

# **COAG NATIONAL REFORM AGENDA**

## **COMPETITION REFORM APRIL 2007**

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## **ENERGY REFORM IMPLEMENTATION GROUP – COAG RESPONSE**

At its meeting on 10 February 2006, COAG agreed that, while structural reforms taken under the National Competition Policy and other COAG initiatives have significantly improved the efficiency of the energy sector, further reform is needed to ensure Australia retains secure energy markets and relatively low electricity and gas prices. To this end, COAG recommitted to the broad ranging reforms being implemented by the Ministerial Council on Energy (MCE) and established the Energy Reform Implementation Group (ERIG) to develop proposals for:

- achieving a fully national electricity transmission grid;
- measures that may be necessary to address structural issues affecting the ongoing efficiency and competitiveness of the electricity sector; and
- any measures needed to ensure transparent and effective financial markets to support energy markets.

COAG thanked the Chairman of ERIG, Mr Bill Scales AO, and the panel members, Mr Geoff Carmody, Mr David Swift and Mr Alan Rattray for their report and for their extensive consultations across industry and government.

ERIG found that Australia's energy market is respected internationally as one of the most competitive and efficient in the world. However, COAG has accepted ERIG's view that there is scope for further reform to maintain productivity improvements and better equip Australia for its future energy needs. In response to the report, COAG has agreed to a broad ranging reform agenda that will improve competition, governance, infrastructure planning and the financial markets within the energy sector to provide a stronger industrial base for Australia's future prosperity.

### **1. Governance**

COAG affirmed its confidence in the new energy market governance arrangements created in 2004-05 and noted that the Ministerial Council on Energy (MCE) as policy-maker and legislator, the Australian Energy Market Commission (AEMC) as rule-maker and market developer, and the Australian Energy Regulator (AER) as economic regulator, are all performing well.

COAG noted that, consistent with ERIG's recommendations, the MCE has recently completed an efficiency review of the AEMC and committed a significant increase in funding and is currently progressing amendments to AEMC rule-making legislation to assist the AEMC to better manage its workload. COAG also notes that the MCE is utilising independent expert groups to assist in the energy market reform program where appropriate.

In addition, COAG has endorsed a number of ERIG's recommendations to further improve energy market governance through the following commitments:

- establishing a National Energy Market Operator (NEMO);
- ensuring the governance arrangements for the NEMO involve market participants in board appointment processes, in a manner that preserves the board's independence from any particular market participant;
- introducing a national transmission planning function; and

- strengthening its commitment to energy market reforms through a requirement for the MCE to report annually on progress in implementing energy reforms to the COAG Reform Council to ensure agreed timelines are met.

COAG considers that these new governance arrangements will provide a solid foundation for the long term development of Australia's energy market. The performance of the new energy market governance arrangements will be examined five years after their commencement.

COAG noted ERIG's advice on the significant potential benefits arising from privatisation and/or disaggregation of energy assets remaining in government ownership. COAG agreed that any decision on privatisation or disaggregation initiatives is a matter for individual governments.

## **2. National Energy Market Operator**

COAG has agreed to establish a single industry funded NEMO, for both electricity and gas, to strengthen the national character of energy market governance. COAG has tasked the MCE with developing, in consultation with stakeholders, a detailed implementation plan by the end of 2007 for establishing the NEMO with:

- the NEMO's functions to encompass:-
  - responsibility for the day to day operation and administration of the power system and electricity wholesale spot market in the National Electricity Market (NEM) (as currently performed by the National Electricity Market Management Company (NEMMCO)), and
  - the planned Gas Market Operator (GMO), as well as the new national transmission planning function; and
- consideration to staging the establishment process for the NEMO with a transitional GMO, based on consultation with stakeholders.

The creation of the NEMO recognises the convergence of regulatory frameworks for gas and electricity as well as the economies of scale and scope arising from a single interface with energy industry participants. COAG agreed with ERIG that the NEMO should include stronger stakeholder participation and responsiveness, and has asked the MCE to develop:

- a process for appointment of an independent skills-based NEMO Board with a balanced mix of industry and generalist expertise, appointed under statutory conditions by the MCE; and
- a Market Operations Panel (or panels) for electricity and gas, to advise the NEMO Board.

COAG noted the MCE's progress in considering the establishment of a national Gas Market Operator (GMO). The GMO, if established, would be expected to subsume the gas market functions of VENCORP, the Gas Market Company (GMC) and Retail Energy Market Company (REMCORP), and have responsibility for the operation of a bulletin board and short term trading market for gas. COAG agrees with ERIG that the development of the NEMO should not delay implementation of these significant gas market development initiatives.

## **3. Electricity Transmission Planning and Regulation**

Development of a national electricity transmission grid (excluding WA and NT) has been central to energy market reform over the last decade. ERIG has made a number of recommendations to enhance national transmission planning and regulation.

COAG has agreed to establish an enhanced planning process for the national electricity transmission network to ensure a more strategic and nationally coordinated approach to transmission network development, providing guidance to private and public investors to help optimise investment between transmission and generation across the power system.

The National Transmission Planner, located in the NEMO, will be required to develop a strategic National Transmission Network Development Plan (NTNDP) outlining the broad development of the power system, including the current and planned future capability of the national transmission network and development options. The NTNDP will be produced after wide consultation with relevant stakeholders, have a minimum outlook of ten years and be updated and released annually.

These new arrangements will be designed to provide an appropriate balance between the delivery of a coordinated and efficient national transmission grid, and local and regional reliability and planning requirements, and be flexible enough to respond to generation and load changes. They will replace the current Inter Regional Planning Committee and Annual National Transmission Statement.

The NTNDP will provide information to the market on the longer term efficient development of the power system in order to guide network investment decisions and provide signals for efficient generation investment. The NTNDP, however, will not replace localised transmission planning, bind transmission companies to specific investment decisions, override TNSP performance obligations, or constrain the timeframes for the revenue approval process of the transmission companies. Accountability for transmission investment, operation and performance will remain with the transmission network service providers.

These arrangements are intended to assist transmission companies, when undertaking planning and putting forward their revenue proposals to the AER, to demonstrate that projects are aligned with the NTNDP. In turn, the AER will have regard to the NTNDP and the advice of the National Transmission Planner when making revenue determinations. The NTNDP will not bind the AER in its consideration of the revenue requirements of the TNSPs.

The new arrangements will be informed by the congestion management scheme (under review by the AEMC) and efficient behaviour will be rewarded through the service incentive regime (under development by the AER). The merits of aligning transmission revenue determination timetables will be considered.

COAG has also agreed to a revised network planning and consultation process, replacing the current 'Regulatory Test'. The AEMC will be tasked with advising on amalgamating the Regulatory Test criteria of reliability and market benefits and broadening the latter's definition to include national market benefits. This will allow proposed transmission projects to be assessed against meeting both local reliability standards and their ability to maximise benefits to the national market. This is intended to recognise the broader national benefits which may be achievable from investment opportunities whilst encouraging and ensuring those justified solely on reliability grounds are delivered in an efficient and timely manner.

COAG further agreed that, under the new transmission planning arrangements:

- accountability for jurisdictional transmission investment, operation and performance will remain with transmission network service providers;

- where possible, the new regime must at a minimum be no slower than the present time taken to gain regulatory approval for transmission investment;
- the new regime must not reduce or adversely impact on the ability for urgent and unforeseen transmission investment to take place;
- the roles of VENCORP in Victoria and ESIPC in South Australia, in regard to those jurisdictions, need not be changed and the new arrangements will not impose inefficient restrictions requiring additional resources; and
- the commercial arrangements relating to Basslink in its capacity as a merchant interconnection should not be altered.

COAG has also committed to reviewing the effectiveness of these arrangements after five years of operation, with a view to making further improvements if necessary.

ERIG has also recommended that the AEMC Reliability Panel review jurisdictional transmission reliability standards and develop a consistent national framework. COAG agreed that this review should be progressed, but with appropriate caution noting the different physical characteristics of the network, existing regulatory treatments in balancing reliability and costs to consumers, and that these standards underpin security of supply.

In summary, COAG has asked the MCE to:

- task the AEMC, in consultation with the AER, NEMMCO and other stakeholders, to develop a detailed implementation plan for the establishment of a national transmission planning function within the NEMO, including proposed amendments to the relevant Law and Rules for decision by the MCE;
- include the following features in the direction to the AEMC:
  - development of a strategic NTNDP, with annual updates;
  - amalgamating the Regulatory Test criteria of reliability and market benefits and broadening the latter's definition to include national market benefits;
  - consideration of alignment of regulatory periods to further reinforce the national character of the planning arrangements;
  - where possible, the new regime must at a minimum be no slower than the present time taken to gain regulatory approval for transmission investment;
  - provision for urgent and unforeseen investment to be made, when required;
  - the NTNDP will not be binding on transmission companies;
  - the AER will have regard to the NTNDP when making revenue determinations (the NTNDP will not bind the AER in its consideration of the revenue requirements of TNSPs);
  - preservation of the jurisdictional roles of VENCORP and ESIPC; and
  - leaves accountability for transmission investment, operation and performance with transmission service providers.
- task the AEMC with reviewing transmission network reliability standards with a view to developing a consistent national framework for network security and reliability, for MCE decision.

#### **4. Energy Rules and Derogations**

ERIG considered that a significant impediment to the introduction of a truly national energy regulatory framework is the existence of derogations from the national Rules and other state-specific legislative and regulatory differences. COAG noted that the MCE, as part of its current work program, has been considering the need for specific derogations in the context

of transferring the economic and non-economic distribution and retail functions to the national framework, and that the AEMC will be reviewing all access derogations.

To consolidate this process, COAG has agreed to ask the MCE to:

- review all remaining derogations to ensure that, to the extent practicable and appropriate, derogations from the national framework, and other state-specific differences, are removed or harmonised.

This process will not vary the allocation of Commonwealth, State and Territory responsibilities as set out in the AEMA.

## **5. Retail Price Regulation**

COAG notes that the AEMC will, in 2007, commence reviewing the competitiveness of energy retail markets, with a view to the phasing out of price regulation where effective competition exists. This process recognises that Community Service Obligation (CSO) arrangements are still required in competitive markets, for social policy purposes.

In response to ERIG's recommendation that governments conduct a review of CSO mechanisms to improve their transparency and targeting, COAG has asked the MCE to:

- undertake a national review of energy CSO mechanisms with a view to developing a consistent national framework which efficiently targets those in need, while recognising that responsibility for delivering any community service obligations remains a matter for individual jurisdictions.

## **6. Energy Financial Markets**

While financial markets are generally operating well, COAG agreed to implement a number of measures recommended by ERIG to remove impediments and enhance their efficiency.

COAG has agreed that the MCE should task the AEMC and NEMMCO, in consultation with the ASX and electricity market stakeholders, to:

- develop options for the integration of spot and forward contract markets, in order to minimise costs, including prudential costs.

This initiative will combine the current rule change proposal submitted to the AEMC by NEMMCO to improve the settlement reallocations process, as well the submission made by the Sydney Futures Exchange (SFE/ASX) and others regarding integration of SFE contracts and the NEMMCO settlement process.

Significant work has been initiated to improve the responsiveness of the regulated electricity transmission network to the needs of the wholesale market. This includes the AEMC congestion management review, the AER incentive regime for transmission operators, and in response to ERIG, the establishment of the National Transmission Planner, amalgamating the Regulatory Test criteria of reliability and market benefits, and development of a consistent national framework for reliability standards.

COAG has asked the MCE to arrange for the AEMC, AER and NEMMCO as part of the development of their approach within this integrated work program, to:

- take measures to identify and develop responses to any barriers to contract arrangements that network service providers may enter into with generators (including embedded generators) and demand side service providers to support network capacity;
- consider measures to improve wholesale trading arrangements, including any simplification that may be possible; and
- consider measures to improve the effectiveness of settlement residue auctions as a risk management instrument.

## 7. Western Australia and Northern Territory

ERIG has noted that the national character of the energy market would be improved if the Western Australia and Northern Territory energy markets were administered by the AER, AEMC and NEMMCO. The COAG Australian Energy Market Agreement provides for these jurisdictions to adopt the national institutions at their discretion.

COAG notes that new market arrangements have recently commenced in Western Australia, and that these arrangements need time to settle. COAG also notes that the Northern Territory has agreed to review adoption of national institutions for its market by end 2007. In this context, and consistent with the National Reform Agenda, the governments of Western Australia and the Northern Territory will monitor the outcome of local and national energy market developments on an ongoing basis and consider the adoption of national institutions at their discretion, consistent with the AEMA.

## 8. Timeline

<b>Reform</b>	<b>Date</b>
<b>1. Governance</b> <ul style="list-style-type: none"> <li>• MCE to provide annual progress reports to COAG on energy market reforms</li> <li>• COAG Reform Council annual report to include energy market reform</li> </ul>	Dec 2007
<b>2. National Energy Market Operator</b> <ul style="list-style-type: none"> <li>• MCE to develop detailed implementation plan</li> <li>• Establish National Energy Market Operator</li> </ul>	Dec 2007 June 2009
<b>3. Transmission Planning and Regulation</b> <ul style="list-style-type: none"> <li>• MCE to task the AEMC with development of new regime</li> <li>• AEMC to advise MCE on new regime, including proposed Laws and Rules</li> <li>• AEMC to report on national framework for network reliability standards</li> <li>• Establish National Transmission Planner and revised transmission regulation within NEMO</li> </ul>	June 2007 June 2008 Sept 2008 June 2009
<b>4. Energy Rules and Derogations</b> <ul style="list-style-type: none"> <li>• MCE to review all remaining derogations</li> <li>• MCE to report to COAG on remaining derogations</li> </ul>	June 2008 Dec 2008
<b>5. Retail Price Regulation</b> <ul style="list-style-type: none"> <li>• MCE to review energy CSO mechanisms</li> </ul>	June 2008
<b>6. Financial Markets</b> <ul style="list-style-type: none"> <li>• AEMC, NEMMCO, ASX to develop options to integrate markets</li> <li>• AEMC, AER and NEMMCO to address network support contracts, wholesale trading and settlement residue auctions</li> </ul>	Dec 2007 June 2008
<b>7. Western Australia and Northern Territory</b>	

<ul style="list-style-type: none"><li>• WA and NT to monitor the outcome of local and national energy market developments on an ongoing basis and consider the adoption of national institutions</li></ul>	Ongoing
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## SMART METERS

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In February 2006 COAG committed to the progressive national roll out of 'smart' electricity meters from 2007 to allow the introduction of time of day pricing and to allow users to better manage their demand for peak power only where benefits outweigh costs for residential users and 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.

Building on that commitment, COAG has now agreed to an implementation strategy to facilitate a national smart meter roll out. COAG noted that the economic benefits are maximised, and the costs of installation are minimised, if a smart meters roll-out is large in scale and based on a consistent national framework and functionality.

MCE was tasked to develop the details and provided an initial report on a smart meter roll out to COAG in November 2006. This report confirmed that a national smart meter roll out provides a platform for a wide range of electricity market benefits, including: improved customer service capability, reduced retailer risks, and network capital and operating cost reductions. The MCE report also presented a methodology for identifying benefits and costs associated with a smart meter roll out and provides the basis for an implementation plan that aligns the benefits and costs to the extent practical and appropriate, in order to align incentives and avoid distortionary impacts.

Smart meters can facilitate significant savings to consumers from informed energy consumption and can also play a role in addressing the challenges of greenhouse gas reductions, where retailers offer time of day pricing. They provide a wider range of energy price choices tailored to consumer usage patterns, and provide tools for consumers to more fully understand and manage their total energy needs to reduce their greenhouse impact.

Based on the recommendations of the MCE, a major cost-benefit assessment is being undertaken to determine optimal smart meter functionalities, the scale of smart meter deployment and a cost-effective installation schedule which takes account of different market circumstances in each state and territory and the circumstances of different groups of consumers.

COAG endorsed a staged approach for the national mandated roll out of electricity smart meters to areas where benefits outweigh costs, as indicated by the results of the cost-benefit analysis which will be completed by the end of 2007:

- By September 2007, MCE will agree to a national minimum functionality for smart meters, including open communication protocols to support competition. Replacement criteria for existing meters will also be agreed to minimise costs of unnecessary replacements.
- By end 2007, MCE will finalise the cost-benefit analysis.
- By March 2008, MCE will also agree to any specific areas where replacement and roll out may be exempt or delayed, on the basis of local factors which are demonstrated to reduce net benefits for consumers, as informed by the results of the cost-benefit analysis.

- By March 2008, MCE will agree necessary changes in the National Electricity Rules to require new and replacement meters to comply with this minimum functionality and enable the national roll out to commence.
- During 2008, MCE will implement the necessary rule changes to mandate the roll out of smart meters, consistent with the outcomes of the cost benefit analysis.
- By end 2008, replacement of existing meters with smart meters will have commenced.

While a smart meters functionality is yet to be determined, COAG noted the MCE's view that smart meters could allow for: two way communications interface; remote reading; remote load control; import and export metering; remote connect/disconnect; outage detection; meter tamper detection; remote time synchronisation; and quality of supply measurement and recording.

MCE will finalise the details of the national framework and implementation plan to optimise the net benefits identified. This plan will include:

- implementation roles and responsibilities;
- facilitation of new time-related tariffs to pass benefits on to consumers; and
- the required changes to the National Electricity Rules and jurisdictional arrangements, including any transitional arrangements.

To support the development of this implementation plan, MCE has formed a smart meter stakeholder working group (SMSWG) with balanced representation from consumers, the electricity industry, regulators and market bodies. This group will advise on stakeholder priorities, technical aspects of the plan and the assessment of costs and benefits.

The MCE will consult with consumers and industry to develop the technical details behind the national minimum functionality.

## **PC REPORT ON ROAD AND RAIL FREIGHT INFRASTRUCTURE PRICING**

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### **Transport – road and rail freight infrastructure pricing**

At its February 2006 meeting, recognising that Australia's domestic freight task is expected to almost double over the next 20 years and the importance of improving the efficiency, adequacy and safety of Australia's transport infrastructure, COAG agreed to a set of productivity enhancing reforms to harmonise rail and road regulation within five years, and to strengthen and coordinate transport planning and project appraisal processes to ensure best use of public investment by adopting the National Guidelines for Transport System Management.

COAG further asked the Productivity Commission (PC) 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 benefit to the community.

Transport pricing reform has the potential to greatly improve the efficiency of both transport infrastructure use and provision by providing better pricing signals to road users and providers. COAG notes the PC's finding that the road freight industry is not subsidised relative to rail freight on either the inter-capital corridors or in regional areas on the evidence presented. Therefore, COAG agrees that the policy reform focus should be on enhancing efficiency and productivity within the road and rail sectors.

COAG has considered the PC's findings and recommendations, and has agreed a comprehensive long term reform agenda for road and rail freight infrastructure pricing and investment decision-making, building on and reaffirming its commitment to measures agreed in February 2006. This agreement will ensure that policy and regulatory settings promote timely and efficient investment in and use of land transport infrastructure to enable Australia to meet the growing freight task and maximise economic growth.

COAG confirmed the commitment it made in February 2006 to ensure that the interests of rural, regional and remote Australia are addressed when considering future reforms to road and rail infrastructure pricing and will ensure that these interests are taken into account when finalising the detail of particular reforms. To this end, the further research that COAG is now commissioning is required to ensure that rural, regional and remote issues are considered appropriately.

COAG's transport reforms, as outlined below, identify a range of actions within the road and rail sectors in the short term. They also set out a substantial forward work program with the potential to deliver significant benefits to the economy by enhancing the efficiency, productivity and sustainability of road and rail freight infrastructure. In key areas, critical further research and strategic pilot initiatives will build on the PC's work to inform future COAG decisions on a reform path. COAG's detailed response to the PC's recommendations is below.

The transport reforms are an integral component of the COAG National Reform Agenda, and COAG has asked the ATC to deliver the reforms, and provide regular six monthly progress reports back to COAG, commencing in the second half of 2007. Progress in implementing

all agreed NRA transport reforms will be included in the COAG Reform Council's annual report to COAG.

## Road

COAG has agreed to a phased approach to the reform of road pricing aimed at promoting the more efficient, productive and sustainable provision and use of freight infrastructure. This three phased approach runs from now until 2014 and is outlined in the table below. The agreed approach focuses on: immediate efficiency enhancements from regulatory reforms and improved decision making frameworks; as well as an ambitious forward research and policy reform agenda to lay the foundations for considering alternative models of road pricing and funding. COAG noted that pricing reforms go hand in hand with the productivity enhancing reforms agreed by COAG in February 2006 and currently being progressed by the Australian Transport Council. These include new driver fatigue regulations, higher mass limits for heavy vehicles and the wider introduction of more productive vehicles onto the national network through the development of a B-triple network. COAG will make decisions on future pricing reforms following its consideration of the outcomes of research and strategic pilots in the first reform phase.

COAG noted the significant steps already undertaken to enhance road funding and investment decisions through the AusLink programme, including the National Land Transport Plan which integrates planning and investment on the National Network, and also noted progress with the implementation of regulatory reforms and the National Guidelines for Transport System Management agreed in February 2006.

COAG agreed that a critical direction is ensuring that national heavy vehicle road prices promote the efficient, safe and sustainable use of infrastructure, vehicles and transport modes.

The first step is ensuring the current PAYGO approach ultimately delivers, and continues to deliver, full recovery from heavy vehicle users of their allocated share of infrastructure costs in aggregate and the removal of cross-subsidisation across heavy vehicle classes. COAG recognises that the full implementation of these principles may require a phased delivery. COAG requested the Australian Transport Council (ATC) direct the National Transport Commission (NTC) to apply these two principles in developing a new heavy vehicle charging determination.

COAG will also commission a detailed review and strategic pilot initiatives to demonstrate the feasibility of, and develop a mechanism for, adopting incremental pricing.

Beyond this, subsequent phases of this pricing work will focus particularly on developing the building blocks necessary for COAG to assess the merits of mass-distance location-based charges.

## Rail

COAG recognises the importance of building an efficient and sustainable dynamic rail freight industry that can meet its share of Australia's growing freight task. At its February 2006 meeting, COAG took a number of decisions to improve the efficiency and productivity of the rail freight industry through its signing of the Competition and Infrastructure Reform Agreement (CIRA), its decision to improve rail safety regulation as a priority reform area,

and its decision to ask the Productivity Commission to develop proposals for efficient pricing of rail freight infrastructure.

COAG has agreed to an implementation plan to give effect to its commitments in the CIRA to improve and enhance the consistency of access regimes for significant rail infrastructure, including the adoption of common objects clauses and pricing principles. In addition, COAG is currently developing a simpler and consistent national system of rail access regulation for agreed nationally-significant railways. This work will ensure that access regulation only applies where the benefits are expected to clearly outweigh the costs.

COAG has now agreed to build upon these decisions in order to achieve a more efficient and sustainable rail freight industry by endorsing the following high priority reforms:

- the full implementation of model national rail safety legislation and regulations in all mainland jurisdictions in 2007<sup>1</sup>, plus additional measures that will assist in establishing a nationally consistent rail safety framework including rail regulator training, standardised rail safety data collection and harmonised national accreditation and approval processes for interstate rail operators (refer to the *COAG Regulatory Reform Plan*); and
- relevant governments will ensure transparency in enunciating the objectives for funding decisions for Community Service Obligations.

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<sup>1</sup> COAG notes that while Tasmania will implement the model legislation and regulations, it will be unable to achieve this in 2007.

## ROAD REFORM PLAN

Progression beyond Phase I is subject to COAG consideration of the outcomes of Phase I and further research.

Timeframe	Action	Date for completion
<b>Phase I</b> <b>2007-08</b>	<ul style="list-style-type: none"> <li>Implementation of National Guidelines for Transport System Management for project development and appraisal, for new public road and rail infrastructure projects, applied in a transparent manner with improved consultation and ex-post project evaluation processes</li> </ul>	Jul 2007
	<ul style="list-style-type: none"> <li>Revised heavy vehicle pricing determination formulation and cost estimation and allocation processes, to apply from 2008, to ensure ongoing delivery of aggregate cost-recovery and removal of cross-subsidisation across heavy vehicle classes (recognising that a phased approach may be required)</li> </ul>	Dec 2007
	<ul style="list-style-type: none"> <li>Continued implementation of agreed regulatory reforms, including Performance Based Standards (PBS)</li> </ul>	Dec 2007
	<ul style="list-style-type: none"> <li>Independent review of policy-relevant externalities of heavy vehicle road use and cost-effective policies for attaining efficient abatement of external costs</li> </ul>	Jul 2008
	<ul style="list-style-type: none"> <li>Independent review of heavy vehicle road use and costs to refine PAYGO, improve investment decision making and provide an information base for examination of location-based charging</li> </ul>	Jul 2008
	<ul style="list-style-type: none"> <li>Government research to identify road spending to meet Community Service Obligations (CSOs) to assist transparency of funding for CSOs and help inform future charging arrangements</li> </ul>	Dec 2008
	<ul style="list-style-type: none"> <li>Detailed review, including trials (building on the Intelligent Access Program) to assess the impact and feasibility of incremental pricing schemes for higher mass and other innovative vehicles which allow access to parts of the road network from which they are currently excluded.</li> </ul>	Dec 2008
	<b>Phase II</b> <b>2009-2010</b>	<ul style="list-style-type: none"> <li>Evaluation study of incremental pricing schemes</li> </ul>

- Each jurisdiction will consider examining alternative institutional arrangements to better link road freight revenues to investment and enhance decision-making Jul 2010
- Reviews of road freight infrastructure regulation under general annual best practice regulation review cycles Jul 2010
- Subject to subsequent COAG consideration, implementation of the results of Phase I and Phase II work programmes where the benefits are clearly expected to outweigh the costs Dec 2010

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**Phase III  
2011-2014**

- Feasibility study of mass-distance location-based charges Dec 2011
  - Subject to subsequent COAG consideration, implementation of the results of Phase III work programme where the benefits are clearly expected to outweigh the costs Dec 2014
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## **PRODUCTIVITY COMMISSION'S ROAD AND RAIL FREIGHT INFRASTRUCTURE PRICING REPORT – COAG RESPONSE**

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### RECOMMENDATION 12.1

***The focus of the policy reform agenda for road and rail freight infrastructure should be on enhancing efficiency and productivity within each mode.***

Agree.

COAG endorses the PC's view that the policy reform focus should be on enhancing efficiency and productivity *within* each of the road and rail sectors as the evidence presented suggests competitive distortions *between* road and rail have been limited and are not a significant source of market inefficiency.

COAG will adopt a policy reform agenda that enhances the efficiency and productivity of the road and rail freight infrastructure sectors within the broader context of the development and sustainable use of Australia's transport network to contribute toward the achievement of economic, social and environmental objectives.

### RECOMMENDATION 12.2

***Relevant governments should take steps to more strictly apply the corporatisation model to government-owned railways in order to improve industry performance. Priorities include greater clarity of objectives, improved transparency of the external governance role of ministers, and a general strengthening of accountability.***

***Greater transparency in funding decisions for Community Service Obligations – including enunciation of objectives, and demonstration of how contributions will achieve stated objectives at least cost – should be introduced by all governments as soon as possible. Among other things, this is needed to facilitate fully commercial provision of rail freight operations.***

Agree in principle.

The Competition and Infrastructure Reform Agreement (CIRA), signed by COAG in February 2006 as part of the National Reform Agenda, includes commitments to enhance the application of competitive neutrality principles to government owned businesses. The principles address a range of issues, including clear and transparent business objectives and governance and reporting arrangements.

Consistent with National Competition Policy commitments, over the last decade, all governments have reviewed their Community Service Obligations (CSOs) policies to ensure that CSOs are administered in ways that are efficient, transparent and do not raise competitive neutrality concerns.

COAG agrees that relevant governments should ensure transparency in enunciating the objectives for funding decisions for CSOs.

### RECOMMENDATION 12.3

***National consistency and coordination in rail regulatory frameworks – including of safety, operational and technical standards – should be expedited by all governments, monitored by the National Transport Commission on behalf of the Australian Transport Council.***

Agree.

COAG has committed to a range of reforms to harmonise rail regulation. For example, by June 2007, mainland governments will enact the National Transport Commission (NTC) – developed model rail safety package<sup>2</sup>. Also in 2007, in addressing rail safety as a regulatory hot-spot, the NTC will be reporting on progress in implementing standardised rail safety data collection and harmonised national accreditation and approval processes for interstate rail operators.

COAG will ask the Australian Transport Council to report to COAG — at the end of 2007 and in mid 2008 — on implementation of all agreed reforms and ensure that agreed timetables are met.

RECOMMENDATION 12.4

***Progress in implementing the February 2006 COAG agreement to adopt a nationally-consistent approach to regulation of all nationally significant infrastructure should be monitored by the NTC in relation to rail to determine whether there are likely to be additional benefits in moving to a single national regulatory regime and regulator. The objects clause, declaration thresholds and pricing principles now embodied in Part IIIA of the Trade Practice Act (which, among other things, allow for multi-part pricing and price discrimination when they aid efficiency) should be incorporated into all State and Territory rail access regimes.***

Under the February 2006 CIRA, COAG is progressing the development of a simpler and consistent national system of rail access regulation for agreed nationally significant railways. This is to apply to the interstate rail track from Perth to Brisbane, subject to commercial negotiations, and to major intra-state freight corridors, on an agreed case-by-case basis depending on the costs and benefits of inclusion under a national regime.

Governments have under CIRA also committed by 2010 to incorporating consistent regulatory principles in all third party access regimes for services provided by means of significant infrastructure facilities, in relation to objects clauses, pricing principles, limited merits review and binding time limits for regulatory decisions.

RECOMMENDATION 12.5

***There appears to be scope to moderate, or even revoke, access regulation where pricing by vertically-separated below-rail operators is significantly constrained by competition from road or sea freight transport operators. Building on COAG's agreement to promote nationally-consistent access regulation of major infrastructure, a process should be established by COAG for reviewing the need for access regulation of vertically-separated rail networks.***

In the CIRA, COAG agreed that, in the first instance, terms and conditions for third party access to services provided by significant infrastructure facilities should be on the basis of those commercially agreed between the access seeker and infrastructure operator. The national system of rail access is to apply to agreed nationally significant railways, and will be designed to accommodate both vertically-integrated and vertically-separated below-rail operators. Access regulation will only apply where the benefits clearly outweigh the costs.

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<sup>2</sup> COAG notes that while Tasmania will implement the model legislation and regulations, it will be unable to achieve this in 2007.

RECOMMENDATION 12.6

***Given the mixed success of vertical separation in encouraging above-rail competition, whether allowing vertical reintegration of particular rail lines or networks would promote their commercial viability and deliver net benefits should be the subject of detailed independent examination on a case-by-case basis, commissioned by relevant governments.***

Decisions regarding the appropriateness and viability of vertical reintegration of particular rail lines or networks are a matter for each jurisdiction to determine on a case-by-case basis.

RECOMMENDATION 12.7

***For road freight, efficiency benefits in the shorter term would come from regulatory reforms and improved decision-making frameworks for road projects. More fundamental reform of road infrastructure pricing and provision could deliver larger benefits, but at higher cost, and would pose implementation challenges that need to be satisfactorily resolved.***

***The Commission accordingly advocates a phased reform agenda for road pricing, regulation and institutional arrangements to be overseen by COAG and as detailed in chapter 12 of this report:***

- ***Phase 1 comprises regulatory reforms and improved decision-making frameworks that should be implemented in the short term, as well as several research and feasibility studies to progress pricing reforms.***
- ***Phase 2 involves implementing a system of incremental pricing combined with institutional reforms (such as the establishment of road funds) to link road charge revenue with future road spending, supported by improved governance arrangements.***
- ***Phase 3 would extend location-based charging and, where feasible, move to commercial provision of road infrastructure services.***

***Progression beyond Phase 1 will require thorough assessment of costs, benefits and distributional impacts of proposed reforms, drawing on experience and on further research as detailed in the Commission's specific findings and recommendations.***

Agree in principle.

As outlined in the responses to the following recommendations, COAG has agreed to a comprehensive reform agenda which will deliver benefits in the short term and set a direction for meeting Australia's freight transport task into the future.

While supporting the PC's phased approach, COAG has agreed to bring forward some of the research and strategic pilots proposed for Phase 2 into Phase 1. COAG agrees with the PC's observation that progress beyond Phase 1 requires a later decision-making process that draws on the thorough assessment of the costs and benefits of each reform implemented in Phase I and the reform options developed as a result of the Phase 1 research program, and will consider this assessment before deciding to proceed with subsequent stages.

In terms of road pricing in particular, COAG endorses the PC's proposed approach of, initially, continuing and updating the PAYGO system, and subsequently developing the building blocks for COAG to assess the merits of mass-distance location-based charging.

RECOMMENDATION 12.8

***Consideration should be given to introducing new processes so as to maintain aggregate cost recovery between heavy vehicle pricing determinations, as well as to constrain undue political influence on price determinations. The Australian Transport Council should publish reasons for not accepting pricing recommendations from the National Transport Commission.***

Agree.

COAG supports and will implement, through the Australian Transport Council (ATC) a range of improvements to the current PAYGO system. In October 2006, the ATC directed the National Transport Commission to commence work on a new Heavy Vehicle Road Pricing Determination that will be considered by the ATC in late-2007. COAG will ask that ATC direct the NTC, in developing its determination, to apply principles and methods that ensure the delivery of full cost recovery in aggregate, further develop indexation adjustment arrangements to ensure the ongoing delivery of full expenditure recovery in aggregate and remove cross-subsidisation across different heavy vehicle classes, recognising that transition to any new arrangements may require a phased approach.

COAG has asked the ATC to clearly indicate the reasons for its decisions and review its decision-making processes relating to determinations, the automatic application of annual indexation arrangements and the commitment to review determinations on a fixed and recurrent timetable.

RECOMMENDATION 12.9

***Prescriptive regulations that restrict particular types or configuration of heavy vehicles from using certain roads should be replaced, where possible, with performance-based regulations to promote flexibility, innovation and greater productivity in the road freight sector. The proposed package of Performance Based Standards to be agreed upon and implemented by all jurisdictions by the end of 2007 is a major step forward, but it is important for the Australian Transport Council to ensure that the announced timetable is met.***

Agree.

COAG recognises that performance-based standards promote flexibility, innovation and productivity in the road freight sector as they permit the operation of safer higher productivity vehicles, more closely align heavy vehicles to roads (and vice versa), encourage heavy vehicle innovation, including accelerating the adoption of new vehicle technology, and improve compliance with transport regulations.

In keeping with their commitment under the COAG National Reform Agenda, governments are on target to enact an enabling legislative package of performance-based standards for innovative vehicles by December 2007. COAG has asked the ATC to ensure that this process is implemented in a way that minimises compliance costs and delays and achieves nationally consistent outcomes, and to report to COAG by the end of 2007.

These efforts form part of COAG's broader commitment under the National Reform Agenda to harmonise road regulation within five years.

RECOMMENDATION 12.10

***Regulations applied to the road transport sector should be rigorously evaluated by all relevant jurisdictions in accordance with regulatory impact criteria, to identify least-cost approaches, including performance-based instruments, and to demonstrate net benefits. The appropriateness and cost-effectiveness of existing regulations in the sector also should be systematically reviewed, consistent with COAG's commitment that all governments undertake targeted annual public reviews of existing regulations.***

Agree.

COAG recognises that while effective regulation is essential to ensure markets operate efficiently and fairly, the benefits from each regulation must not be offset by unduly high compliance and implementation costs. COAG also recognises that inconsistent regulations across Australia may impose additional costs on the community and reduce economic efficiency.

Under the National Reform Agenda, COAG has agreed to a range of measures to ensure best-practice regulation making and review, including better gate keeping arrangements and analysis, annual reviews that will, among other objectives, highlight cross-jurisdictional inconsistencies and overlaps, and a Productivity Commission benchmarking study.

Governments will ensure that the principles and processes relating to best practice regulation apply to new and existing road-related regulation. Acknowledging the significant reform presently being undertaken in relation to road regulation, COAG has agreed that jurisdictions will conduct targeted reviews of road freight infrastructure regulation, under their respective annual regulation review cycles, by the end of 2009-10. The results of these reviews and actions arising will be reported to COAG.

COAG further calls on ATC to continue to assess, and bring forward, any additional regulatory reforms that will enhance transport productivity where the benefits are expected to clearly outweigh the costs.

RECOMMENDATION 12.11

***To improve existing investment decision-making frameworks, governments should ensure that road infrastructure funding mechanisms include a clear project selection process, stakeholder involvement and public transparency, including formal procedures for public consultation, as well as systematic post-project evaluation. These principles have been broadly adopted as part of the AusLink framework for investing in the national highway system and endorsed by COAG. They should be rigorously applied in all jurisdictions as soon as practicable.***

Agree.

COAG recognises that efficient investment in road infrastructure requires processes that facilitate clear project selection, stakeholder involvement, public transparency and post-project evaluation.

Under the COAG National Reform Agenda, governments have committed to strengthen and coordinate transport planning and project appraisal processes by adopting 'National Guidelines for Transport System Management in Australia' (the Guidelines) developed under the ATC's auspices and which will apply to proposals for investment in the AusLink National

Network. The Guidelines outline processes for objective-based strategic planning, appraisal and programme development (project identification, appraisal, prioritisation and development), and programme delivery and performance review.

Governments will report to COAG on the adoption of these Guidelines, which will apply to all new public road and rail infrastructure projects, by mid-2007.

To improve investment decision-making on Australia's major national land transport routes, a series of 24 long-term corridor strategies are being developed jointly by Commonwealth, State and Territory governments and will be completed by June 2007. Consistent with the Guidelines, these strategies will provide the basis for determining national investment priorities on the AusLink National Network.

RECOMMENDATION 12.12

***Under the sponsorship of COAG, further research should be undertaken to identify:***

- ***the costs of different types of heavy vehicles (by mass) using different types of road; and***
- ***road spending undertaken to meet CSOs, which should be excluded from the costs to be recovered through heavy vehicles charges.***

Agree.

COAG recognises that, to develop a road freight infrastructure pricing system that more closely reflects the costs of road use, robust information regarding the costs of different types of heavy vehicles using different parts of the networks is essential. Therefore, COAG will commission independent research on this issue, commencing in mid-2007, for completion by July 2008.

COAG also agreed that Governments will undertake research to identify road spending to meet Community Service Obligations (CSOs) to assist transparency of funding for CSOs and help inform future charging arrangements with this research to be completed by December 2008.

This work will form part of the policy reform agenda for road and rail freight infrastructure pricing, to be overseen by COAG within the broader National Reform Agenda framework.

RECOMMENDATION 12.13

***Further research into transport externalities in Australia is required to assist the introduction of the most cost-effective policies for attaining efficient abatement of external costs. Research should focus on:***

- ***the characteristics, locations, incidence and size of transport externalities; and***
- ***the extent to which these externalities already are internalised particularly by policies affecting the decisions of passenger and freight transport users.***

***The BTRE is well placed to undertake this research.***

Agree in principle.

COAG recognises that road and rail freight transport generate a range of externalities, a number of which are currently being internalised through regulation, legal liability, and various other means.

To ensure that the costs of freight transport externalities are adequately and efficiently addressed within the context of Australia's rapidly growing transport and freight task, COAG will commission an independent review into the nature, extent and mechanisms for addressing these externalities, commencing in mid-2007 for completion by July 2008.

The outcomes of the review will form part of the policy reform agenda for road and rail freight infrastructure pricing, to be overseen by COAG within the broader National Reform Agenda framework.

RECOMMENDATION 12.14

***Incremental pricing, building on the Intelligent Access Program, would provide a base for testing direct road user pricing and could deliver potentially large efficiency benefits in its own right. As provided for in Phase One of the Commission's proposed reform agenda, COAG should sponsor further work on the feasibility of incremental pricing, focussing on:***

- ***how incremental charges would mesh with the PAYGO system;***
- ***charging technologies; and***
- ***a process for determining and applying incremental charges in a nationally-consistent manner.***

Agree.

COAG recognises that incremental pricing provides an opportunity to test direct user pricing and, by enabling higher mass and innovative vehicles to access latent capacity in parts of the road network, deliver potentially significant efficiency benefits to the road freight sector in the short term.

COAG noted that incremental charging schemes have been applied or piloted in some States for some time and that, in October 2006, the ATC directed the NTC to develop proposals for incremental charging.

In taking this forward, COAG will commission strategic trials to demonstrate the feasibility of, and develop a mechanism for, adopting incremental pricing. This work will build on the Intelligent Access Program initiative, and the work of the National Transport Commission, and will be completed by December 2008.

RECOMMENDATION 12.15

***Properly constituted road funds, as detailed in chapter 10, would provide an appropriate institutional framework for promoting efficient infrastructure spending and should be established within individual jurisdictions.***

COAG recognises that efficient investment in road infrastructure is essential to developing and maintaining a road network that can meet Australia's growing freight transport task.

As outlined in response to recommendation 12.11, COAG has committed to a range of reforms to improve investment decision-making processes within existing road funding arrangements. Each jurisdiction will consider examining alternative institutional

arrangements to better link road freight revenues to investment and enhance decision-making by July 2010.

RECOMMENDATION 12.16

***The reform agenda for road and rail freight should be overseen by COAG, and advanced through the appointment of a special taskforce of officials and experts who would be tasked with reporting back to COAG with detailed findings and implementation measures. Subject to COAG agreement on effective governance and monitoring arrangements the reform process for road and rail freight should be embedded within the wider National Reform Agenda architecture.***

Agree in principle.

COAG agrees that the policy reform agenda for road and rail freight infrastructure pricing should form an integral part of the wider COAG National Reform Agenda. To deliver this, COAG has asked the ATC to deliver the Plan, and provide regular six monthly progress reports back to COAG, commencing in the second half of 2007. Progress in implementing all agreed NRA transport reforms will be included in the COAG Reform Council's annual report to COAG.

## COAG URBAN CONGESTION REVIEW

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In February 2006, COAG commissioned a Review of Urban Congestion Trends, Impacts and Solutions to inform the development of measures to reduce current and projected urban transport congestion, within existing jurisdictional responsibilities, focusing on national freight corridors. Current jurisdictional responsibilities include joint responsibility for the AusLink network and state responsibility for urban public transport and the remaining urban arterial network.

The review confirmed that the growth of urban congestion is an important national issue. Longer journey times and journey unreliability impose costs on individuals, businesses and the broader economy. Congestion also adds to motor vehicle emissions and can affect the 'liveability' of cities. Australia's international competitiveness is potentially affected as the most important non-bulk ports are accessed via the national road and rail networks through our capital cities.

With traffic increasing as incomes and population grow the 'business-as-usual' cost of congestion in terms of extra travel time, increased unreliability, higher vehicle operating costs and poorer air quality in Australia's cities is estimated to double over the next 15 years. Major cities in the eastern states (Melbourne, Sydney and Brisbane) currently face the most significant congestion bottlenecks, but congestion costs are also forecast to rise appreciably in other jurisdictions.

The review found that, while there is no 'silver bullet' solution to growing congestion, there are opportunities for managing it better. Infrastructure development and congestion management measures should be seen as complementary elements in approaches to provide, manage and price transport infrastructure to maximise the productivity of urban transport networks. Each city has a unique set of circumstances depending on the configuration of its broader transport network, including its public transport system. As such, policy responses need to be tailored to each city.

Possible responses include: improved traffic management, particularly on urban motorways; changing urban supply chain behaviour so that more freight moves outside congested periods; improved public transport services; better integration of transport and land use planning including coordination with local government decision-making; and managing demand for road use through pricing and through encouraging non-car travel. There are also opportunities for cooperative joint action on issues of cross-jurisdictional impact.

Governments are already making significant investments in strategic infrastructure to address congestion by removing key infrastructure bottlenecks and/or improving public transport options. These investments are costly, and Governments are seeking to better target the available funds at priority projects.

COAG has therefore agreed that:

- jurisdictions will develop and implement their own specific responses to urban congestion, drawing on the action strategies as appropriate and adhering to the principles set out in the review, both on and off the AusLink National Network;
- AusLink contributions to future urban projects will continue to be considered – consistent with jurisdictional urban congestion responsibilities – recognising jurisdictions’ urban congestion initiatives on and off the AusLink national network. The projects will meet priorities identified in relevant AusLink corridor strategies and where the requests satisfy the AusLink processes consistent with the National Guidelines for Transport System Management in Australia; and
- the Australian Transport Council will establish arrangements to improve urban congestion data, modelling and performance information for decision-making and report to COAG on progress by June 2008.

In addition COAG has:

- agreed jurisdictions will take travel demand management measures into account, drawing on the COAG urban congestion review and travel demand management strategies, when preparing their specific responses to congestion; and
- noted that the Australian Transport Council has referred the issue of tax concessions for public transport users for further consideration by the Ministerial Council for Commonwealth-State Financial Relations.

## **Competition and Infrastructure Reform Agreement — Implementation Plan**

On 10 February 2006, the Council of Australian Governments (COAG) reached agreement on a new National Reform Agenda to help underpin Australia's future prosperity. The new agenda comprises three streams — human capital, competition and regulatory reform. The competition stream of the agenda is a substantial addition to, and continuation of, the highly successful National Competition Policy reforms. A significant component of the new initiatives is the *Competition and Infrastructure Reform Agreement (CIRA)*, signed by COAG, to provide for a simpler and consistent national approach to the economic regulation of significant infrastructure.

This implementation plan supports the CIRA. It sets out an agreed timetable for the implementation of specific reform commitments, including identifying actions and milestones.

Commencing this year, all jurisdictions, including the Commonwealth, will streamline the regulatory processes in their access regimes, including by incorporating binding time limits and a limited form of merits review for regulatory decisions (where merits review is already provided for). Jurisdictions will also adopt common objectives clauses and pricing principles for access regimes.

As part of the CIRA, jurisdictions will take specific measures to enhance regulatory outcomes for nationally significant ports and rail networks. This includes a commitment to review the regulation of ports and port authority, handling and storage facility operations at significant ports by the end of 2007, with the findings of the reviews to be implemented by each jurisdiction by the end of 2008. Jurisdictions have also set a target of December 2008 to implement a simpler and consistent national system of rail access regulation for agreed interstate rail track and major intra-state freight corridors.

In order to give effect to a number of the commitments set out in the CIRA, COAG has also agreed to amendments to the Competition Principles Agreement (CPA). The full text of the amended CPA is available on the COAG web site.

The plan also includes information relevant to the implementation of CIRA, as follows:

- The access regimes and ports subject to the relevant commitments in CIRA (Appendices 1 and 2 respectively).
- Agreed amendments to the Competition Principles Agreement to include objects clauses, pricing principles and limited merits review of regulatory decisions (where merits review is provided for); and a streamlined process for the certification of state and territory third party access regimes (Appendix 3).
- Guiding principles for the implementation of binding time limits on regulatory decisions in access regimes (Appendix 4).

- Guiding principles for the implementation of limited merits review of regulatory decisions in access regimes (where merits review is provided for) (Appendix 5).
- A year-by-year timetable of reforms (Appendix 6).

The commitments, actions and milestones contained in this implementation plan should be read in conjunction with the interpretive provisions of CIRA, which for ease of reference are replicated below.

COAG may agree the proposed schedule of implementing the CIRA be expanded to include other agreed actions to enhance the efficiency and consistency of Australia's regulation of significant infrastructure. Thus, on an on-going basis, as the need arises and particularly after the 2010 review of the Agreement, the Parties can agree to augment the Agreement.

## Timetable for Implementation of the Competition and Infrastructure Reform Agreement (CIRA)

### Competition and Infrastructure Reform Agreement — Interpretative Provisions

- 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*.

## Timetable for Implementation of the Competition and Infrastructure Reform Agreement (CIRA)

<b>Principle: The establishment of a simpler and consistent national approach to regulation of significant infrastructure</b> <b>Outcome: More efficient investment in and use of key national infrastructure</b>			
CIRA Clause	Actions	Milestones	Date
2.1 The Parties agree to establish a simpler and consistent national approach to economic regulation of significant infrastructure.	Statement of principle.	-	Ongoing.
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.	Statement of principle.	-	Ongoing.
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.	The introduction of price monitoring for services in the agreed circumstances.	-	Ongoing.

## Timetable for Implementation of the Competition and Infrastructure Reform Agreement (CIRA)

<b>Principle: The establishment of a simpler and consistent national approach to regulation of significant infrastructure</b>			
<b>Outcome: More efficient investment in and use of key national infrastructure</b>			
CIRA Clause	Actions	Milestones	Date
<p>2.4 All third party access regimes for services provided by means of significant infrastructure facilities will include the following consistent regulatory principles.</p> <p>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.</p> <p>b. Regulated access prices should be set so as to:</p> <p>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;</p> <p>ii. allow multi-part pricing and price discrimination when it aids efficiency;</p> <p>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</p> <p>iv. provide incentives to reduce costs or otherwise improve productivity.</p> <p>c. Where merits review of regulatory decisions is provided, the review will be limited to the information submitted to the regulator.</p>	<p>Introduce the following principles within the third party access regimes identified in Appendix 1, and any new access regimes for services provided by means of significant infrastructure facilities:</p> <p>d. objects clauses that promote the economically efficient use of, operation and investment in significant infrastructure thereby promoting effective competition in upstream or downstream markets;</p> <p>e. regulated access prices to achieve objectives as outlined in clause 2.4.b (i-iv) in the Agreement; and</p> <p>f. where merits review of regulatory decisions is provided for, limit reviews to the information submitted to the original decision-maker (see Appendices 3 and 5).</p>	<p>Officials' agreement on guiding principles for legislative provisions or other arrangements.</p> <p>COAG agreement.</p> <p>Legislation enacted or other arrangements completed.</p>	<p>December 2006.</p> <p>Out-of-session, or no later than the first COAG meeting of 2007.</p> <p>For existing access regimes, refer to Appendix 1.</p>

## Timetable for Implementation of the Competition and Infrastructure Reform Agreement (CIRA)

<b>Principle: The establishment of a simpler and consistent national approach to regulation of significant infrastructure</b>			
<b>Outcome: More efficient investment in and use of key national infrastructure</b>			
CIRA Clause	Actions	Milestones	Date
2.5 The Parties agree to amend clause 6 of the Competition Principles Agreement to include subclause 2.4 above.	Amend clause 6 of the Competition Principles Agreement to include subclause 2.4(a), (b) and (c) (see Appendix 3).	Completion.	First COAG meeting of 2007.
<p>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.</p> <p>a. Regulators will have the discretion to determine when the six month time limit is suspended:</p> <p>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</p> <p>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.</p> <p>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.</p>	Introduce within the third party access regimes identified in Appendix 1, and any new access regimes for services provided by means of significant infrastructure facilities, the requirement that regulators will be bound to make regulatory decisions within six months (see Appendix 4).	<p>Officials' agreement on guiding principles for legislative provisions or other arrangements.</p> <p>COAG agreement.</p> <p>Legislation enacted or other arrangements completed.</p>	<p>December 2006.</p> <p>Out-of-session, or no later than the first COAG meeting of 2007.</p> <p>For existing access regimes, refer to Appendix 1.</p>

## Timetable for Implementation of the Competition and Infrastructure Reform Agreement (CIRA)

<b>Principle: The establishment of a simpler and consistent national approach to regulation of significant infrastructure</b>			
<b>Outcome: More efficient investment in and use of key national infrastructure</b>			
<b>CIRA Clause</b>	<b>Actions</b>	<b>Milestones</b>	<b>Date</b>
2.7 The principles in clauses 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 <i>Trade Practices Act 1974</i> as soon as practicable or as they are reviewed, provided that they are included in such regimes no later than the end of 2010.	Refer to actions under clauses 2.4 and 2.6.	-	-
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.	Commonwealth and State officials will oversight the implementation of the principles in clauses 2.4 and 2.6	See above.	See above.
	Commonwealth and State officials to develop and implement a streamlined access regime certification process (see amendments to the Competition Principles Agreement set out in Appendix 3).	Streamlined certification process reflected in amended Competition Principles Agreement.	Out-of-session, or no later than the first COAG meeting of 2007.
	Commonwealth and state officials will develop proposals for additional regulatory principles that contribute to a simpler and consistent national approach to regulation.	-	Ongoing — consider from 2006 onwards.

## Timetable for Implementation of the Competition and Infrastructure Reform Agreement (CIRA)

<b>Principle: The establishment of a simpler and consistent national approach to regulation of significant infrastructure</b>			
<b>Outcome: More efficient investment in and use of key national infrastructure</b>			
<b>CIRA Clause</b>	<b>Actions</b>	<b>Milestones</b>	<b>Date</b>
<p>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 <i>Trade Practices Act 1974</i> and the Competition Principles Agreement.</p> <p>a. All new third party access regimes will be submitted for certification as soon as practicable.</p> <p>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.</p> <p>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.</p>	<p>All state and territory access regimes listed in Appendix 1, and any new access regimes for services provided by means of significant infrastructure facilities, submitted for certification under Part IIIA of the <i>Trade Practices Act 1974</i> and clause 6 of the Competition Principles Agreement, in accordance with the streamlined access regime certification process at Appendix 3.</p>	<p>Access regimes submitted for certification.</p>	<p>Ongoing — as soon as practicable or, for existing regimes, as they are reviewed, provided they are submitted for certification no later than the end of 2010.</p>

## Timetable for Implementation of the Competition and Infrastructure Reform Agreement (CIRA)

<b>Principle:</b> The establishment of a simpler and consistent national system of rail access regulation for interstate rail track, major intra-state freight corridors (as agreed) and other significant export related rail infrastructure <b>Outcome:</b> More efficient investment in and use of key rail freight infrastructure			
CIRA Clause <sup>ab</sup>	Actions	Milestones	Date
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:	See below.	-	-
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	Undertake commercial negotiations and, if they allow, bring rail from Kalgoorlie to Perth and Queensland/New South Wales border to Brisbane under new national regime.	Relevant track covered by new national regime, pending the outcome of commercial negotiations.	December 2008 (subject to commercial negotiations).
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.	Undertake cost-benefit analyses of bringing major intra-state freight corridors under a national regime.	Commence reviews. Application of national undertaking approach where applicable.	From 2007. From December 2007.
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.	Develop approach to apply the Australian Rail Track Corporation access undertaking so it is appropriate for unbundled and vertically integrated rail operators and can apply to all track subject to clause 3.1.	New access undertaking/code developed.  New access undertaking/code accepted.	June 2007.  December 2007.

<sup>a</sup> Timeframes for the milestones under Clause 3.1b are subject to the completion of Clause 3.2. In turn, the timeframes for Clause 3.2 are subject to the outcomes of any necessary consultation with, or involvement of, the rail industry in the development of the national system of rail access regulation (and any relevant regulatory and legislative processes)

<sup>b</sup> NB: The Parties agree that the Tarcoola to Darwin rail line is not subject to clause 3.1 until the existing certified access regime, as established by *the AustralAsia Railway (Third Party) Access Act*, expires

## Timetable for Implementation of the Competition and Infrastructure Reform Agreement (CIRA)

<b>Principle:</b> The establishment of a simpler and consistent national system of rail access regulation for interstate rail track, major intra-state freight corridors (as agreed) and other significant export related rail infrastructure <b>Outcome:</b> More efficient investment in and use of key rail freight infrastructure			
CIRA Clause <sup>ab</sup>	Actions	Milestones	Date
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.	Submit state based rail access regimes governing other significant export related rail infrastructure facilities for certification, in accordance with the streamlined access regime certification process at Appendix 3.	Commence.  Completion.	From 2007.  No later than December 2010.
3.4 This agreement does not require any change to passenger priority policies.	Statement of principle.	-	Ongoing.

## Timetable for Implementation of the Competition and Infrastructure Reform Agreement (CIRA)

<b>Principle: The establishment of a simpler and consistent national approach to regulation of significant port infrastructure</b>			
<b>Outcome: More efficient investment in and use of key port infrastructure</b>			
CIRA Clause	Actions	Milestones	Date
<p>4.1 The Parties agree that:</p> <p>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</p> <p>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:</p> <p>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;</p> <p>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;</p> <p>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</p> <p>iv. where access regimes are required, and to maximise consistency, those regimes should be certified in accordance with the <i>Trade Practices Act 1974</i> and the Competition Principles Agreement.</p>	<p>Statement of principle.</p> <p>Note: Where new port access regimes are required to be certified under Part IIIA of the <i>Trade Practices Act 1974</i> (clause 4.1b(iv)), this process is to be subject to agreement on a streamlined certification process as provided for in clause 2.9c.</p>	-	Ongoing.

## Timetable for Implementation of the Competition and Infrastructure Reform Agreement (CIRA)

<b>Principle:</b> The establishment of a simpler and consistent national approach to regulation of significant port infrastructure			
<b>Outcome:</b> More efficient investment in and use of key port infrastructure			
<b>CIRA Clause</b>	<b>Actions</b>	<b>Milestones</b>	<b>Date</b>
<p>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:</p> <p>a. port planning should, consistent with the efficient use of port infrastructure, facilitate the entry of new suppliers of port and related infrastructure services;</p> <p>b. where third party access to port facilities is provided, that access should be provided on a competitively neutral basis;</p> <p>c. commercial charters for port authorities should include guidance to seek a commercial return while not exploiting monopoly powers; and</p> <p>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.</p>	Statement of principle.	-	Ongoing.

## Timetable for Implementation of the Competition and Infrastructure Reform Agreement (CIRA)

<b>Principle:</b> The establishment of a simpler and consistent national approach to regulation of significant port infrastructure			
<b>Outcome:</b> More efficient investment in and use of key port infrastructure			
<b>CIRA Clause</b>	<b>Actions</b>	<b>Milestones</b>	<b>Date</b>
<p>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.</p> <p>a. Significant ports include:</p> <ul style="list-style-type: none"> <li>i. major capital city ports and port facilities at these ports;</li> <li>ii. major bulk commodity export ports and port facilities, except those considered part of integrated production processes; and</li> <li>iii. major regional ports catering to agricultural and other exports.</li> </ul>	<p>Undertake transparent public reviews of the regulation and effectiveness of competition in ports and port authority, handling and storage facility operations. The ports to be reviewed are listed in Appendix 2.</p> <p>Implement findings/recommendations from reviews, as appropriate.</p>	<p>Complete reviews.</p> <p>Implementation of review findings.</p>	<p>December 2007.</p> <p>December 2008 (subject to contractual obligations).</p>

## Timetable for Implementation of the Competition and Infrastructure Reform Agreement (CIRA)

<b>Principle: Introduction of effective criteria for a Part IIIA declaration exemption for significant government owned infrastructure facilities, the construction and operation of which is undertaken through a competitive tender process</b>			
<b>Outcome: Enhanced regulatory certainty for government sponsored investment in significant infrastructure</b>			
CIRA Clause	Actions	Milestones	Date
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.	Statement of principle.	-	Ongoing.
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.	Statement of principle.	-	Ongoing.
5.3 The Commonwealth has introduced amendments to Part IIIA of the <i>Trade Practices Act 1974</i> 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.	For information.	-	-
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.	Work together to develop a consistent set of criteria to operationalise Commonwealth amendments to Part IIIA of the <i>Trade Practices Act 1974</i> . These provide that declaration will not apply to government owned infrastructure whose access provisions are developed by a competitive tender approved by the Australian Competition and Consumer Commission.	Regulations agreed.  Regulations made.	March 2007.  June 2007.

## Timetable for Implementation of the Competition and Infrastructure Reform Agreement (CIRA)

<b>Principle: Further the application of competitive neutrality principles to government business enterprises</b> <b>Outcome: Enhance competitive neutrality between government business enterprises and the private sector</b>			
CIRA Clause	Actions	Milestones	Date
<p>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:</p> <p><i>Objectives</i></p> <p>a. That the enterprise has clear commercial objectives.</p> <p>b. That any non commercial objectives or obligations established for the enterprise are clearly specified and publicly reported.</p> <p>c. That enterprises do not exercise regulatory or planning approval functions in circumstances in which they compete with private sector enterprises.</p> <p><i>Governance</i></p> <p>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.</p> <p>e. That the governing board is appointed on the basis of particular skills needed by the board.</p> <p>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.</p> <p>g. That the dividend policy applicable to the enterprise should be clearly and publicly specified.</p>	<p>Heads of Treasuries to develop a reporting mechanism for COAG regarding the enhanced application of competitive neutrality principles to government business enterprises.</p>	<p>Reporting mechanism developed.</p> <p>Report for COAG.</p>	<p>Early 2007.</p> <p>2007.</p>

## Timetable for Implementation of the Competition and Infrastructure Reform Agreement (CIRA)

<b>Principle:</b> Further the application of competitive neutrality principles to government business enterprises			
<b>Outcome:</b> Enhance competitive neutrality between government business enterprises and the private sector			
CIRA Clause	Actions	Milestones	Date
<p>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.</p> <p><i>Reporting</i></p> <p>i. That at least annually the enterprise will report publicly on its commercial performance and on its performance of any non commercial activities.</p> <p>j. That any directions given to the enterprise by the government are published.</p> <p>k. That where the legislation establishing an enterprise derogates from competitive neutrality the derogation has been published.</p>			

## Timetable for Implementation of the Competition and Infrastructure Reform Agreement (CIRA)

<b>Competition and Infrastructure Reform Agreement — Administrative and Review Provisions</b>			
<b>CIRA Clause</b>	<b>Actions</b>	<b>Milestones</b>	<b>Date</b>
<p>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.</p> <p>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.</p> <p>7.3 If a Party withdraws from this Agreement, this Agreement will continue in force in respect of the remaining Parties.</p>	Procedural clauses — no action required.	-	-
8.1 Once this Agreement has operated for five years, the Parties will review its operation and terms.	Review the operation of the Agreement to determine its effectiveness and any possible enhancements. Implement findings/recommendations from review, as appropriate.	<p>Commence review.</p> <p>Complete review.</p> <p>Implementation of review findings.</p>	<p>2011.</p> <p>No later than end 2011.</p> <p>From completion of review.</p>
9.1 This Agreement commences once the Commonwealth and at least four other jurisdictions have executed it.	Execution of the Agreement (completed).	Commencement of Agreement.	10 February 2006.

## Appendix 1

### Third Party Access Regimes for Services Provided by Means of Significant Infrastructure Facilities (Clauses 2.4, 2.6 and 2.9 of the Competition and Infrastructure Reform Agreement)

Jurisdiction	Access regime	Review of access regime (where applicable)	Implementation of consistent principles	Certification application
Commonwealth	National Access Regime		2007	Not applicable
New South Wales	nil			
Victoria	Channel Access Regime		2007 <sup>1</sup>	2009
	Rail Access Regime			Before end 2010
	Grain Handling and Storage Access Regime	Mid-2009	2007 <sup>1</sup>	2009
Queensland	Queensland Access Regime: comprising the <i>Queensland Competition Authority Act 1997</i> and the declarations of the services provided by Queensland's intrastate rail network and the Dalrymple Bay Coal Terminal		Commencing from 2007	Before end 2010
South Australia	Rail Access Regime	2008	2009	Before end 2010
	Ports Access Regime	2007	2008	Before end 2010
Western Australia	Rail Access Regime <sup>2</sup>			
Tasmania	nil			
Northern Territory	nil			
Australian Capital Territory	nil			

<sup>1</sup> Subject to review of the *Essential Services Commission Act 2001*.

<sup>2</sup> Subject to implementation of clause 3.1 of the Competition and Infrastructure Reform Agreement.

## **Appendix 2**

### **Ports to be reviewed (Clause 4.3 of the Competition and Infrastructure Reform Agreement)**

#### **New South Wales**

The Sydney Ports (Port Botany, Glebe Island, White Bay, Darling Harbour)

Port of Newcastle

Port Kembla

#### **Victoria**

Port of Melbourne

#### **Queensland**

Port of Brisbane

Port of Gladstone

Port of Mackay

Port of Abbot Point

Port of Townsville

Port of Weipa

Port of Hay Point

#### **South Australia**

Port Adelaide

#### **Western Australia**

Port of Fremantle

Port of Port Hedland

Port of Esperance

#### **Tasmania**

Nil

#### **Northern Territory**

Port of Darwin

## Appendix 3

### **Amendments to the Competition Principles Agreement (Clauses 2.4, 2.5 and 2.8 of the Competition and Infrastructure Reform Agreement)**

Clauses 2.4 and 2.5 of the Agreement commit the parties to amending the Competition Principles Agreement to include objects clauses, pricing principles and limited merits review of regulatory decisions (where merits review is provided for).

Clause 2.8 of the Agreement commits to the introduction of a streamlined process for the certification of third party access regimes under the National Access Regime.

2.8 The 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.

It is agreed that these commitments will be reflected in the following amendments to the Competition Principles Agreement.

#### Amendments to the Competition Principles Agreement

Incorporate the following amendments (shown in bold and underscore) into Clause 6 of the Competition Principles Agreement:

#### **6. ACCESS TO SERVICES PROVIDED BY MEANS OF SIGNIFICANT INFRASTRUCTURE FACILITIES**

- (1) Subject to subclause (2), the Commonwealth will put forward legislation to establish a regime for third party access to services provided by means of significant infrastructure facilities where:
- (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.

- (2) The regime to be established by Commonwealth legislation is not intended to cover a service provided by means of a facility where the State or Territory Party in whose jurisdiction the facility is situated has in place an access regime which covers the facility and conforms to the principles set out in this clause unless:
- (a) the Council determines that the regime is ineffective having regard to the influence of the facility beyond the jurisdictional boundary of the State or Territory; or
  - (b) substantial difficulties arise from the facility being situated in more than one jurisdiction.
- (3) For a State or Territory access regime to conform to the principles set out in this clause, it should:
- (a) apply to services provided by means of significant infrastructure facilities where:
    - (i) it would not be economically feasible to duplicate the facility;
    - (ii) access to the service is necessary in order to permit effective competition in a downstream or upstream market; and
    - (iii) 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; and
  - (b) **reasonably incorporate each of the principles referred to in subclause (4) and (except for an access regime for: electricity or gas that is developed in accordance with the Australian Energy Market Agreement; or the Tarcoola to Darwin railway) subclause (5).**

**There may be a range of approaches available to a State or Territory Party to incorporate each principle. Provided the approach adopted in a State or Territory access regime represents a reasonable approach to the incorporation of a principle in subclause (4) or (5), the regime can be taken to have reasonably incorporated that principle for the purposes of paragraph (b).**

**(3A) In assessing whether a State or Territory access regime is an effective access regime under the *Trade Practices Act 1974*, the assessing body:**

- (a) should, as required by the *Trade Practices Act 1974*, and subject to section 44DA, not consider any matters other than the relevant principles in this Agreement. Matters which should not be considered include the outcome of any arbitration, or any decision, made under the access regime; and**

**(b) should recognise that, as provided by subsection 44DA(2) of the Trade Practices Act 1974, an access regime may contain other matters that are not inconsistent with the relevant principles in this Agreement.**

- (4) A State or Territory access regime should incorporate the following principles:
- (a) Wherever possible third party access to a service provided by means of a facility should be on the basis of terms and conditions agreed between the owner of the facility and the person seeking access.
  - (b) Where such agreement cannot be reached, Governments should establish a right for persons to negotiate access to a service provided by means of a facility.
  - (c) Any right to negotiate access should provide for an enforcement process.
  - (d) Any right to negotiate access should include a date after which the right would lapse unless reviewed and subsequently extended; however, existing contractual rights and obligations should not be automatically revoked.
  - (e) The owner of a facility that is used to provide a service should use all reasonable endeavours to accommodate the requirements of persons seeking access.
  - (f) Access to a service for persons seeking access need not be on exactly the same terms and conditions.
  - (g) Where the owner and a person seeking access cannot agree on terms and conditions for access to the service, they should be required to appoint and fund an independent body to resolve the dispute, if they have not already done so.
  - (h) The decisions of the dispute resolution body should bind the parties; however, rights of appeal under existing legislative provisions should be preserved.
  - (i) In deciding on the terms and conditions for access, the dispute resolution body should take into account:
    - (i) the owner's legitimate business interests and investment in the facility;
    - (ii) the costs to the owner of providing access, including any costs of extending the facility but not costs associated with losses arising from increased competition in upstream or downstream markets;
    - (iii) the economic value to the owner of any additional investment that the person seeking access or the owner has agreed to undertake;
    - (iv) the interests of all persons holding contracts for use of the facility;

- (v) firm and binding contractual obligations of the owner or other persons (or both) already using the facility;
  - (vi) the operational and technical requirements necessary for the safe and reliable operation of the facility;
  - (vii) the economically efficient operation of the facility; and
  - (viii) the benefit to the public from having competitive markets.
- (j) The owner may be required to extend, or to permit extension of, the facility that is used to provide a service if necessary but this would be subject to:
    - (i) such extension being technically and economically feasible and consistent with the safe and reliable operation of the facility;
    - (ii) the owner's legitimate business interests in the facility being protected; and
    - (iii) the terms of access for the third party taking into account the costs borne by the parties for the extension and the economic benefits to the parties resulting from the extension.
  - (k) If there has been a material change in circumstances, the parties should be able to apply for a revocation or modification of the access arrangement which was made at the conclusion of the dispute resolution process.
  - (l) The dispute resolution body should only impede the existing right of a person to use a facility where the dispute resolution body has considered whether there is a case for compensation of that person and, if appropriate, determined such compensation.
  - (m) The owner or user of a service shall not engage in conduct for the purpose of hindering access to that service by another person.
  - (n) Separate accounting arrangements should be required for the elements of a business which are covered by the access regime.
  - (o) The dispute resolution body, or relevant authority where provided for under specific legislation, should have access to financial statements and other accounting information pertaining to a service.
  - (p) Where more than one State or Territory regime applies to a service, those regimes should be consistent and, by means of vested jurisdiction or other cooperative legislative scheme, provide for a single process for persons to seek access to the service, a single body to resolve disputes about any aspect of access and a single forum for enforcement of access arrangements.

- (5) A State, Territory or Commonwealth access regime (except for an access regime for: electricity or gas that is developed in accordance with the Australian Energy Market Agreement; or the Tarcoola to Darwin railway) should incorporate the following 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 decisions is provided, the review will be limited to the information submitted to the original decision-maker except that the review body:
    - (i) may request new information where it considers that it would be assisted by the introduction of such information;
    - (ii) may allow new information where it considers that it could not have reasonably been made available to the original decision-maker; and
    - (iii) should have regard to the policies and guidelines of the original decision-maker (if any) that are relevant to the decision under review.

## Appendix 4

### **Binding Time Limits for Regulatory Decisions in Access Regimes (Clause 2.6 of the Competition and Infrastructure Reform Agreement)**

Clause 2.6 of the Agreement commits the parties to introducing six month binding time limits for decisions by regulators under third party infrastructure access regimes. Clause 1.5 of the Agreement provides that, for the purposes of the Agreement, the term ‘regulator’ includes disputes resolution bodies.

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.

It is agreed that in implementing binding time limits for decisions by regulators, jurisdictions will be guided by the principles set out below.

#### Guiding Principles for Binding Time Limits

##### *Scope*

It is agreed that binding time limits should apply to the following decisions in access regimes:

- decisions by regulators on access disputes and access undertakings and codes;
- declaration (coverage) recommendations and decisions;
- certification recommendations and decisions under the National Access Regime;
- decisions on immunity from declaration for services developed under a competitive tendering process; and
- merits reviews of the above decisions.

It is not intended that binding time limits be applied to judicial review processes.

### *General*

Regulators (that is, those agencies or bodies responsible for making the decisions listed in the above section on scope) must make a final decision within 6 months (shorter time limits, where appropriate, may be implemented).

### *Commencement of time limit*

Once a regulator is of the opinion that the lodged application and supporting information are sufficient to enable it to proceed, the time limit commences.

- The regulator must directly notify the applicant, and any other parties to the matter, advising of the commencement of the time period for the decision, and may publish a notice where appropriate.
- The regulator may publish guidelines setting out the information that applicants should provide to facilitate commencement of consideration of the matter by the regulator.

Where the regulator is not satisfied that the application is sufficient to enable it to commence consideration of the matter, it must issue a notice to the applicant advising:

- that the documents provided do not provide sufficient information; and
- the additional information required.

### *Suspension of time limit*

The regulator is to have the discretion to suspend the time limit where:

- the regulator makes a reasonable request for further information from the applicant and/or another party or parties to the matter in question; or
- the regulator seeks submissions from third parties or the community; or
- all parties to the matter request or otherwise agree to a suspension of the time limit.

When suspending the time limit, the regulator should advise all parties to the matter of the commencement and duration of the suspension.

### *Where information is not provided*

Where the recipient of a reasonable request for information does not provide the requested information, the regulator will be permitted to make its decision on the information that has been presented to it.

### *Expiry of time limit without decision*

If the 6 month time limit expires, and a final decision has not been made:

- the regulator must advise the parties and the relevant Minister and provide reasons as to why the time limit has not been met; and
- a decision made after an expired time limit should still be a legally valid decision.

Jurisdictions may consider whether it is appropriate to provide for a 'deemed' decision in circumstances where the time limit expires without a decision having been made by the regulator.

## Appendix 5

### **Limited Merits Review of Regulatory Decisions in Access Regimes (Clause 2.4c of the Competition and Infrastructure Reform Agreement)**

Clause 2.4c of the Agreement requires:

2.4c      Where merits review of regulatory decisions is provided, the review will be limited to  
the          information submitted to the regulator.

It is agreed that in implementing limited merits review, jurisdictions will be guided by the principles in relation to admissible evidence and other information set out below (see also Appendix 3).

#### Guiding Principles for Limited Merits Review

The review will be limited to the information submitted to the original decision-maker except that the review body:

- may request new information where it considers that it would be assisted by the introduction of such information;
- may allow new information where it considers that it could not have reasonably been made available to the original decision-maker; and
- should have regard to the policies and guidelines of the original decision-maker (if any) that are relevant to the decision under review.

## **Appendix 6**

### **YEAR-BY-YEAR TIMETABLE OF REFORMS**

#### **2006-07**

##### *Infrastructure Regulation*

Commence implementation of objects clauses, pricing principles, six month binding time limits and limited merits review (where merits review of regulatory decisions is provided for).

Amend clause 6 of the Competition Principles Agreement to include objects clause and pricing principles.

Commence processes for submitting all uncertified state based access regimes for certification.

Commonwealth and State officials commence consideration of proposals for additional regulatory principles that contribute to a simpler and consistent national approach to regulation.

##### *Rail Regulation*

Undertake commercial negotiations on the application of a national rail access regime to the Perth-Kalgoorlie line.

Commence undertaking cost-benefit analyses to determine which other major intra-state freight corridors would benefit from inclusion under a national rail access undertaking or code.

##### *Competitive Tendering*

Work together to develop a consistent set of criteria to operationalise Commonwealth amendments to Part IIIA of the *Trade Practices Act 1974*. These provide that declaration will not apply to government owned infrastructure whose access provisions are developed by a competitive tender approved by the Australian Competition and Consumer Commission.

##### *Competitive Neutrality*

To be considered by Heads of Treasuries — Enhance the application of competitive neutrality principles to government business enterprises engaged in significant business activities in competition with the private sector.

#### **2007-08**

##### *Infrastructure Regulation*

Agree and implement streamlined access regime certification process.

##### *Rail Regulation*

Complete development of a new national rail industry access undertaking/code to allow for both unbundled and vertically integrated operators.

Complete process of bringing major intra-state freight corridors — for which cost-benefit analyses show would be beneficial — under the national rail undertaking.

##### *Ports Regulation*

Undertake transparent public reviews of the regulation and effectiveness of competition in ports and port authority, handling and storage facility operations.

## **2008-09**

### *Infrastructure Regulation*

Continue processes for having all uncertified state based access regimes certified.

### *Rail Regulation*

Bring rail track, currently managed by the Australian Rail Track Corporation and other parties, linking Perth to Brisbane under a new national rail access undertaking or code, subject to commercial negotiations.

### *Ports Regulation*

Implement reforms identified in reviews of ports that are necessary to:

- ensure that where the economic regulation of significant ports is warranted, it conforms to a consistent national approach based on the agreed principles; and
- promote port service competition.

## **2009-10**

### *Infrastructure Regulation*

All state and territory access regimes for services provided by significant infrastructure facilities submitted for certification in accordance with the *Trade Practices Act 1974* and the Competition Principles Agreement.

### *Rail Regulation*

Complete submitting state based rail access regimes governing other significant export related rail infrastructure facilities for certification.

### *Ports Regulation*

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