.

However, where access seekers have been unable to reach agreement with the operator on commercial terms, the relevant Commonwealth Minister may declare a service where, among other criteria, it is uneconomic to duplicate the infrastructure and third party access is essential to promote competition in upstream or downstream markets, following a recommendation from the NCC. Where access seekers and infrastructure operators cannot reach an agreement on access terms after declaration the ACCC can establish access terms through arbitration.

The national access regime does not cover services provided by means of a facility which is already covered by an effective state or territory regime. To be "effective" a state or territory access regime must be consistent with the access principles included in the CPA and be limited to significant infrastructure (described by (a), (b) and (d) above) that does not have an influence beyond the jurisdiction. It was provided that such access regimes may be certified as effective by the NCC under clause 6 of the CPA. If an access regime is not certified, the infrastructure service may be declared by the relevant Commonwealth Minister or, if the infrastructure is state government owned, by the relevant State Minister.

Since 1995, national access regimes have been established for electricity, inter-state gas pipelines, telecommunications and the Australian Rail Track Corporation (ARTC). State and territory governments have established a further 22 state-based access regimes, of which nine have been certified by the NCC as effective in terms of the CPA.

An Effective Access Regime

For a state or territory access regime to be effective in terms of Clause 6 of the CPA the regime needs, amongst other things, to have the following features:

- a legal right for a third party to negotiate access to the service;
- the right to negotiate access needs to be supported by an enforcement process;
- an independent dispute resolution mechanism when agreement cannot be reached on access terms; and
- provisions to protect the legitimate business interests of the owner and the economically efficient operation of the facility.

A number of changes are proposed in response to COAG's in-principle decision to establish a consistent national approach to infrastructure regulation.

The Commonwealth's preference is for owners of nationally significant infrastructure to make undertakings to the ACCC to ensure national consistency of infrastructure regulation and administration. To enhance national consistency where state and territory regimes provide access to infrastructure the Commonwealth has offered to make the ACCC available on an 'opt-in' basis. Consistent with the recommendations of the Exports and Infrastructure Taskforce, the Commonwealth has proposed that the states give consideration to the merits review of regulatory decisions being undertaken by the Australian Competition Tribunal.

All jurisdictions agree that it would be consistent with COAG's decision for state based access regimes to be certified as effective under the CPA. This will signify that such regimes are consistent to that extent. It is also recommended that national consistency can be strengthened by working towards common principles to govern the operation of access regimes and minimise costs for infrastructure users operating across jurisdictions. These elements should include common objects clauses and pricing principles and the adoption of six months binding time limits on decisions by regulators. It is recommended that the CPA be amended to include these agreed approaches. It is further recommended that Senior Officials oversee the development and implementation of these principles and the streamlining of arrangements for the certification of state and territory access regimes for COAG approval.

Recommendation 4.2

COAG agree:

(a) that governments will establish a simpler and consistent national approach to the economic regulation of significant infrastructure;

(b) in the first instance, terms and conditions for third party access to services provided by means of significant infrastructure facilities should be on the basis of terms and conditions commercially agreed in negotiations between the access seeker and the operator of the infrastructure;

(c) that the introduction of price monitoring for services provided by means of significant infrastructure facilities should be considered, where this would improve the level of price transparency, as a first step where price regulation may be required, or when scaling back from more intrusive regulation;

(d) that all third party access regimes for services provided by means of significant infrastructure facilities will include the following consistent regulatory principles:

  (i) objects clauses that promote the economically efficient use of, operation and investment in, significant infrastructure thereby promoting effective competition in upstream or downstream markets;

(ii) regulated access prices should be set so as to:
   i. generate expected revenue for a regulated service or services that is at least sufficient to meet the efficient costs of providing access to the regulated service or services and include a return on investment commensurate with the regulatory and commercial risks involved;
   ii. allow multi-part pricing and price discrimination when it aids efficiency;
   iii. not allow a vertically integrated access provider to set terms and conditions that discriminate in favour of its downstream operations, except to the extent that the cost of providing access to other operators is higher; and
   iv. provide incentives to reduce costs or otherwise improve productivity; and

(iii) where merits review of regulatory decisions is provided, the review will be limited to the information submitted to the regulator;

(e) to amend the Competition Principles Agreement (CPA) to incorporate the agreed principles in (d);

(f) introduce requirements that regulators will be bound to make regulatory decisions under an access regime within six months, provided that the regulator has been given sufficient information, noting that:
   (i) regulators will have the discretion to determine when the six month time limit is suspended:
      i. grounds for commencing time limits include when the regulator considers that sufficient information has been provided to enable the regulatory process to commence; and
      ii. grounds for suspending time limits include requests for further information from significant infrastructure facility service providers, provided these are on reasonable grounds, and consultation periods during which the regulator seeks submissions from third parties or the community; and
   (ii) where the service provider of a significant infrastructure facility has not provided the requested information, a regulator will be permitted to make a determination on the information before it in order to satisfy six month time limits; and

(g) to incorporate the principles in (d) and (f) in existing access regimes for services provided by means of significant infrastructure facilities and in Part IIIA of the *Trade Practices Act 1974* as soon as practicable or as they are reviewed, provided that they are included in such regimes no later than the end of 2010;

(h) that Commonwealth and state officials will oversight the implementation of the principles in (d) and (f), including developing a streamlined process and appropriate administrative arrangements for the certification of access regimes, and may develop further proposals for consideration by COAG for the adoption of appropriate additional regulatory principles that may contribute to a simpler and consistent national approach to regulation;

(i) that, to advance the objective of a simpler and consistent national approach

to regulation, all state and territory access regimes for services provided by means of significant infrastructure facilities will be submitted for certification in accordance with the *Trade Practices Act 1974* and the Competition Principles Agreement, noting that:

(i) all new third party access regimes will be submitted for certification as soon as practicable;

(ii) third party access regimes existing at the time this agreement commences will be submitted for certification as soon as practicable, or as they are reviewed, provided they are submitted for certification no later than the end of 2010; and

(iii) the certification of access regimes under this clause is subject to jurisdictions agreeing a streamlined certification process and appropriate administrative arrangements to be developed as part of the mechanism recommended in (h).

Port competition and regulation

The Exports and Infrastructure Taskforce drew attention to competition and access issues in several ports around the country. It is apparent that while there is considerable monopoly market power in most major ports the need for regulation should be considered on a case by case basis. Several ports now operate under state based access or price monitoring regimes but none are certified as effective. It is now timely that all jurisdictions review their port authority and handling facility operations to ensure the competition and regulatory frameworks operating in ports are appropriate.

Recommendation 4.3

COAG agree:

(a) ports should only be subject to economic regulation where a clear need for it exists in the promotion of competition in upstream or downstream markets or to prevent the misuse of market power;

(b) where a jurisdiction decides that economic regulation of significant ports is warranted, it should conform to a consistent national approach based on the following principles:

(i) wherever possible, third party access to services provided by means of ports and related infrastructure facilities should be on the basis of terms and conditions agreed between the operator of the facility and the person seeking access;

(ii) wherever possible, commercial outcomes should be promoted by establishing competitive market frameworks that allow competition in and entry to port and related infrastructure services, including stevedoring, in preference to economic regulation;

(iii) where regulatory oversight of prices is warranted pursuant to

Recommendation 4.2(c), this should be undertaken by an independent body which publishes relevant information; and

(iv) where access regimes are required, and to maximise consistency, those regimes should be certified in accordance with the *Trade Practices Act 1974* and the Competition Principles Agreement;

(c) to allow for competition in the provision of port and related infrastructure facility services, unless a transparent public review by the relevant jurisdiction indicates that the benefits of restricting competition outweigh the costs to the community, including through the implementation of the following principles:

(i) port planning should, consistent with the efficient use of port infrastructure, facilitate the entry of new suppliers of port and related infrastructure services;

(ii) where third party access to port facilities is provided, that access should be provided on a competitively neutral basis;

(iii) commercial charters for port authorities should include guidance to seek a commercial return while not exploiting monopoly powers; and

(iv) any conflicts of interest between port owners, operators or service providers as a result of vertically integrated structures should be addressed on a case by case basis with a view to facilitating competition;

(d) each jurisdiction will review the regulation of ports and port authority, handling and storage facility operations at significant ports within its jurisdiction to ensure they are consistent with the principles set out in (b) and (c); and

(e) port authority and handling facility operations in the following ports will be reviewed against the foregoing principles:

(i) major capital city ports and port facilities at these ports;

(ii) major bulk commodity export ports and port facilities, except those considered part of integrated production processes; and

(iii) major regional ports catering to agricultural and other exports.

Rail freight infrastructure

Considerable progress has been made towards the development of a national rail track access regime through the undertaking given to the ACCC by the ARTC. The inter-state track currently leased or owned by the Australian Rail Track Corporation extends from Kalgoorlie (WA) to the New South Wales - Queensland border, including inter-state track in South Australia and Victoria. It is recommended that the sections of the inter-state rail track, from Perth to Kalgoorlie and from New South Wales to Queensland, be brought under a national system of rail access regulation, using the ARTC undertaking as a model, so that rail users will face the same regulatory requirements from Western Australia to Queensland. Major intra-state freight can be included in

this national system of rail access regulation on a case by case basis. An agreed approach will be developed to the application of the ARTC access undertaking model including the pricing and access mechanisms that may be necessary if vertically integrated operators retain control of relevant sections of track. It is also recommended that state based access regimes that apply to intra-state track will be submitted for certification in accordance with the TPA and the CPA. These proposals require no changes in relation to the Tarcoola to Darwin railway, which is subject to an access agreement that has been certified.

Recommendation 4.4

COAG agree:

(a) to implement a simpler and consistent national system of rail access regulation, using the Australian Rail Track Corporation access undertaking to the Australian Competition and Consumer Commission as a model, to apply to the following agreed nationally significant railways:
    (i) inter-state rail track from Perth to Brisbane, currently managed by the Australian Rail Track Corporation and other parties, subject to the outcome of commercial negotiations; and
    (ii) major intra-state freight corridors on an agreed case by case basis depending on the costs and benefits of inclusion under a national regime;

(b) to develop an agreed approach to the application of the Australian Rail Track Corporation access undertaking model including pricing and access mechanisms that will be appropriate if vertically integrated operators retain control of relevant sections of track;

(c) that state based rail access regimes governing other significant export related rail infrastructure facilities will be submitted for certification as per Recommendation 4.2(i); and

(d) this does not require any changes to passenger priority policies.

Recommendation 4.5

COAG agree to sign a new COAG infrastructure agreement embodying Recommendations 4.1 to 4.4 above as per Appendix E.

Where could we be in 2010 if the infrastructure regulation reforms are implemented?

- There should be more nationally consistent regulation for nationally significant infrastructure and significant export-related infrastructure through:
  - the adoption of common regulatory principles and processes by governments;
  - bringing some additional inter-state and intra-state track under a national rail access undertaking; and
  - greater consistency of state based regimes through certification.
- Significant government owned businesses will compete on a more level playing field with private businesses, reducing sovereign risk for investors.

BEST PRACTICE REGULATION

Regulation is an important tool for delivering governments' social and economic goals, including ensuring Australia's safety and security, guarding freedom of choice, protecting the environment and setting standards for corporate governance.

However, over-regulation or inappropriate regulation can reduce competition, productivity, workforce participation and innovation. Some in the business sector and the broader community are concerned that certain regulation may be excessive, overly complex and misdirected when viewed against its policy objectives. It may also be inconsistent or overlapping between jurisdictions. The regulatory burden of this 'red-tape' is borne by business, the community and the economy more generally.

In this report regulations are broadly defined to include "the broad range of legally enforceable instruments which impose mandatory requirements upon business and the community as well as to those voluntary codes and advisory instruments … for which there is reasonable expectation of widespread compliance".[3]

Maximising the efficiency of new and existing regulations

It is important that all Australian governments – at the Commonwealth, state and territory and local levels – ensure that practical processes are in place for the rigorous, best practice assessment of proposed new regulations and burdensome existing regulations. The key consideration is that 'gate-keeping' arrangements must ensure that concise, relevant information is considered by decision-makers when they are addressing regulatory proposals.

The assessment of regulatory proposals will be assisted by the availability of high quality regulation impact analysis. This in turn should draw on the rigorous use of cost-benefit analysis where this may be relevant and better measurement of compliance costs flowing from proposed new and amended regulation. The Office of Small Business within the Commonwealth Department of Industry, Tourism and Resources, has developed a costing model which has a potentially broad application in the measurement of compliance costs. It is also appropriate in some circumstances to have regard to the existing regulatory regimes of other jurisdictions and to consider whether they might offer a viable alternative to the regulatory course under consideration.

[3] As defined in the *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard Setting Bodies*, amended by COAG June 2004.

Recommendation 5.1

COAG agree to establish and maintain effective arrangements at each level of government that maximise the efficiency of new and amended regulation and avoid unnecessary compliance costs and restrictions on competition by:

(a) establishing and maintaining "gate keeping mechanisms" as part of the decision-making process to ensure that the regulatory impact of proposed regulatory instruments are made fully transparent to decision makers in advance of decisions being made and to the public as soon as possible;
(b) improving the quality of regulation impact analysis through the use, where appropriate, of cost-benefit analysis;
(c) better measurement of compliance costs flowing from new and amended regulation, such as through the use of the Commonwealth Office of Small Business' costing model;
(d) broadening the scope of regulation impact analysis, where appropriate, to recognise the effect of regulation on individuals and the cumulative burden on business and, as part of the consideration of alternatives to new regulation, have regard to whether the existing regulatory regimes of other jurisdictions might offer a viable alternative; and
(e) applying these arrangements to COAG Ministerial Councils.

Streamlining and reducing the regulatory burden

While the implementation and maintenance of sound 'gate keeping' arrangements will be important to achieving good regulatory outcomes when new policy is considered, there are substantial benefits to be gained by all jurisdictions from the review of the stock of existing regulation. It is proposed that each jurisdiction commence targeted annual reviews of the burden of existing regulation within their jurisdiction through a public inquiry and reporting process. This should provide opportunities for input from a range of stakeholders including business groups and identify areas of regulation where action can be taken promptly with benefits to business and the community.

Recommendation 5.2

COAG agree that each jurisdiction review existing regulations with a view to encouraging competition and efficiency and streamlining and reducing the regulatory burden on business by:

(a) initiating at least annual targeted reviews to reduce the burden of existing regulation in its own jurisdiction through a public inquiry and reporting process that provides opportunities for input from a range of stakeholders including business groups, with each review to identify priority areas where regulatory reform could provide significant gains to business and the community; and
(b) acting on the recommendations of the reviews referred to above, and co-ordinating reform measures with other jurisdictions if appropriate.

Benchmarking progress

It is important that mechanisms are in place to demonstrate progress in reducing the regulatory burden. It is therefore proposed that consideration be given to adopting a common framework for benchmarking, measuring and reporting on the regulatory burden across all levels of government. In response to an initiative by the South Australian Premier, the Commonwealth Government is consulting with the states and territories on a Productivity Commission study to examine regulatory burdens across all levels of government and the feasibility of establishing reporting frameworks and performance indicators. If such indicators are to provide a basis for meaningful comparison, they will have to take into account the differences in industrial structures across jurisdictions. Common approaches to benchmarking the burden of existing regulation and measuring the compliance costs (including administration costs) associated with new or amended regulation could help contribute to greater regulatory consistency across jurisdictions.

Recommendation 5.3

(a) COAG agree, in principle, to adopt a common framework for benchmarking, measuring and reporting on the regulatory burden across all levels of government, subject to governments considering the recommendations of the current Productivity Commission study on regulatory benchmarking and performance indicators; and
(b) COAG note that some jurisdictions may choose to set quantifiable targets for the reduction of "red tape" within their jurisdictions.

Early action on cross-jurisdictional hotspots

While it is important to put in place ongoing processes for reviewing new regulatory proposals and the stock of existing regulations, business has identified some obvious priority regulatory issues requiring urgent action. All levels of government should commit to identifying and addressing as a priority those areas where inconsistent and unnecessarily burdensome regulatory regimes are impeding economic activity. In those areas where problems have already been identified, COAG can initiate immediate actions.

Recommendation 5.4

COAG agree that the annual reviews of the burden of existing regulations referred to in Recommendation 5.2 be used to identify further reforms that enhance regulatory consistency across jurisdictions or reduce duplication and overlap in regulation and in the role and operation of regulatory bodies.

Rail Safety

The need to comply with different rail safety regimes across jurisdictions increases regulatory and operating costs to the rail industry and adversely impacts on the competitive position and efficiency of inter-state rail freight operations. The experience of other federated nations, such as the US and Canada, demonstrates the benefits of adopting a single regulatory approach. An important first step is the enactment and commencement of new model safety legislative provisions by all jurisdictions by end 2006. However further measures to support nationally consistent regulatory arrangements for inter-state rail safety regulation, including national rail operator accreditation, regulatory institutions and rail regulator recruitment and training should be explored. The objective should be establishing nationally consistent and streamlined rail safety regulation of rail operators and track managers including closer cooperation between jurisdictions in regulatory decision making.

Recommendation 5.5

(a) As a high priority, COAG agree to explore further measures to implement a nationally consistent rail safety regulatory framework; and

(b) COAG request the Australian Transport Council (ATC) to recommend an approach for establishing a nationally consistent approach to inter-state rail safety regulation, potentially including a single system of operator accreditation, regulatory oversight and rail regulator recruitment and training, and report to COAG by end 2006.

Occupational Health and Safety

In broad terms regulatory approaches to occupational health and safety (OHS) are consistent nationally but there are significant differences in the detailed requirements on specific hazards or industries typically dealt with by regulations or codes. Consistently applied national standards to govern the most significant OHS hazards would help reduce the regulatory burden imposed in the management of occupational health and safety and would be welcomed by industry. COAG could request that the Australian Safety and Compensation Council (ASCC) put arrangements in place that will allow the more rapid development and uptake of national OHS standards.

Recommendation 5.6

COAG request:

(a) the Australian Safety and Compensation Council (ASCC), as an immediate priority, to develop strategies to improve the development and uptake of national occupational health and safety (OHS) standards, with particular emphasis on the following:
  (i) reducing the time taken to develop national OHS standards;
  (ii) undertaking state/territory consultation with local stakeholders in parallel with national consultation to inform the development of the national standard and ensure agreement to nationally consistent arrangements; and
  (iii) agreeing specific time frames for implementation so that each jurisdiction will implement the standard or code within an agreed time frame;

(b) the Workplace Relations Ministerial Council (WRMC) to identify priority areas in principal OHS Acts in each State and Territory that should be harmonised;

(c) request the WRMC to report back to COAG by end 2006 on the ASCC's recommended strategies for implementing the reforms outlined in (a) and (b) above, and thereafter provide six-monthly progress reports to COAG; and

(d) that there be no reduction or compromise in standards for legitimate safety concerns in current OHS standards.

National Trade Measurement

In 1985 the Scott review of the trade measurement system recommended a national system of trade measurement and saw the development of uniform model trade measurement legislation (UTML) which all jurisdictions agreed to enact under a 1990 Ministerial Agreement. Although UTML has now been incorporated in all States and Territories, its interpretation, administration and funding arrangements remain inconsistent across jurisdictions, with consequent costs to users of the system.

The 1995 Kean review of Australia's Standards and Conformance Infrastructure also recommended a national system of trade measurement and the Commonwealth amended the National Measurement Act to take responsibility for trade measurement in utility meters. At present the Commonwealth is drafting additional amendments for packaging, a significant area of trade measurement, that will be harmonised internationally and will assist our packaged exports, particularly of bottled wine. The Standing Committee of Officials of Consumer Affairs (SCOCA), the advisory body for the Ministerial Council on Consumer Affairs, has recently established a working group on core national trade measurement legislation. The Ministerial

Council itself has agreed to fund a consultancy to review the options for national trade measurement.

Increasingly trade measurement monitoring of measuring instruments is undertaken by private industry certifiers who are often licensed in multiple jurisdictions and must comply with multiple administration systems. For the traditional areas of trade measurement (weighing instruments and fuel dispensers) this commonly occurs in border regions. More recently the introduction of trade measurement controls for the grain and wine industries have meant that large companies, with their own centralised administrations, have to comply with the differing administration procedures of multiple jurisdictions.

Recommendation 5.7

COAG request the Ministerial Council on Consumer Affairs to:
(a) develop a recommendation for introducing a national system of trade measurement that would rationalise the different regulatory regimes of the Commonwealth, states and territories and streamline the present arrangements for cost recovery and the certification of trade measuring instruments; and
(b) report back to COAG with its recommendations and a proposed timeline for implementation for COAG consideration before the end of 2006.

Chemicals and Plastics

The complex matrix of chemicals and plastics regulation across multiple agencies, jurisdictions and all levels of government results in inconsistency, duplication and inefficiency, adding to industry costs which are passed on to end users. Responsibility for chemicals' regulation typically resides with many government departments and agencies, including those responsible for industry, agriculture, health, OH&S, environment and security, complicating efforts to rationalise controls. The March 2001 report to the Commonwealth Government from the Chemicals and Plastics Action Agenda Steering Group made 10 recommendations on regulation including developing a national chemicals policy. While genuine progress was achieved via the Action Agenda, industry remains concerned at the complex regulatory environment in which it operates, with seven of the 34 recommendations in its August 2004 *Report to the Australian Government* addressing ongoing regulatory issues.

Recommendation 5.8

COAG establish a ministerial taskforce, with each jurisdiction nominating one responsible minister, to develop measures to achieve a streamlined and harmonised system of national chemicals and plastics regulation, and reporting progress to COAG by mid 2006.

Development Assessment

Streamlining the development assessment process has been identified by industry as an opportunity to reduce the costs facing business. Quicker, more efficient referral and concurrence procedures for building and development will deliver more reliable economic, social, and environmental outcomes for the entire community. Streamlining the development assessment process requires a commitment from the Commonwealth, state and territory and local governments to work together. The Development Assessment Forum (DAF), which brings together the three spheres of government and industry, has identified a range of initiatives to assist in the harmonisation of the Australian development assessment systems including the facilitation of electronic processing of development applications.

The Electronic Development Assessment (eDA) proposal aims to create a National Communication Protocol for transferring development assessment information between stakeholders ("the Protocol"). Use of the Protocol will ultimately make it easier to submit, process, consult on and determine development applications across Australia.

The Local Government and Planning Ministers' Council has acknowledged the work of DAF in the development of proposals to inform the reform of development assessment processes. COAG could request that the Local Government and Planning Ministers Council encourage the implementation of key elements of the DAF's reform proposals and report progress back to COAG by end 2006.

Recommendation 5.9

COAG request the Local Government and Planning Ministers' Council to:

(a) recommend and implement strategies to encourage each jurisdiction to:
    (i) systematically review its local government development assessment legislation, policies and objectives to ensure that they remain relevant, effective, efficiently administered, and consistent across the jurisdiction; and
    (ii) ensure that referrals are limited only to agencies with a statutory role relevant to the application and that referral agencies specify their requirements in advance and comply with clear response times;
(b) facilitate trials of electronic processing of development applications and adoption through Electronic Development Assessment; and
(c) report back to COAG on progress and recommended options for streamlining legislation by end 2006.

Building Regulation

Efficient regulation can make an important contribution to the productivity of the building and construction industry. The Australian Building Codes Board, established in 1994, has coordinated significant reforms which have facilitated the development of a national approach to building regulation through the Building Code of Australia (BCA). The BCA contains important standards aimed at achieving minimum health, safety and amenity objectives and significant progress has been made in reducing differences in mandatory technical requirements across jurisdictions and establishing performance based rather than prescriptive requirements.

In 2004, the Productivity Commission in its research paper, *Reform of Building Regulation*, found that the reform of building regulation has delivered greater certainty and efficiency to the building industry, as well as benefits to the broader community. The Commission found that the greatest contribution of reform had been through encouraging skill acquisition, reducing costs and encouraging and enabling innovation. However, it also called for further reforms to achieve a national and soundly based system of building regulation. The Commission found there was widespread support for further reform which should lead to further productivity gains.

The Commission made a number of recommendations regarding the future building regulation reform agenda. Among the suggested future reform proposals were a strengthened commitment to consistent application of the Building Code of Australia; enhanced administration, compliance and enforcement systems; strengthened use of regulatory impact analysis; the application of rigorous analysis to the incorporation of environmental requirements; and better articulation of performance-based requirements.

Progress is being made in some of these proposed reform areas. For example, a number of jurisdictions have amended building regulations to incorporate environmental requirements. Further, in order to address many of these recommendations, a Ministerial meeting of the Commonwealth, state and territory governments agreed in-principle a new Intergovernmental Agreement governing the operation of the Australian Building Codes Board.

Recommendation 5.10

That COAG agree to:
(a) note the findings of the Productivity Commission research paper, *Reform of Building Regulation*;
(b) commit to achieve a nationally consistent Building Code of Australia based on minimum regulation and formalise that commitment by signing the new inter-governmental agreement; and
(c) request the Local Government and Planning Ministers Council, co-opting where necessary Ministers with responsibility for building regulation, to report back by mid 2006 on the content and timetable for implementing further building regulation reforms including a nationally consistent building code.

Where could we be in 2010 if best practice regulation recommendations are implemented?

- The quality of regulatory decisions by governments will have improved due to better gate-keeping arrangements to vet all new regulatory proposals, using improved costing tools and cost benefit analysis to ensure new regulations' benefits outweigh their costs to the community.
- The regulatory burden in 'hotspot' areas will be substantially reduced through open annual reviews to identify and reduce unnecessarily burdensome regulation in priority areas.
- Cross-jurisdictional regulatory overlap and inconsistency that create a burden for business and the community will also be reduced.
- There will be a common national framework for benchmarking progress in reducing the regulatory burden in each jurisdiction.

Appendix A

MINISTERIAL COUNCIL ON ENERGY REFORM AGENDA

Governments have agreed to implement significant energy market reforms under the auspices of the Ministerial Council on Energy (MCE). The MCE is bringing forward further initiatives for the consideration of COAG, including arrangements for the certification of energy access arrangements on a nationally consistent basis, time bound commitments to transfer retail and distribution regulation to a national framework and the phase out of retail price regulation where effective competition can be demonstrated. These new initiatives will be formalised in amendments to the Australian Energy Market Agreement 2004 and are included in this document on that basis. The current reform agenda broadly comprises the following key initiatives:

Governance and Institutions

- Implement a national legislative and regulatory framework for gas (*end 2006*).
- Establish a national energy access regime based on a certification model incorporating national arrangements (*end 2006*).
- Finalise and implement arrangements for merits review of decision making in the gas and electricity regulatory frameworks (*end 2006*).

Economic Regulation

- Establish a national distribution and retail framework (*1 January 2007*). Transfer distribution functions to the AER and AEMC (*1 January 2007*), other functions to be transferred (*1 January 2008*).

Retail Pricing

- A phase out of energy retail price regulation where effective competition can be demonstrated (*reviews commencing 1 January 2007*) and the process of responding to advice from the AEMC reviews will be agreed by the MCE by 1 July 2006.

Electricity Transmission

- Finalise and implement the initiatives set out in the MCE Statement on NEM Electricity Transmission of May 2005 covering regulation, planning, criteria for regional boundary changes and congestion management (*end 2006*).

User Participation

- Implement new interim consumer advocacy arrangements (*mid 2006*).
- Implement new long term consumer advocacy arrangements (end *2006*)
- Consider demand side response options (*late 2006*).

Gas Market Development

- Finalise and implement response to the PC Review of the Gas Access Regime (*end 2006*).
- Policy decision on wholesale gas market arrangements, based on outcomes of the Gas Market Leaders Group development of a gas market development plan (*late 2006*).
- Implement a gas emergency response protocol (*early 2006*).

Emergency Fuel Management

- Endorse a liquid fuel emergency inter-governmental agreement (*early 2006*).
- Implement legislative amendments responding to the Review of the Liquid Fuel Emergency Act (*mid 2006*)

Energy Efficiency

- Implementation of the National Framework for Energy Efficiency (Stage 1) (*end 2007*).
- Consideration of the response to the Productivity Commission Inquiry on the Private Cost Effectiveness of Improving Energy Efficiency (*Mar 2006*).
- Consideration of the National Framework for Energy Efficiency (Stage 2) (*mid 2006*).

Renewable and Distributed Generation

- Issues paper on options available in the National Electricity Market to maximise the benefits of distributed generation (early 2006).
- Development of a code of practice for embedded generation (*end 2006*).
- Development of policies to facilitate the increased penetration of wind energy while maintaining system security and reliability (end *2006*).
- Development of a wind forecasting model (*late 2006 / early2007*).

Appendix B

REVIEW OF ECONOMIC COSTS OF FREIGHT INFRASTRUCTURE AND EFFICIENT APPROACHES TO TRANSPORT PRICING

TERMS OF REFERENCE

1. The purpose of the review is to assist COAG to implement efficient pricing of road and rail freight infrastructure through consistent and competitively neutral pricing regimes, in a manner that optimises efficiency and productivity in the freight transport task and maximises net benefits to the community.

2. The review will estimate the full financial costs of providing and maintaining freight transport infrastructure on major road and rail networks. It should be based on the principle that prices charged should reflect all costs in each mode and that there are benefits in a national pricing regime. In estimating these financial costs, the review will take account of the extensive research and studies on this issue, including by the National Transport Commission and the Bureau of Transport and Regional Economics.

3. The review also will assess the full economic and social costs of providing and maintaining road and rail freight infrastructure, if it judges this to be feasible. Such costs would include environmental and safety impacts of different transport modes. The review would assess existing studies of these economic and social costs and comment on the strengths and weaknesses of methodologies used. The review should also assess what information or future research could improve the quality of the estimates.

4. The review will investigate options for transport pricing reform, including moving to mass, distance and location charging of freight transport. In considering distance based charging regimes the review will:
   a) consider principles and practical options for the structure of the different pricing regimes;
   b) estimate the impact of charging regime options, including on transport operators and users and specific locations;
   c) consider options for implementing any new pricing regime, including the practical costs and benefits of alternative technology options; and
   d) provide advice on options for the design of and timeframes for implementing mass distance location based charging regimes, taking into account adjustment issues. The review will not address

fiscal implications which will be assessed by governments following the review's completion.

5. The review will also identify any other competition, regulatory and access constraints on the economically efficient pricing and operation of road and rail freight transport and related infrastructure networks and assets, including access to and competition between inter-modal facilities, and make recommendations on the options for removing these impediments and increasing efficiency.

6. The review will be undertaken by the Productivity Commission and is to be presented to COAG by December 2006. The review should publish a draft report and consult widely with stakeholders on its contents and recommendations.

Appendix C

WORK SCHEDULE FOR HARMONISING AND REFORMING ROAD AND RAIL REGULATIONS

Regulatory reform will be most beneficial if a more flexible regulatory approach focussed on outcomes and managing risks is established. This would see rules that:

- deliver productivity outcomes that do not compromise safety and environment outcomes or put infrastructure at risk;
- differ on different parts of the network, depending on the capacity of the infrastructure and the risk environment;
- specify safety, environment and infrastructure protection outcomes; and
- are monitored directly, using information technology.

A national system is crucial to Australia's economic and social well being. It is essential that decisions made in one jurisdiction should be mutually recognised elsewhere. There should be an integrated, national and efficient decision-making framework to gain access to the national road or rail network.

Transport systems should operate smoothly across modes (particularly road and rail). Consequently, standards that determine what access is allowed on different parts of the transport infrastructure should be aligned. As the road mode has greater potential flexibility, this means that more flexible rules governing access to the road network should be established, that will allow freight carried by rail to be seamlessly picked up and dropped off by road transport operations.

The essential elements of these outcomes are included on the existing road and rail reform agenda, and must be delivered if they are to ultimately establish new, more effective regulatory systems for road and rail transport. However, this commitment must be continued and strengthened if any significant progress is to occur.

The following schedule of road and rail regulatory reforms is grouped under three headings:

1. reforms which have already been agreed by the Australian Transport Council;
2. new work on regulation harmonisation reforms; and
3. new work on transport regulation reforms.

The ATC will oversee the implementation of these reforms and provide regular progress reports to COAG.

1. Existing Road and Rail Regulation Harmonisation Program

The Prime Minister has written to Premiers and First Ministers proposing, as part of the "end August" set of actions in the 3 June COAG Communiqué, that ATC be required to report to COAG by early 2006 on progress against this existing road and rail reform agenda; progress against target dates for agreed reforms; and a timetable for implementing model rail safety legislation and regulations. At its meeting on 18 October 2005, the ATC endorsed this proposed road and regulation reform agenda. The ATC also directed senior transport officials to develop appropriate performance indicators and milestones against this agenda, for reporting to COAG by March 2006.

A review of the Federal Interstate Registration Scheme (FIRS) is not included in the NTC work program because the Commonwealth has already committed to undertake the review in cooperation with the states. FIRS was originally introduced to cover registration of heavy vehicles travelling inter-state but ATC has now achieved a national uniform heavy vehicle charging regime.

MID 2006

Road transport compliance and enforcement
Implementation of previously agreed national policy on heavy vehicle accreditation, ie Mass Management and Maintenance Management modules of the National Heavy Vehicle Accreditation Scheme.

Performance-based standards (PBS)
Review of selected standards and decision-making processes, ie Interim Regulation Panel.

PBS is a nationally agreed process for assessing the access of innovative vehicles to the road system and has the potential to increase productivity by encouraging the use of over-dimension or over mass vehicles where it is safe to do so and where their use will not cause unacceptable damage to road infrastructure.

Over the longer term, PBS is seen as the key productivity reform that has the potential to replace prescriptive rulemaking, as it would provide a regulatory framework for operator-driven flexibility in vehicle design and operation, subject to agreed safety and asset standards. PBS is seen as an important element in a regulatory approach to road transport which will enable continuous productivity gains and technological improvement, whilst meeting reasonable safety, road asset protection and environmental standards.

END 2006

Model rail safety legislation
Enactment and commencement of agreed, new model legislative provisions including model regulations by all jurisdictions by 31 December 2006.

National package on heavy vehicle driver fatigue
ATC is expected to vote on a new heavy vehicle driver fatigue package in 2006.

PROGRESSIVELY FROM END 2006

Intelligent Access Project
Developed by Austroads, in conjunction with the NTC, this scheme will allow monitoring of operating conditions (location, time-of-day, speed) through GPS by certified service providers, with exception (breach) reports supplied to road agencies. Its purpose is not currently related to pricing but to the monitoring of operations. However, depending on the success of its implementation with participating road agencies and businesses, it could potentially provide a basis and a model for moving to more refined road pricing arrangements.

MID 2007

Road transport fatigue
- Implementation in participating jurisdictions within 12 months of ATC agreement. Implementation to include all three options (Standard Hours, Basic Fatigue Management and Advanced Fatigue Management) and a national decision-making process for AFM accreditation. It is noted that some jurisdictions may decide to retain fatigue regulation wholly within OHS regulation. These jurisdictions would be required to demonstrate regulation equivalent to agreed national road transport regulation.
- Audit of rest areas against national guidelines.

Road transport compliance and enforcement
Implementation of mechanisms for exchange of heavy vehicle compliance and enforcement data between jurisdictions. This date includes breach/sanctions information and enforcement intelligence.

END 2007

Performance-based standards
Implementation of PBS regulation within 6 months of ATC agreement to regulatory package (being considered by ATC in May 2007), including binding and effective national decision-making processes.

END 2008

Full implementation of higher mass limits (HML) for vehicles with road friendly suspensions
Jurisdictions should work to increase the network available for access by heavy vehicles operating at HML. This would involve a commitment, by end 2008, to examine and if necessary upgrade sections of highway, bridges and appropriate arterial and local roads linking key distribution points to the AusLink National Network.

Progress in implementation of performance-based standards
ATC review to ensure all jurisdictions have implemented agreed PBS reforms outlined under 'Mid 2006' and 'End 2007' actions above.

Road transport fatigue
Provision of rest areas to nationally agreed standards.

2. Possible Future Work on Road Regulation Harmonisation

This program is not currently on the ATC agenda but could be considered as priority areas for further productivity reform.

EARLY 2006

Examination of the general mass limits applying to heavy vehicle operations (refers to safety, not charging, regulations)
This would assess whether further small increments in additional mass could be considered. Implementation of mass adjustments under the compliance and enforcement reform could see some loss of measurement tolerance, resulting in industry not being able to safely load to levels approaching legal mass limits in some circumstances.

Adoption of more general use of quad axle groups in semi-trailers and B-doubles
Permitting more general use of such groups under the on-going PBS reform program outlined above would result in more productive vehicles being utilised in the freight task. The NTC could be asked to develop a policy proposal on this matter in advance of the implementation of performance based standards.

Development of a network for B-triples
This would involve the identification of a suitable road network that is capable of handling the large and heavier B-triples which will improve the safety and efficiency of freight transport. It would require the appropriate compliance and enforcement regimes to be in place before access to B-triples was granted.

Both of the above reforms are capable of being implemented as elements of the PBS program.

MID 2006

Completion of review of steer axle mass limits for some combinations
Permitted mass on the steer axle is lower in Australia than in Europe or the US. This divergence may increase as recent and anticipated decisions on environmental and safety standards may impact on front axle mass. However, emerging evidence suggests that the road wear impact of front axle mass has been under-estimated. ATC has approved the development of a package involving increased front axle mass with safety improvements (front underrun protection systems and cabin strength). Depending on the estimated road wear impacts, it may be necessary to impose additional charges for vehicles utilising higher front axle mass. This proposal would be subject to a Regulatory Impact Statement.

Road transport compliance and enforcement
Agreement to national processes for monitoring of and reporting on heavy vehicle compliance with road transport regulatory requirements

END 2006

Treatment of overloaded axles
The NTC has been provided with funding to determine the treatment that should apply to an overloaded axle within a vehicle or vehicle combination that otherwise is mass compliant.

MID 2007

Road transport compliance and enforcement
- Implementation of national monitoring of and reporting on heavy vehicle requirements with road transport regulatory requirements, in accordance with the agreed process
- Agreement on a national heavy vehicle enforcement strategy

MID 2008

Road transport compliance and enforcement
Implementation of agreed national heavy vehicle enforcement strategy.

3. Possible Future Work on Road Transport Regulation

This program is not currently on the ATC agenda but could be considered as priority areas for further productivity reform.

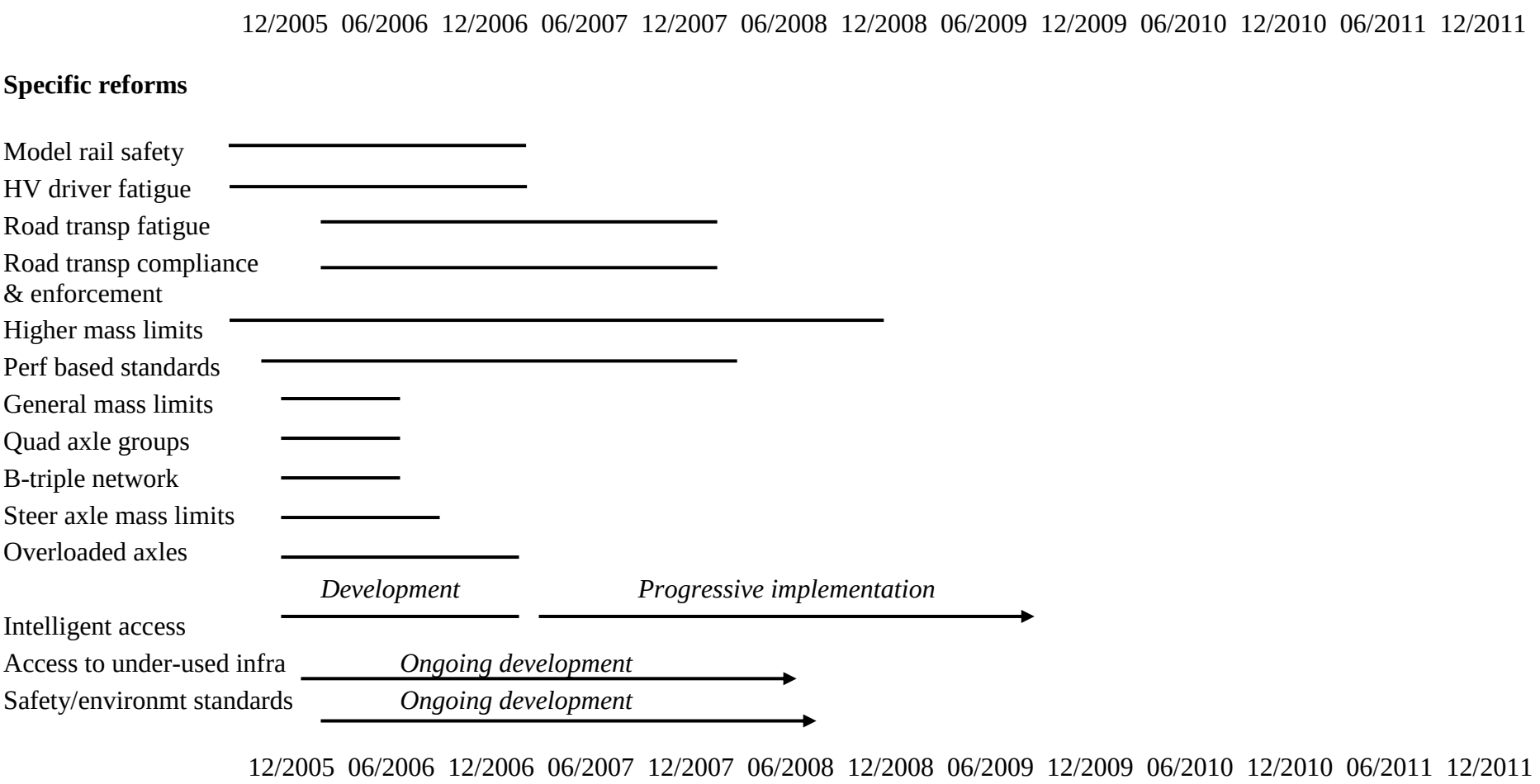
Access to under-utilised infrastructure

- Road infrastructure is far from homogeneous. Road and bridge characteristics (strength, condition, geometry, etc) vary depending on a range of factors. A combination of prescriptive vehicle standards intended for application through all or most of the road system results in standards which do not allow maximum productivity as they are designed to protect critical points of the infrastructure. The result is spare/unused capacity in much of the infrastructure.
- The NTC will need to work to develop more flexible and objective criteria and systems which might allow greater access to infrastructure. Provision of access to the full capacity of the infrastructure would require compliance conditions which provide a high degree of confidence that operations are restricted to suitable segments of infrastructure, possibly combined with pricing mechanisms which are more closely linked to asset use. Success in this area will require effective linking of compliance and enforcement, performance-based standards including developing mass distance location pricing, flexible mass limits, infrastructure standards and Intelligent Access monitoring.

Safety and environmental standards

- There are strong community expectations of high safety and environmental standards in heavy vehicle operation. Surveys support anecdotal evidence of community concerns over sharing roads with heavy vehicles and requirements to maintain or enhance residential amenity. Successfully addressing these concerns would help improve community acceptance of freight traffic and overcomes community opposition to the anticipated growth in the freight task.

REGULATION REFORM TIMELINES – AGREED AND PROPOSED FUTURE WORK



Appendix D

REVIEW OF URBAN CONGESTION TRENDS, IMPACTS AND SOLUTIONS

TERMS OF REFERENCE

States and Territories, as the principal level of government involved with planning, developing and managing urban transport systems, are undertaking numerous initiatives and some studies to combat urban congestion (see Annex A). The Australian Government is constructively involved with jurisdictions in tackling infrastructure bottlenecks on urban sections of the AusLink national network. All levels of government are also cooperating in the Standing Committee on Transport (SCOT) Urban Congestion Management Working Group, due to report to the Australian Transport Council (ATC) in November 2005. The review should build on this work. The proposed COAG review would complement and extend these initiatives with the aim of enhancing national productivity growth and achievement of social objectives within current jurisdictional responsibilities.

The joint review will examine the major causes of Australia's urban congestion, including traffic growth and management, to develop a coherent and cooperative framework for governments to address this problem for COAG's consideration.

The review will make findings on improving the economic performance of national urban corridors and improving productivity outcomes from urban transport. While the focus is on national corridors, the review will need to examine local networks where they interact with, and impact on, national corridors.

1. The review will examine the main current and emerging causes, trends and impacts of urban traffic growth and congestion due to freight and passenger transport.

2. The review will not duplicate and where appropriate will draw on existing studies. The review also will identify any deficiencies in information and make recommendations regarding the collection and sharing of nationally consistent data.

3. The review will examine and assess the key characteristics and impact of successful urban congestion management approaches and initiatives in Australia and overseas. This examination may include, but not be limited to, improved infrastructure planning, regulation, travel behaviour change incentives including charges, levies and taxes, infrastructure and service pricing, land use planning and institutional coordination across tiers of government. In particular, the review will focus on:

a) better integration of national corridors and adjoining local networks and systems;

b) better interaction and management of passenger and freight systems/flows;

c) better management of local, cross-urban and through-urban flows;

d) improved implementation of integrated land use and transport planning, to protect performance of national corridors and improve productivity over the long-term; and

e) improved options for demand management and other travel behaviour change initiatives.

4. The review will be oversighted by a joint Commonwealth, state and local government steering committee.

5. The review should be completed for COAG consideration by December 2006.

Appendix E

Competition and Infrastructure Reform Agreement 10 February 2006

WHEREAS the Council of Australian Governments at its meeting in Canberra on 10 February 2006 agreed to a programme for the implementation of further National Competition Policy reforms;

AND WHEREAS the Parties intend to achieve a simpler and consistent national approach to the economic regulation of significant infrastructure;

THE COMMONWEALTH OF AUSTRALIA

THE STATE OF NEW SOUTH WALES

THE STATE OF VICTORIA

THE STATE OF QUEENSLAND

THE STATE OF SOUTH AUSTRALIA

THE STATE OF WESTERN AUSTRALIA

THE STATE OF TASMANIA

THE AUSTRALIAN CAPITAL TERRITORY, AND

THE NORTHERN TERRITORY OF AUSTRALIA

agree as follows:

Interpretation

1.1 For the purposes of this agreement significant infrastructure means infrastructure, including ports and export related infrastructure, that falls within the scope of subclause 6(3)(a) of the Competition Principles Agreement or Part IIIA of the *Trade Practices Act 1974*.

1.2 Nothing in this agreement requires existing access regimes certified in accordance with Part IIIA of the *Trade Practices Act 1974* to be resubmitted for assessment.

1.3 The access regimes for electricity and gas which are to be developed and certified in accordance with the Australian Energy Market Agreement and the access regime for the Tarcoola to Darwin Railway will be taken to satisfy the requirements of clause 2 of this agreement.

1.4 For the purposes of clause 6.1 government business enterprises are enterprises that are incorporated under State, Territory or Commonwealth legislation and are classified as Public Financial Corporations or Public Non-Financial Corporations, excluding central borrowing authorities, under the Government Financial Statistics Classifications.

1.5 For the purposes of this agreement the term "regulator" also includes dispute resolution bodies.

1.6 This agreement is to be read in conjunction with, and does not replace, the Competition Principles Agreement 1995 and the *Trade Practices Act 1974*.

Simpler and consistent regulation of significant infrastructure

2.1 The Parties agree to establish a simpler and consistent national approach to economic regulation of significant infrastructure.

2.2 The Parties agree that, in the first instance, terms and conditions for third party access to services provided by means of significant infrastructure facilities should be on the basis of terms and conditions commercially agreed between the access seeker and the operator of the infrastructure.

2.3 The introduction of price monitoring for services provided by means of significant infrastructure facilities should be considered, where this would improve the level of price transparency, as a first step where price regulation may be required, or when scaling back from more intrusive regulation.

2.4 All third party access regimes for services provided by means of significant infrastructure facilities will include the following consistent regulatory principles.

a. Objects clauses that promote the economically efficient use of, operation and investment in, significant infrastructure thereby promoting effective competition in upstream or downstream markets.

b. Regulated access prices should be set so as to:

i. generate expected revenue for a regulated service or services that is at least sufficient to meet the efficient costs of providing access to the regulated service or services and include a return on investment commensurate with the regulatory and commercial risks involved;

ii. allow multi-part pricing and price discrimination when it aids efficiency;

iii. not allow a vertically integrated access provider to set terms and conditions that discriminate in favour of its downstream operations, except to the extent that the cost of providing access to other operators is higher; and

iv. provide incentives to reduce costs or otherwise improve productivity.

c. Where merits review of regulatory decisions is provided, the review will be limited to the information submitted to the regulator.

2.5 The Parties agree to amend clause 6 of the Competition Principles Agreement to include subclause 2.4 above.

2.6 The Parties agree to introduce requirements that regulators will be bound to make regulatory decisions under an access regime within six months, provided that the regulator has been given sufficient information.

a. Regulators will have the discretion to determine when the six month time limit is suspended:

i. Grounds for commencing time limits include when the regulator considers that sufficient information has been provided to enable the regulatory process to commence; and

ii. Grounds for suspending time limits include requests for further information from significant infrastructure facility service providers, provided these are on reasonable grounds, and consultation periods during which the regulator seeks submissions from third parties or the community.

b. Where the service provider of a significant infrastructure facility has not provided the requested information, a regulator will be permitted to make a determination on the information before it in order to satisfy six month time limits.

2.7 The principles in clause 2.4 and 2.6 will be incorporated in existing access regimes for services provided by means of significant infrastructure facilities and Part IIIA of the *Trade Practices Act 1974* as soon as practicable or as they are reviewed, provided that they are included in such regimes no later than the end of 2010.

2.8 Commonwealth and State officials will oversight the implementation of the principles in clauses 2.4 and 2.6, including developing a streamlined process and appropriate administrative arrangements for the certification of access regimes, and may develop further proposals for consideration by COAG for the adoption of appropriate additional regulatory principles that may contribute to a simpler and consistent national approach to regulation.

2.9 The Parties agree that, to advance the objective of a simpler and consistent national approach to regulation, all state and territory access regimes for services provided by means of significant infrastructure facilities will be submitted for certification in accordance with the *Trade Practices Act 1974* and the Competition Principles Agreement.

a. All new third party access regimes will be submitted for certification as soon as practicable.

b. Third party access regimes existing at the time this agreement commences will be submitted for certification as soon as practicable, or as they are reviewed, provided they are submitted for certification no later than the end of 2010.

c. The certification of access regimes under this clause is subject to Parties agreeing a streamlined certification process and appropriate administrative arrangements to be developed as part of the mechanism established under clause 2.8.

Rail freight infrastructure

3.1. The Parties agree to implement a simpler and consistent national system of rail access regulation, using the Australian Rail Track Corporation access undertaking to the Australian Competition and Consumer Commission as a model, to apply to the following agreed nationally significant railways:

a. Interstate rail track from Perth to Brisbane, currently managed by the Australian Rail Track Corporation and other parties, subject to the outcome of commercial negotiations; and

b. Major intra-state freight corridors on an agreed case by case basis depending on the costs and benefits of inclusion under a national regime.

3.2. The Parties agree to develop an agreed approach to the application of the Australian Rail Track Corporation access undertaking model including pricing and access mechanisms that will be appropriate if vertically integrated operators retain control of relevant sections of track.

3.3. The Parties agree that state based rail access regimes governing other significant export related rail infrastructure facilities will be submitted for certification as required by clause 2.9.

3.4. This agreement does not require any change to passenger priority policies.

Port competition and regulation

4.1. The Parties agree that:

a. ports should only be subject to economic regulation where a clear need for it exists in the promotion of competition in upstream or downstream markets or to prevent the misuse of market power; and

b. where a Party decides that economic regulation of significant ports is warranted, it should conform to a consistent national approach based on the following principles:

i. wherever possible, third party access to services provided by means of ports and related infrastructure facilities should be on the basis of terms and conditions agreed between the operator of the facility and the person seeking access;

ii. where possible, commercial outcomes should be promoted by establishing competitive market frameworks that allow competition in and entry to port and related infrastructure services, including stevedoring, in preference to economic regulation;

iii. where regulatory oversight of prices is warranted pursuant to clause 2.3, this should be undertaken by an independent body which publishes relevant information; and

iv. where access regimes are required, and to maximise consistency, those regimes should be certified in accordance with the *Trade Practices Act 1974* and the Competition Principles Agreement.

4.2. The Parties agree to allow for competition in the provision of port and related infrastructure facility services, unless a transparent public review by the relevant Party indicates that the benefits of restricting competition outweigh

the costs to the community, including through the implementation of the following:

a. port planning should, consistent with the efficient use of port infrastructure, facilitate the entry of new suppliers of port and related infrastructure services;

b. where third party access to port facilities is provided, that access should be provided on a competitively neutral basis;

c. Commercial charters for port authorities should include guidance to seek a commercial return while not exploiting monopoly powers; and

d. any conflicts of interest between port owners, operators or service providers as a result of vertically integrated structures should be addressed by the relevant Party on a case by case basis with a view to facilitating competition.

4.3. Each Party will review the regulation of ports and port authority, handling and storage facility operations at significant ports within its jurisdiction to ensure they are consistent with the principles set out in clauses 4.1 and 4.2.

a. Significant ports include:

i. Major capital city ports and port facilities at these ports;

ii. Major bulk commodity export ports and port facilities, except those considered part of integrated production processes; and

iii. Major regional ports catering to agricultural and other exports.

Promotion of competitive infrastructure arrangements through competitive tendering

5.1. In some circumstances competitive infrastructure market structures are not feasible because the infrastructure exhibits natural monopoly characteristics. Where governments are considering the development of such monopoly infrastructure, they can initiate competition for the market through competitive tendering that promotes efficient service delivery. This allows the market to establish the terms and conditions for the supply of infrastructure services, reducing the need for subsequent regulation.

5.2. The Parties agree to consider the use of competitive tendering to establish the terms and conditions for the supply of significant new services provided by government owned monopoly infrastructure.

5.3. The Commonwealth has introduced amendments to Part IIIA of the *Trade Practices Act 1974* to provide that declaration will not apply to government owned infrastructure developed by way of a competitive tender approved by the Australian Competition and Consumer Commission.

5.4. For the purposes of clause 5.3, the Parties agree to work together to develop a consistent set of criteria for access related elements of tenders for the provision of nationally significant infrastructure facility services.

Competitive neutrality of government business enterprises

6.1 The Parties agree to enhance the application of competitive neutrality principles to government business enterprises engaged in significant business activities in competition with the private sector:

Objectives

a. That the enterprise has clear commercial objectives.

b. That any non commercial objectives or obligations established for the enterprise are clearly specified and publicly reported.

c. That enterprises do not exercise regulatory or planning approval functions in circumstances in which they compete with private sector enterprises.

Governance

d. That the responsibilities of the governing board of the enterprise and the performance measures against which the board will be held accountable are published.

e. That the governing board is appointed on the basis of particular skills needed by the board.

f. That having received strategic guidance from the government about the achievement of its objectives, the enterprise has operational autonomy in the day to day management of its affairs.

g. That the dividend policy applicable to the enterprise should be clearly and publicly specified.

h. That any payments to the government as shareholder or for the purposes of competitive neutrality, such as taxes, tax equivalent payments, special dividends, capital repayments, are identified in a transparent manner.

Reporting

i. That at least annually the enterprise will report publicly on its commercial performance and on its performance of any non commercial activities.

j. That any directions given to the enterprise by the government are published.

k. That where the legislation establishing an enterprise derogates from competitive neutrality the derogation has been published.

New Parties and Withdrawal of Parties

7.1 A jurisdiction that is not a Party at the date of this Agreement commences operation may become a Party by sending written notice to all the Parties.

7.2 A Party may withdraw from this Agreement by sending written notice to all other Parties**.** The withdrawal will become effective six months after the notice was sent.

7.3 If a Party withdraws from this Agreement, this Agreement will continue in force in respect of the remaining Parties.

Review of this Agreement

8.1 Once this Agreement has operated for five years, the Parties will review its operation and terms.

Commencement of this Agreement

9.1 This Agreement commences once the Commonwealth and at least four other jurisdictions have executed it.