Response to the COAG Reform Council’s *Seamless National Economy: Report on Performance 2011-2012*

Under the *Intergovernmental Agreement on Federal Financial Relations* and clause 24 of the *National Partnership Agreement to Deliver a Seamless National Economy* (SNE NP), the COAG Reform Council (the Council) is required to provide COAG with an annual report on progress against SNE NP Implementation Plan milestones.

On 28 November 2012, the Council provided its fourth annual report on the performance of governments under the SNE NP to the Prime Minister, the Hon Julia Gillard MP, in her capacity as COAG Chair. The findings of this report reflect the Council’s assessment of progress against 2011-12 milestones (and any outstanding 2008-09, 2009-10 and 2010-11 milestones) as at 17 August 2012.

COAG notes the completion of the SNE NP at end of December 2012 and that the Business Regulation and Competition Working Group (BRCWG) also ceased at this time. COAG acknowledges the role the BRCWG has played in overseeing the implementation of the SNE NP reforms between 2008 and 2012, and thanks past and current members of the BRCWG for their contributions.

Although in December 2012 the CRC reported that 17 deregulation and three competition reform streams were completed by 30 June 2012, two further reforms – oil and gas reform and national access regime – have been completed since then. Presently, 18 of the deregulation priorities and four competition reforms are now completed.

COAG’s response to the recommendations of the Council’s 2011-12 report is set out below.

‘Reward reforms’/deregulation priorities

**Recommendation 1**

The COAG Reform Council recommends that COAG note our findings that:

- of the 19 ‘reward reforms’ due to be complete by 30 June 2012, 17 are fully or largely complete and two may not be achieved

- of the remaining eight ‘reward reforms’, two are on track, four are likely to be achieved but are either overdue or at risk of being delayed and two may not be achieved.

The COAG Reform Council recommends that COAG:

- **take steps** to remedy the four cases where we have identified that the intended output is at risk of not being achieved:
  - occupational health and safety
  - chemicals and plastics
- mine safety
- directors’ liability.

**COAG Response:**

COAG welcomes the Council’s assessment that 17 of the 27 SNE NP deregulation priorities have now been completed, consistent with COAG’s own assessment on 25 July 2012. Two deregulation priority reforms were completed by governments in the 2011-12 year (personal property securities reform and business names reform).

COAG agrees with the Council’s assessment that of the remaining reforms, electronic conveyancing reform and oil and gas reform are largely on track, but that there are risks of delay to trades licensing reform, maritime safety reform, consumer credit reform and to the full delivery of the National Construction Code. In recognition of these risks, COAG has requested that the new COAG Business Advisory Forum (BAF) Taskforce oversee delivery of these reforms and the remaining SNE agenda following the cessation of the BRCWG on 31 December 2012. The BAF Taskforce will coordinate twice-yearly reports to COAG from relevant COAG fora on implementation progress, until such time as all SNE NP milestones are completed.

COAG further notes that in addition to these risks to COAG agreed timeframes, the Council has assessed that four of the 27 deregulation priority reforms are at risk of not achieving the intended output: occupational health and safety (OH&S) reform, chemicals and plastics reform, mine safety reform and directors’ liability reform.

National OH&S laws are now in place in the Commonwealth, Northern Territory, Tasmania, New South Wales, Queensland, South Australia and the Australian Capital Territory (ACT). The Council has assessed however, that the output for this reform, nationally uniform OH&S laws, may not be achieved due to decisions by some governments to either not introduce the model laws or carry out further analysis of the costs and benefits of the reform before making a final decision. The Council also assessed that variations to the model legislation in New South Wales, Queensland, South Australia and the ACT reduce national uniformity. COAG supports the Council’s overall assessment of reform progress, but considers that the legislative variations identified in the Council’s report are not significant or material, and are unlikely to reduce the benefits of a national OH&S regime for national businesses.

COAG agrees with the Council’s assessment that ongoing delays to the chemicals and plastics reforms could place achievement of the overall reform output at risk if not addressed, though COAG notes there has been progress across most streams of this complex reform since the CRC’s reporting period concluded on 30 June 2012. To ensure this progress continues, COAG has agreed that the BAF Taskforce will oversee continued implementation of the chemicals and plastics reforms and that the Standing Committee on Chemicals will provide twice-yearly advice to COAG, through the Taskforce, on progress.

In relation to mine safety reforms, COAG notes the Council’s view that the ‘core’ and ‘non-core’ mining provisions represent a risk to the achievement of a nationally consistent mine...
safety regime. The ‘core’ and ‘non-core’ mining provisions reflect recognition by COAG that high-hazard mining activities (such as underground coal mining) warrant a higher level of regulation than other forms of mining. Jurisdictions are working to ensure that these provisions are consistent across those jurisdictions where they will apply, and that all other ‘core’ provisions are nationally consistent. The ‘core’ provisions were before the Select Council on Workplace Relations for out of session consideration, as at December 2012.

In relation to directors’ liability reform, COAG notes the Council’s assessment that all milestones have been completed, but that the Council still considers that the reform output may be at risk because the SNE NP Implementation Plan only requires that jurisdictions introduce legislation (rather than requiring ‘passage’ of legislation) by the end of 2012. All governments have committed to deliver this reform and COAG does not consider that the risks identified by the Council are likely to be realised. Jurisdictions, once they have introduced legislation, will seek prompt passage. As at 13 March 2013, legislation has been introduced and passed in the Commonwealth, New South Wales, Victoria and the ACT. Legislation has been introduced in the majority of other jurisdictions (Queensland, South Australia and Tasmania) and is expected to be passed in early 2013. Remaining jurisdictions are working towards introduction in the first half of 2013. The Western Australian Attorney-General made a statement to Parliament on 30 November 2012 confirming a commitment to introduce the legislation.

Further, COAG notes the Council’s assessment that there is a risk that the COAG agreed principles for directors’ liability may not be applied consistently across jurisdictions, particularly given that not all governments have decided to remove ‘type 3’ liability provisions for certain laws. COAG does not support this assessment. While legislation necessarily differs across jurisdictions, all jurisdictions have applied the consistent national principles in good faith, and the outcome for business will be a nationally consistent and principled approach to the imposition of directors’ liability. The legislative changes being introduced by governments will also substantially reduce the number of legislative provisions that impose a personal criminal liability on directors or other corporate officers for corporate fault. The CRC has assessed that once governments implement the directors’ liability reforms, over 4,500 liability provisions will have been repealed and the number of Acts containing directors’ liability provisions will be reduced from 383 to 207. In addition jurisdictions have agreed mechanisms to ensure the principles are applied to the drafting of future legislation – ensuring that the reform outcomes are sustained over time.
‘Non-reward reforms’

**Recommendation 2**

The COAG Reform Council recommends that COAG note that:

- of the nine ‘non-reward reforms’ governments were due to complete by 30 June 2012, five are fully or largely complete, two are overdue and two may not be achieved
- of the remaining ‘non-reward reforms’, two are on track, nine are likely to be achieved but are either overdue or at risk of being delayed and two may not be achieved.

The COAG Reform Council recommends that COAG:

- **take steps** to remedy the following cases where we have identified that the intended output is at risk of not being achieved:
  - energy (including market investment and demand side participation): *set a new program of action to drive energy market reform to promote a competitive retail electricity market and efficient investment*—such a program could be established under COAG’s future regulatory and competition reform agenda
  - occupational licensing: *renew COAG’s commitment to eliminating unnecessary licensing regimes for occupations*

- **take steps** to finish the reforms governments were due to complete by 30 June 2012, or bring back on track reforms where the timeframe is at risk, in particular:
  - legal profession
  - infrastructure (regulation of significant ports)
  - energy (retail price regulation and harmonisation of market legislation).

**COAG Response:**

COAG welcomes the Council’s assessment that five of the 22 ‘non-reward reforms’ have now been completed (retail tenancy, anti-dumping and countervailing, parallel book importation, infrastructure (rail access) and infrastructure (competitive neutrality), and that a further two reforms (not for profit sector (fundraising) and infrastructure (port regulation)) reforms are delayed, but are likely to be completed.

COAG notes the Council’s assessment that action is required however, to remedy two instances where the intended reform output is at risk of not being achieved: energy reform (market investment and demand side participation) and occupational licensing reform, under Part 2 of the SNE NP.

COAG notes that urgent and concrete action is underway on **energy market reform**. COAG agreed on 7 December 2012 as part of the BAF agenda, to a comprehensive package of
energy market reforms to be implemented by the Standing Council on Energy and Resources (SCER), that aim to place downward pressure on prices (through better regulation and pricing rules, delivery of a new best-practice framework for reliability standards and a continued focus on increased competition) and improve consumers’ ability to manage and control their energy usage (including through improving demand side participation).

In relation to the Council’s assessment for energy (market investment) reform, the Council notes that governments have only partially completed the required advice on a framework for assessing the adequacy of energy market investment. COAG notes that a framework is already in place. Energy Ministers and the public now have access to annual and intra-year updates on investment. The Australian Energy Market Operator (AEMO) provides comprehensive, annual publications that forecast the year in which potential supply shortfalls might eventuate in the absence of any new commitment to invest in additional projects.

In relation to occupational licensing reform, COAG does not support the Council’s assessment that the output for this reform is at risk due to governments only removing licensing requirements for six of the eleven occupations initially identified as part of this reform. COAG has agreed that this reform has been completed as far as is practicable, as jurisdictions cannot progress removal of those licences that exist in only one or two jurisdictions until the national occupational licensing system (NOLS) work under Part 1 of the SNE NP is completed. Once the details of the NOLS are settled, remaining licensing arrangements can be further considered.

COAG also notes the Council’s assessment that the legal profession reform, and the infrastructure (regulation of significant ports) and energy (retail price regulation and harmonisation of market legislation) reforms, which were due to be completed by 30 June 2012, are delayed and remedial action may be required.

In relation to legal profession reform, COAG agreed on 25 July 2012 that the Standing Committee on Legal Profession will have responsibility for delivering this reform beyond the completion of the SNE NP, and that it will report to the Standing Council on Law and Justice on progress. COAG agreed that no further SNE NP milestones are needed as the timeframes for this reform are set out in the Intergovernmental Agreement, and are sufficient to ensure delivery.

In relation to infrastructure (regulation of significant ports) reform, COAG notes that all jurisdictions, with the exception of Western Australia and the Northern Territory, have now completed this reform. The Northern Territory has implemented the majority of the recommendations from its Review of the Regulatory Framework for the Port of Darwin. Western Australia is currently working on implementing changes as part of a response to a broader ports review (Ports Review 2012).

In relation to energy (harmonisation of market legislation) reforms, on 7 December 2012, as part of the package of energy market reforms, COAG reiterated the commitment of all
jurisdictions who participate in the National Electricity Market to implement the National Energy Customer Framework (NECF), which will commence in jurisdictions that have not yet adopted it as soon as practicable and no later than 1 January 2014, subject to the resolution of issues specific to those jurisdictions yet to implement.

With regards to energy (retail price regulation) reform progress continues to be made, with COAG agreeing on 7 December 2012 that SCER will report back by the end of 2013 on proposals by jurisdictions to enhance competition in electricity markets, including advice on the development of best practice approaches to the determination of regulated retail prices, reflecting any guidance by the Australian Energy Market Commission. In addition, South Australia recently announced price deregulation in its electricity and gas markets from February 2013.
Performance reporting framework

Recommendation 3
The COAG Reform Council recommends that COAG approve updated implementation plans which address:

- the changes to the reforms that COAG has agreed, but which are not yet reflected in the current versions of the implementation plans (this is required urgently)

Deregulation priorities
- directors’ liability: to set a final milestone to complete the directors’ liability reform

Additional regulatory reforms
- legal profession: to amend the output and milestones for this reform to reflect its revised scope and timeframe
- not-for-profit sector (SCOA): to agree additional milestones for implementing Stage 2 once COAG agrees work on fundraising reform; and to affirm whether to exclude gaming provisions as part of Stage 2
- not-for-profit sector (fundraising): to agree additional milestones that outline a path to completing this reform

Competition reforms
- infrastructure (access regimes): to affirm whether states are required to submit their electricity and gas access regimes for certification.

COAG Response
COAG notes the Council’s recommendations with respect to the SNE NP Implementation Plan and requests that the BAF Taskforce provide advice to the next COAG meeting on whether any further Implementation Plan changes are required.

As noted earlier in this response, in relation to directors’ liability reform, COAG considers that this reform will be completed once jurisdictions introduce the relevant legislation, and that no further milestones are required.

In relation to the two not-for-profit sector (Standard Chart of Accounts (SCOA) and fundraising) reforms, COAG notes that all governments have adopted a national SCOA and since the Council’s report, the Australian Charities and Not-for-profits Commission (ACNC) commenced on 3 December 2012, following royal assent of the Australian Charities and Not-for-profits Commission Act 2012. COAG also agreed out of session on 26 July 2011 to commission a Not-for-Profit Reform Working Group to progress national not-for-profit reforms, reporting to COAG through the Standing Council for Federal Financial Relations.
COAG agreed Terms of Reference and the 2011-12 work plan for this working group in April 2012. This work plan supersedes the milestones previously agreed through BRCWG. As this work is being progressed independently of the SNE agenda, COAG requests that the Council remove its assessment of the not-for-profit reforms from its SNE work plan.

Regarding infrastructure (access regimes) reform, COAG notes the Council’s assessment that state and territory multijurisdictional energy access regimes have not been certified. The Australian Energy Market Agreement (AEMA) requires jurisdictions to submit their energy access regimes for certification as effective access regimes. The SCER (which has carriage of the AEMA) has provided advice to COAG on the certification of energy access regimes. This matter remains under consideration.