

**COUNCIL OF AUSTRALIAN GOVERNMENTS
REFORM COUNCIL**

**REPORT TO THE COUNCIL OF AUSTRALIAN
GOVERNMENTS
MARCH 2008**

INTRODUCTION

On 10 February 2006 the Council of Australian Governments (COAG) agreed in principle to establish a COAG Reform Council (CRC) to report to COAG annually on progress in implementing the National Reform Agenda.

On 13 April 2007 COAG agreed that the CRC's role is to monitor progress in implementing National Reform Agenda reforms and to assess the costs and benefits of reforms referred to it unanimously by COAG. It agreed as reforms are implemented and economic, fiscal and other benefits are being realised, the CRC would provide COAG with a broad ex-post assessment of the costs and benefits of individual reform packages, giving consideration to the differences between jurisdictions. It is required to provide an annual report on the implementation of these reform commitments.

At the 13 April 2007 meeting COAG also referred to the CRC seven specific areas of reform:

- transport pricing reform;
- national rail safety reforms;
- infrastructure regulation;
- electricity smart meters;
- the new National Energy Market Operator and new transmission planning function;
- the establishment of a national system of trade measurement administered by the Commonwealth; and
- improvements to the Building Code of Australia.

The CRC has prepared this report, at the request of COAG, to provide a snapshot of progress in these areas of reform and discuss the effectiveness so far of implementation.

The CRC has met with a number of State leaders and Senior Officials. It has also been briefed on each of the reform areas that have been referred to it and met with representatives of the Productivity Commission (PC) to see how both parties might work together to ensure the success of the reform process.

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OVERVIEW

This is the CRC's first report to COAG. Since the CRC's establishment in April last year it has spent time building relationships with governments around the country, finalising its charter, being briefed on the seven specific reform areas that were referred to the CRC by COAG for monitoring and assessment and meeting with stakeholders. The CRC has also met with the Productivity Commission (PC) to discuss the results of the PC's earlier modelling work on the potential benefits of the National Reform Agenda and to investigate how the PC might assist the CRC in its work.

The Council has assessed the progress over the last 11 months of the seven reform areas against the milestones agreed by COAG in 2007. At this stage, most reforms are generally on track but the Council has noted that there are some delays and difficulties that warrant addressing now. In many instances the implementation of COAG agreements has been delayed by the inability of some jurisdictions to marshal the necessary policy implementation resources, including drafting capacity, particularly in small jurisdictions and where there are competing legislative priorities. This challenge – to implement effectively reforms agreed by COAG - is likely to come more to the fore as new work streams and new agreements are reached by COAG. Indeed, the limited resources available to all jurisdictions is one of the most significant factors in the failure to meet a high proportion of timetables laid down by COAG, and all Governments will need to substantially increase both policy and legislative drafting capabilities if the new and more ambitious reform agenda being considered by COAG has any chance of timely and successful implementation.

Drafting limitations are, in particular, likely to constrain the capacity to implement the further national regulatory reforms now being developed by COAG's Working Group on Business Regulation and Competition. These reforms will be very important for business to reduce regulatory burden and to increase productivity but the reform proposals will need to comprehend the legislative implications to enable timely implementation of new national arrangements.

The CRC recommends that COAG commission the COAG Working Group on Business Regulation and Competition to:

- *assess the most efficient approach to the legislative drafting task for new national arrangements across jurisdictions, including through consultation with the Council of Parliamentary Counsel;*
- *develop options to assist those jurisdictions with limited drafting resources to meet their current commitments and obligations; and*
- *consider legislative implications as part of any proposals for new commitments.*

The CRC notes that COAG on 20 December 2007 directed the COAG Working Group on Business Regulation and Competition "...assist the CRC to prepare a report for COAG on progress with existing energy, transport and infrastructure regulation and best practice regulation reforms." and has consulted with the Working Group in the preparation of this report.

Transport: The agreement by Transport Ministers on 29 February 2008 on the new heavy vehicle pricing arrangements will meet COAG's direction to ensure full-cost

recovery from heavy vehicles in aggregate, remove cross subsidies across different heavy vehicle classes and ensure the maintenance of cost recovery over time, albeit with a six month delay in the increase in the Road User Charge. Most aspects of the road pricing research agenda are on track, although the incremental pricing review and trials have experienced delays of over six months. It is now expected the trials will take six months longer to complete than previously anticipated by COAG. These delays are not critical at this stage, but warrant close attention and assessment in six months time.

The CRC recommends that COAG agree that it is important that the existing work program, aimed at enhancing the efficiency, productivity and sustainability of road and rail freight infrastructure continue and where possible be hastened. This includes assessing alternative models of road pricing such as mass-distance location pricing.

Rail Safety: The COAG commitment to implement national rail safety legislation and a nationally-consistent rail safety regulatory framework by 1 July 2007 has not been met. Only Victoria managed to meet the deadline. Several other jurisdictions have since either passed the required legislation or are in the throes of doing so. Two jurisdictions, Tasmania and the Northern Territory, have yet to introduce legislation, due to competing legislative priorities. As a consequence, the implementation of the national rail operator accreditation arrangements has also been delayed. This highlights another concern of the CRC at the potential for the inability to implement one reform to have a cascading effect of delaying other reforms that are dependent on its implementation.

The CRC recommends that COAG set a revised timetable for completing the passage of the necessary legislation and the introduction of a nationally-consistent rail safety regulatory framework.

Infrastructure Regulation: Overall the implementation plan for the COAG Competition and Infrastructure Reform Agreement (CIRA) is on track with one or two exceptions. The Commonwealth legislative changes to the National Access Regime, required under the terms of the agreement, were not made by the end of 2007. However this delay is temporary and legislative processes have now recommenced. The Commonwealth is now working towards introducing the amendments to the *Trade Practices Act 1974* during the Winter Sittings this year. However, work on enhancing the existing national system of rail access has stalled. The implementation deadline of December 2007 has not been achieved and there is no sign of progress on the proposal.

The CRC recommends that COAG ask the Business Regulation and Competition Working Group to consider how best to progress the national system of rail access.

The review by all jurisdictions of the regulatory arrangements for port operations is a significant part of the CIRA. All affected jurisdictions have commenced, but not all have completed, the required review. This partial delay is not a concern at this stage but the CRC plans to focus upon this area in the period ahead to ensure that, as appropriate, the findings and recommendations of the reviews are implemented by December 2008.

The CRC recommends that COAG agree that all jurisdictions should complete and publish their port reviews as soon as possible, and act on the findings by the end of 2008.

Smart Meters: The commitment to a staged approach to a national roll-out of smart meters is on track. The Ministerial Council on Energy (MCE) has now agreed on the national minimum functionality for smart meters to be embodied in the National Electricity Rules. The cost-benefit analysis has been completed to the consultation phase and shows substantial benefits over costs nationwide but to varying levels across jurisdictions. The analysis was released on 5 March 2008 for public consultation. The analysis, Regulation Impact Statement and stakeholder comment will enable the MCE to consider the details of the national smart meter roll-out at its next meeting in mid 2008.

The CRC recommends that the COAG note that the progressive national roll-out of smart meters as previously agreed by COAG is important and should continue in accordance with the agreed timeframes.

The Australian Energy Market Operator (AEMO): The establishment of the AEMO is well progressed with the only outstanding matter being to settle the AEMO ownership matters. Energy Ministers in early March 2008 agreed on the composition of a selection panel to advise on appointments to the AEMO Board which is expected to be appointed in mid 2008. The development of the new transmission planning framework is on schedule with a final report scheduled to be submitted to MCE by the end of June 2008. Thus AEMO is on track to meet the COAG deadline of commencing operations in June 2009.

The CRC recommends that COAG note the good progress made in establishing the AEMO and new transmission planner and request that MCE resolve outstanding matters as soon as possible.

National System of Trade Measurement: The establishment of the national system of trade measurement, funded by the Commonwealth, is progressing very well. The ability to institute the new arrangements successfully on 1 July 2010 is, however, crucially dependent on the passage of legislation, the transfer of qualified staff and specialised equipment from the States and Territories.

The CRC recommends that the Commonwealth Government give high priority to the drafting and passage of the necessary legislation and associated regulations and particular attention is paid by all parties to the staffing and equipment requirements of the new national trade measurement entity.

Improvements to the Building Code of Australia: The Australian Building Codes Board (ABCB) has met the COAG directions to review the Code, report on variations and is continuing to monitor performance in relation to reducing local government intervention in building regulation. Nevertheless the CRC considers that there is a strong case for further efforts by government to reduce the significant costs of regulation on the building industry and the consequent impact on the cost of housing. In the course of its monitoring activities last year, the CRC was briefed on the results

of a pilot study commissioned by the ABCB which reveals that local government interventions have increased the cost of housing by as much as 14 per cent in some instances. This is a considerable amount.

The CRC recommends that COAG commission its Business Regulation and Competition and Housing Working Groups to consider further the impact of local government interventions, including in relation to building regulation and development assessments, on the cost of housing and advise COAG of further measures that might be taken to address this situation.

TRANSPORT REFORMS

Transport reforms have been a focus of COAG since its establishment. Efficient safe and sufficient transport and export infrastructure is critical to Australia's economic performance, particularly given the long distances between our major domestic markets and distance from major economic markets.

The most recent COAG commitments on transport were agreed in 2007 – transport pricing and rail safety.

TRANSPORT PRICING REFORM

With the rapid expansion in the freight task predicted over coming decades, it is important that Australia has efficient pricing arrangements for road and rail freight infrastructure. In 2005, the PC reviewed the progress of the 1995 National Competition Policy Reforms and identified, among other things, scope for further reforms in transport pricing to enhance the efficiency and productivity of the freight transport task and investment choices by governments and the private sector. It considered that more efficient pricing would help direct infrastructure investment to the most appropriate modes and projects. Ensuring more efficient sharing of the freight transport task within and across modes should also help to reduce road accidents, greenhouse emissions and noise pollution in urban areas.

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

Heavy vehicle road charges are presently set by governments under a national approach which seeks to recover the share of road construction and maintenance costs attributable to heavy vehicles. It is generally recognised that technologies are emerging that would enable more cost reflective charging that would be a more effective and equitable cost allocation tool and that consequently alternative methodologies should be examined. However, this requires detailed and careful examination of alternative approaches and a better understanding of the economic costs of road infrastructure and its use by the road freight industry.

At its 10 February 2006 meeting, COAG recognised that transport pricing reform had the potential to improve greatly the efficiency of both transport infrastructure use and provision by providing better pricing signals to road users and providers, and COAG asked the PC to develop proposals for efficient pricing of road and rail freight infrastructure through consistent and competitively neutral pricing regimes.

At its 13 April 2007 meeting, and in response to the subsequent PC findings, COAG agreed to a phased approach to the reform of road pricing and investment aimed at promoting the more efficient, productive and sustainable provision and use of freight infrastructure. This three-phased approach runs until 2014, with Phase I including a number of milestones leading up to a decision by COAG during 2009 on whether to progress to Phase II.

The agreed approach focuses on immediate efficiency enhancements from regulatory reforms and improved decision making frameworks and early charging adjustments to improve cost recovery for heavy vehicles. In the longer term, a forward research and policy reform agenda will lay the foundations for considering alternative and more direct models of road pricing and funding in later phases.

Key Milestones

The following table sets out the milestones for the COAG transport pricing reform commitments and the progress to date.

COAG Milestones agreed April 2007		Progress to March 2008
July 2007	<p>Implementation of National Guidelines for Transport System Management</p> <p>The National Guidelines for Transport System Management outline a national system for road and rail project development and appraisal.</p>	<p><i>Ongoing</i></p> <p>The guidelines were adopted in July 2007 by all jurisdictions for AusLink projects and Victoria, Queensland, South Australia and Tasmania are applying the Guidelines to all new road and rail projects.</p> <p>The CRC notes that there are differing views as to the scope of the application of this decision and that this issue is now being progressed through the COAG Working Group on Infrastructure.</p>
December 2007	<p>Revised Heavy Vehicle Pricing Determination</p> <p>COAG directed that a new heavy vehicle charges determination, to apply from 2008, be developed to ensure ongoing delivery of full-cost recovery from heavy vehicles in aggregate, the removal of cross-subsidies across different heavy vehicle classes and ensure the maintenance of cost recovery over time.</p>	<p><i>Delayed</i></p> <p>On 25 January 2008, following the development of a draft Regulation Impact Statement (RIS) and extensive industry and stakeholder consultation through 2007, the National Transport Commission (NTC) circulated a final RIS to Australian Transport Council (ATC) Ministers. The proposed charges will deliver on the directions set forward by COAG.</p> <p>The NTC recommendations included an increase from 1 July 2008 in the road user charge (collected by the Commonwealth) and reductions or small increases in registration charges (collected by the states) for the majority of heavy vehicles but larger increases, phased in over three years, for the heavy truck trailers and multi-combination vehicles.</p> <p>ATC Ministers agreed to the recommended charges on 29 February 2008 for implementation on 1 July 2008 as scheduled. However, the Commonwealth has decided to delay the road user charge increase until 1 January 2009.</p>
Ongoing	<p>Continued Implementation of Agreed Regulatory Reforms</p> <p>The agreed reforms include the harmonisation and reform of road and rail regulation for implementation on specific timeframes within five years,</p>	<p><i>Ongoing</i></p> <p>In line with COAG's reporting requirements, an updated semi-annual report on the progress of implementing a number of agreed regulatory reforms was considered by ATC Ministers at their 29 February 2008 meeting and it is anticipated that the final report will be forwarded to COAG shortly.</p>

	including productivity enhancing reforms such as higher mass limits, improved and nationally-consistent road and rail safety regulation and performance-based standards for licensing innovative vehicles that do less road damage.	
<p>Road Pricing Research Agenda</p> <p>The research agenda is intended to provide the information required to inform a COAG decision on options for more direct pricing of heavy vehicles, in particular, the merits of mass distance location based charging. A Taskforce with representation from across jurisdictions, and including the NTC, has been formed to manage the first three research streams below. COAG and central agency officials are also being consulted in these processes. COAG will make decisions on future pricing reforms following its consideration of the outcomes of the research and strategic pilots in the first reform phase.</p>		
July 2008	<p>Review of Policy – Relevant Externalities</p> <p>Independent consultancy work has commenced to identify best treatment options for all heavy vehicle externalities. Where pricing may be the best treatment option for an externality, additional work will be undertaken on the value and pricing of that externality to enable consideration of how this may be incorporated into a future more direct heavy vehicle pricing arrangement.</p>	<p><i>On track</i></p> <p>A report will be prepared by the COAG Road Reform Taskforce for the July milestone on the preliminary conclusions from this work.</p>
July 2008	<p>Review of Heavy Vehicle Road Use and Costs</p>	<p><i>On track</i></p> <p>Work has been contracted to look at the options for, and the merit of, moving away from the current PAYGO recovery arrangement towards other cost bases, such as whole of life cycle costing. Further work is being undertaken through Austroads to improve the technical knowledge required to refine techniques for allocation of the cost base to different vehicles and for developing pricing policy. An example is to define better the road impact costs of different mass and axle combinations by road type and condition.</p> <p>A progress report will be prepared by the COAG Road Reform Taskforce for the July milestone that reports on this initial work phase and outlines necessary next steps. These will include a range of deliverables beyond July 2008 to inform COAG's consideration of more direct pricing options.</p>
December 2008	<p>Research to identify Road Expenditure to meet CSOs</p>	<p><i>On track</i></p> <p>Independent contracted research has commenced to</p>

		<p>define and develop a methodology and undertake case studies to indicate the extent of CSO investment in roads. This work will inform consideration of how CSO spending should be addressed in the calculation of the cost base to be recovered from heavy vehicle operators. The December milestone for the CSO work is expected to be met.</p>
<p>December 2008</p>	<p>Incremental Pricing Review and Trials</p> <p>The coordination of the incremental pricing trials is being managed by the NTC. Working through a reference group of jurisdictional representatives, the NTC has developed an initial framework document including a template for the development of trials and a work program for the delivery of the trials. Other initial NTC products include:</p> <ul style="list-style-type: none"> • a pricing framework document to guide jurisdictions in the development of prices for their specific trials; • an Intelligent Access Program (IAP) case study document to identify the various technical options and issues arising out of the application of IAP in the trials; and • ad hoc legislative advice – responding to legislative barriers that were not anticipated by jurisdictions in the development of the COAG reform agenda. 	<p><i>Delayed</i></p> <p>Four jurisdictions (New South Wales, Victoria, Queensland and South Australia) have indicated their intention to run incremental pricing trials. Each trial will be different in nature in order to test the effectiveness of different approaches. However, jurisdictions have faced a number of barriers in progressing their respective trials. In addition to facing legislative barriers (which in some cases prevent the charging of incremental prices), other issues such as resource constraints, approvals and IAP delays are likely to result in jurisdictions not being able to meet COAG deadlines. In addition, some jurisdictions are yet to liaise with industry to establish interest in participation or to refine further the trials.</p> <p>While jurisdictions have clearly shown a commitment to the trials, they had not anticipated some of the technical and legal challenges associated with delivery of them. As a result, incremental pricing trials will not commence by April, the commencement date required to enable the phase 1 review of the trials by December 2008.</p> <p>The NTC is proposing changes to the timetable which would enable achievement of the delivery of a national incremental pricing scheme by the originally intended date of December 2010. It requires the evaluation study of incremental pricing schemes to be undertaken in parallel rather than consecutively (and therefore undertaken in Phase 1). The NTC will seek to have this new timetable endorsed at the next ATC meeting in May 2008.</p>

Comment

At this stage the progress of transport pricing reforms is proceeding well with the new heavy vehicle pricing determination agreed by the ATC on 29 February 2008 and reasonable progress on the road pricing research agenda. However, it is becoming clear that there are greater challenges in reviewing heavy vehicle road use and cost than were anticipated in the 2006 review. In particular, more time is involved in collecting detailed data to support decision making than expected and additional work is needed to consider technologies to support direct pricing as well as revenue collection and enforcement systems to support charging reform.

While the work involved in reviewing heavy vehicle road use and costs and on incremental pricing review and trials means more time will be needed than COAG identified, the CRC notes that these delays will not necessarily impact on the timing of later milestones.

The CRC recommends that COAG agree that it is important that the existing work program, aimed at enhancing the efficiency, productivity and sustainability of road and rail freight infrastructure continue and where possible be hastened. This includes assessing alternative models of road pricing such as mass-distance location pricing.

NATIONAL RAIL SAFETY REFORMS

In recent years, the ATC has made much progress in road and rail regulation harmonisation. However users still face a range of different regulatory regimes and regulators within and between different jurisdictions, raising operating and compliance costs and limiting potential productivity. For example, a submission to the Exports and Infrastructure Taskforce in 2005 noted that operators of inter-state trains must comply with seven rail safety regulators, three transport accident regulators, six rail access regimes, 15 pieces of occupational health and safety legislation and 75 pieces of environmental legislation. Such overlapping regulation significantly increases compliance costs for rail operators.

Rail safety regulation is one of COAG's priority regulatory 'hot spots' where the need to comply with different rail safety regimes across jurisdictions has increased regulatory and operating costs to the rail industry, and impacts on the competitive position and efficiency of interstate rail freight operations.

The objective of this reform is to improve national rail safety and efficiency, to enable Australia to meet the forecast growth in the national freight task, by providing for a nationally-consistent rail safety regulatory regime.

At its 3 June 2005 meeting, COAG endorsed reinvigorating the road and rail regulation reform agenda in light of the Exports and Infrastructure Taskforce recommendations. In this context, Senior Officials proposed that the ATC report to COAG in early 2006 on: progress against existing reform efforts; a timetable for the implementation of model safety legislation; and priorities for further productivity reforms.

To achieve consistent rail safety regulatory arrangements, COAG agreed in April 2007 to the implementation of national rail safety legislation and a nationally-consistent rail safety regulatory framework. Additional measures included establishing national rail operator accreditation, data collection and rail regulator training.

Key Milestones

COAG Milestones agreed April 2007		Progress to March 2008
July 2007	Full implementation of model national rail safety legislation and regulations in all mainland jurisdictions	<p><i>Not completed</i></p> <p>Victoria has met COAG's deadline of 1 July 2007 for establishing consistent rail safety legislation and regulation in each jurisdiction. South Australia passed legislation in the latter part of 2007, which should have effect in 2008.</p> <p>Of the other states, a Bill is expected to be passed by the Queensland Parliament by 30 June 2008. The New South Wales Government has also committed to implement a model of national rail safety legislation in 2008.</p> <p>Western Australia's <i>Rail Safety Bill 2007</i> is currently being drafted and scheduled for introduction into the Western Australian Parliament in the Autumn 2008 session. Western Australia's delay in finalising the Bill is due to drafting of a</p>

		State-specific Part of the Act, to govern rail accident investigation – on the basis that the Part of the national model governing such investigations could be improved. Tasmania and the Northern Territory have yet to implement the legislation due to competing legislative priorities.
July 2007	Establishing national rail operator accreditation	<i>Delayed</i> These measures are dependent on progress with the implementation of the model legislation and regulations so their implementation has been delayed until the legislation and regulations have been put in place.
December 2007	Rail safety data collection	<i>Delayed</i> This work was delayed because of the rescheduling of the ATC meeting late last year. The NTC has commenced work on the national rail safety data strategy which is expected to go to the ATC for consideration in May 2008.
July 2009	Development of rail regulator training	<i>On track</i> The NTC has commenced work on the national train driver licensing framework and will provide a progress report to the ATC in May 2008.

Comment

Overall, progress in implementing national rail safety arrangements has been slow due largely to delays in drafting and passing legislation. In the CRC's view the inability of some jurisdictions to secure passage of the necessary legislation by the agreed date highlights the challenge of the smaller jurisdictions in particular to marshal the required drafting resources. All jurisdictions have agreed through COAG to develop options for improved national regulatory arrangements to reduce the regulatory burden and increase productivity. Whether this is achieved by references of power from the States, model legislation or other harmonised means, the legislative drafting task is potentially considerable. While the smaller jurisdictions do not necessarily have the same resources to implement the arrangements, the CRC notes the importance of all jurisdictions meeting the agreed commitment so as not to delay the overarching reform program. Indeed, the CRC further notes that where reforms are integrated the failure to achieve one facet of the reform can have a cascading effect and put at risk, or even compromise, other reforms.

With this in mind, the CRC considers that in future, when the national regulatory arrangements are under consideration, the proponents might discuss with the Council of Parliamentary Counsel the most efficient approach to the legislative drafting task with the aim of achieving not only timely outcomes but also assisting those jurisdictions with limited drafting resources to meet their commitments.

The CRC recommends that COAG set a revised timetable for completing the passage of the necessary legislation and the introduction of a nationally-consistent rail safety regulatory framework.

COMPETITION AND INFRASTRUCTURE REFORM AGREEMENT

On 10 February 2006 COAG signed a Competition and Infrastructure Reform Agreement (CIRA) to provide for a simpler and consistent national system of economic regulation for nationally-significant infrastructure, including for ports, railways and other export-related infrastructure. The agreed reforms aim to reduce regulatory uncertainty and compliance costs for owners, users and investors in significant infrastructure and to support the efficient use of national infrastructure. An implementation plan for the CIRA was agreed by COAG on 13 April 2007.

Simpler and Consistent Access Regulation

Jurisdictions agreed to a number of measures to achieve a simpler, more timely and consistent national approach to the economic regulation of significant infrastructure, including:

- wherever possible, promoting commercial negotiations as the means by which terms and conditions of third-party access to services provided by means of significant infrastructure facilities are determined;
- within access regimes, adoption of common objects clauses, pricing principles and requirements for limitations on merits review proceedings, where merits review is provided (all principles are to be incorporated in the Competition Principles Agreement guidelines for effective access regimes) and six-month binding time limits on regulatory decisions; and
- all existing State and Territory access regimes are to be submitted for certification as effective access regimes under the National Access Regime (and new access regimes as soon as practicable) following agreement on a streamlined certification process.

Rail

To improve the economic regulation of rail, jurisdictions agreed to implement a national system of rail access regulation for agreed nationally-significant railways using the Australian Rail Track Corporation access undertaking as a model. State-based access regimes governing other significant export-related rail facilities were also to be submitted for certification under the National Access Regime.

Ports

Jurisdictions agreed to review the regulation of their ports and port authority, handling and storage facility operations at significant ports to ensure that where economic regulation is warranted it conforms with agreed access, planning and competition principles. Where port access regimes are required, these regimes are to be certified under the National Access Regime.

Competitive Tendering

Jurisdictions agreed 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.

Competitive Neutrality

Jurisdictions also committed to principles to enhance the application of competitive neutrality to government business enterprises engaged in significant business activities in competition with the private sector.

Key Milestones

COAG Milestones agreed April 2007		Progress to March 2008
December 2007	Implementation by the Commonwealth of Common Principles and Binding Time Limits within Access Regimes	<p><i>Delayed</i></p> <p>The Commonwealth undertook to effect relevant changes to the National Access Regime by the end of 2007 (introduction of binding time limits and limited merits review – Commonwealth legislation already incorporates the agreed pricing principles and objects clause). The processes for the introduction of legislation were well-advanced in 2007, but legislation was not introduced into Parliament prior to the calling of the election. Processes have now recommenced and the Commonwealth is working towards introduction of the legislation during the Winter Sittings.</p>
<p>As nominated by individual jurisdictions according to CIRA Implementation Plan.</p> <p>(Time-Frames of 2009 - 2010)</p>	Under the CIRA some States have committed to submit to the National Competition Council by 2010 certification applications under the National Access Regime in respect of their nominated own access regimes.	<p><i>Continue to monitor</i></p> <p>The Victorian Government is likely to be progressing this through amendments to the <i>Essential Services Act 2001</i>.</p> <p>The <i>Queensland Competition Authority Bill 2008</i> has been introduced in Parliament and is expected to be passed shortly.</p> <p>Western Australia's only existing access regime requiring submission for certification prior to 2010, is the State's Rail Access Regime – as contained in the Railways (Access) Act 1998 and Railways (Access) Code 2000. The timing and form of its certification application will depend on the outcome of the CIRA. If a national rail access regime is implemented on the State's interstate and major rail lines as proposed, amendments to the current State Rail Access Regime are likely to be required. These amendments would address issues arising from having two different regimes operating on the State rail network and being regulated by, potentially, two different regulators.</p> <p>The Australian Capital Territory has no infrastructure that falls under the <i>Trade Practices Act 1974</i>(TPA) that is not already covered by the relevant provisions.</p> <p>The Northern Territory has three access regimes in place – electricity, gas and rail. All are currently certified under the TPA. The gas-related regime is part of a separate process (the national electricity market reforms being progressed by the MCE), while the regime for electricity is currently under review, reform options are being developed by its Treasury. One of the reform options under consideration is moving to the national framework.</p>

December 2007	National System of Rail Access Regulation	<i>Stalled</i> Although there has been considerable detailed discussion between officials on this proposal, progress to date has been slow and initial timeframes have not been met by most jurisdictions.
December 2007	Review of Port Infrastructure and Implementation of Findings	<i>Delayed</i> The final report of the New South Wales Review of Ports Regulation was received by the New South Wales Government in late 2007, and is currently under consideration. The Victorian Essential Services Commission has completed its review of the impact of Victoria's port planning policies on competition and the final report was publicly released on 30 January 2008. The Queensland Government completed its review prior to the end of 2007 and is expected to be released shortly. The Western Australian Government's review of ports is underway with a draft discussion paper to be delivered by external consultants in early 2008. South Australia completed its review in January 2008 and a report is awaiting Ministerial agreement for release. The Northern Territory has largely completed an issues paper.
Ongoing	Competitive Tendering	<i>Ongoing</i> The Commonwealth has developed draft regulations to give effect to relevant provisions in the National Access Regime, incorporating comments received from the States and Territories, and intends to consult further on the latest draft in the next couple of months.
Ongoing with annual reporting to COAG	Competitive Neutrality	<i>Ongoing</i> Jurisdictions have agreed a framework for assessing compliance against the agreed enhanced competitive neutrality provisions set out in the CIRA, with reporting to COAG by Heads of Treasuries. The first Heads of Treasuries report was completed in January 2008 and is to be published on the COAG web site www.coag.gov.au

Comment

As with other reforms discussed in this report, the achievement of milestones is dependent on the passage of legislation. The Commonwealth's legislation to amend the National Access Regime was delayed by the recent Federal election but progress is now back on track. The CRC considers it would be helpful if the Commonwealth

could secure passage in the Spring Sittings in 2008 with a view to securing agreement on a national set of arrangements before the end of 2008. In contrast, the CRC notes that negotiations on the national system of rail access have stalled with no evident plan for reviving the progress. This is an important regulatory reform underpinning contestability in the rail sector and needs to be re-invigorated, ideally through COAG's Business Regulation and Competition Working Group.

The CRC recommends that COAG ask the Business Regulation and Competition Working Group to consider how best to progress the national system of rail access.

The review by all jurisdictions of the regulatory arrangements for port operations is a significant part of the CIRA arrangements. All affected jurisdictions have commenced, but not all have completed, the required review. This partial delay is not a concern at this stage but the CRC plans to focus upon this area in the period ahead to ensure that, as appropriate, the findings and recommendations of the reviews are implemented by December 2008.

The CRC recommends that COAG agree that all jurisdictions should complete and publish their port reviews as soon as possible, and act on the findings by the end of 2008.

ENERGY REFORM

Energy reform has been a strong focus of COAG over the past 15 years.

Reliable, affordable and sustainable energy services are critical to Australia's economic and social wellbeing. Energy market reforms over the past two decades, notably an agreement to establish a national energy market in 1995, have played a significant role in facilitating improvements in Australia's productivity with a movement from publicly-owned state regulated suppliers to the establishment of competitive national energy markets. Energy market reforms by the year 2000 were estimated by the Australian Bureau of Agriculture and Resource Economics to have resulted in an increase in national income of \$1.5 billion with Australia having some of the lowest electricity prices in the developed world.

In 2004, COAG endorsed a major energy market reform program proposed by the MCE and this was expanded in 2005. It drew on an independent review (Parer Review) which identified strategic issues for Australian energy markets and proposed policy directions. ACIL-Tasman has estimated that reforms to the electricity and gas sectors in line with the recommendations of the 2002 Parer Review would cumulatively increase Australia's real GDP by around \$8 billion between 2005 and 2010. Implementation of the MCE energy market reform program is expected to be finalised by 2009 with the reform agenda focusing on improving regulatory and governance arrangements, electricity transmission planning and regulation, gas market development and operation and end-user participation in the energy market.

The most recent energy reform efforts of COAG include the commitment to establish the Australian Energy Market Operator (AEMO) for electricity and gas, including a new transmission planning function and the roll out of smart meters to improve demand management for consumers and infrastructure providers.

ELECTRICITY SMART METERS

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 and energy suppliers to manage better their demand for peak power.

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. Smart meters can provide a wider range of energy price choices tailored to consumer usage patterns, and provide tools for consumers to understand more fully and manage their total energy needs to reduce their greenhouse impact.

On 13 April 2007 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 was to be completed by the end of 2007. A wide range of objectives have been identified for the project, by both COAG and the MCE, including:

- reducing demand for peak power, with consequential infrastructure savings;
- driving efficiency and innovation in electricity business operations, including improving price signals for efficient investment and contracting;
- promoting the long-term interests of electricity consumers with regard to the price, quality, security and reliability of electricity;
- promoting competition in electricity retail markets;
- enabling consumers (including residential, business, low- and high-volume users) to make informed choices and better manage their energy use and greenhouse gas emissions;
- managing distributional price impacts for vulnerable consumers;
- promoting energy efficiency and greenhouse benefits; and
- providing a potential platform for other demand-side response measures and avoiding discrimination against technologies, including alternative energy technologies.

The Smart Meter Cost-Benefit Analysis Consultation Report considered the upper and lower range of likely costs and benefits in a risk analysis approach. The key finding is that a national roll-out of smart meters is expected to have positive benefits of between \$179 million and \$3.9 billion. The impact varied, however, between jurisdictions, with some jurisdictions not positive in all scenarios. The results were:

New South Wales:	\$310 million to \$1.5 billion
Queensland:	\$155 million to \$1.05 billion
Victoria:	\$11 to \$841 million
Western Australia:	\$165 to \$673 million
South Australia:	-\$74 to \$200 million
Tasmania:	-\$33 to \$110 million
Australian Capital Territory:	-\$12 to \$25 million
Northern Territory:	-\$3 to \$23 million

The study also found that in most cases the costs of the meters were recovered from improved operational efficiencies in distribution and retail businesses, and were not dependent on the more variable (but potentially significant) benefits of consumer response. Greenhouse emissions reductions are variable between scenarios but potentially significant, with the upper end around 36 million tonnes aggregate to 2030. Additionally, benefits in on-grid regional/rural areas are likely to be greater than those in urban areas, given high existing operational costs which can be reduced.

Importantly the study also identified a range of measures which will be crucial to maximising benefits during implementation, which include: further trials and pilots to refine technical issues and develop the most effective consumer offers, a review of existing protections for vulnerable consumers to ensure they are not eroded under the new arrangements, and a significant and effective consumer education campaign.

Key Milestones

COAG Milestones agreed April 2007		Progress to March 2008
<p>September 2007</p> <p>MCE will agree to a national minimum functionality for smart meters, including open communication protocols to support competition.</p> <p>Replacement criteria for existing meters will also be agreed to minimise costs of unnecessary replacements.</p>	<p>Completed in December 2007</p> <p>In September 2007 MCE released a proposed National Minimum Functionality for public consultation.</p> <p>On 13 December 2007 MCE agreed to a National Minimum Functionality for smart meters to be set out in the National Electricity Rules.</p> <p>MCE also agreed to form a technical stakeholder group to finalise the related technical and legal documentation, including performance and service standards.</p> <p>In investigating the replacement criteria, MCE found that the National Electricity Market Management Company (NEMMCO) is already supporting this form of risk management planning in reviewing asset management plans of Victorian businesses. The MCE publicly confirmed support for this mechanism.</p>	
<p>By end 2007</p> <p>MCE will finalise the cost-benefit analysis.</p>	<p>Delayed</p> <p>On 5 March 2008 MCE SCO released the preliminary cost-benefit analysis for a six-week stakeholder consultation period. . This consultation is intended to validate the cost and benefit assumptions.</p> <p>Note - The cost-benefit analysis will not be completed until stakeholder comments have been received and processed.</p>	
<p>By March 2008</p> <p>MCE will 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.</p> <p>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.</p>	<p>Delayed</p> <p>In December 2007 MCE confirmed that at its next meeting in May 2008 it will agree on the scope, time frame and implementation framework for the national roll-out, considering the different market circumstances and costs and benefits identified in each State and Territory. This decision will be based on the final cost-benefit analysis, that will incorporate stakeholder comments.</p>	
<p>During 2008</p> <p>MCE will implement the necessary rule changes to mandate the roll out of smart meters, consistent with the</p>	<p>On track</p> <p>This is expected to be undertaken as a result of the May 2008 decision.</p>	

	outcomes of the cost-benefit analysis.	
By end 2008	Replacement of existing meters with smart meters to have commenced.	<i>On track</i> The timelines for meter replacement to commence will be confirmed with consideration of the results of the cost-benefit analysis in May 2008.

Comment

These results are likely to support a staged approach to roll-out with those jurisdictions accruing the greatest benefits leading the way. Benefits in the more uncertain jurisdictions are expected to improve as smart meter technologies mature in the Australian market. MCE will consider these issues in May, following finalisation of the cost-benefit analysis with stakeholder comments.

The project remains sensitive to variations in jurisdictional approaches to managing vulnerable consumers and related retail tariffs. The MCE has committed to a specific review of these arrangements, but it is expected that these arrangements will remain jurisdictionally specific. The MCE has a separate agreed forward work plan developing national retail arrangements.

The CRC recommends that the COAG note that the progressive national roll-out of smart meters as previously agreed by COAG is important and should continue in accordance with the agreed timeframes.

NEW NATIONAL ENERGY MARKET OPERATOR AND NEW TRANSMISSION PLANNING FUNCTIONS

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 was needed to ensure Australia retains secure energy markets and relatively low electricity and gas prices.

To this end, COAG agreed in February 2006 to establish the Energy Reform Implementation Group (ERIG) to recommend proposals for:

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

On 13 April 2007 COAG considered the ERIG report and agreed to the recommended reforms to improve competition, governance, infrastructure planning and the financial markets within the energy sector to provide a stronger industrial base for Australia's future prosperity. ERIG estimated that these reforms, taken as a whole, could increase real Gross Domestic Product by about \$400 million per year, with retail energy price reductions of about two per cent. As part of these reforms, COAG agreed to establish a National Energy Market Operator for both electricity and gas, encompassing a new national transmission planning function.

COAG confirmed that the new arrangements would not bind transmission companies to specific investment decisions; that accountability for jurisdictional transmission investment, operation and performance will remain with transmission network service providers; and, where possible, the new regime must at a minimum be no slower than the present time taken to gain regulatory approval for transmission investment.

Key Milestones

COAG Milestones agreed April 2007		Progress to March 2008
Ongoing	MCE to provide annual progress reports to COAG.	Ongoing MCE provided its first annual progress report to COAG on 18 December 2007.
December 2007	MCE to develop a detailed National Energy Market Operator implementation plan	Completed On 18 December 2007, the MCE provided the Prime Minister, as the Chair of COAG, with a detailed implementation plan for the establishment of this body, to be called the Australian Energy Market Operator (AEMO). The implementation plan proposes a five member independent selection panel for appointing members of the AEMO Board as the primary governance mechanism for AEMO. The independent chair of the selection panel will be appointed on an 'ex-officio' basis (by virtue of holding a position that

		<p>requires a strong understanding of corporate governance). Energy industry associations (including end user associations), and MCE will each be responsible for selecting two panel members.</p> <p>The MCE has agreed on the process for making final Board appointments. Ministers have agreed to the appointment of the ex-officio Chair and two industry representatives and are now in the process of shortlisting candidates for the two MCE appointed positions.</p> <p>Ministers continue to discuss the question of ownership of the AEMO and the important question of industry involvement in that ownership.</p>
June 2009	MCE to establish a National Energy Market Operator	<p><i>On track</i></p> <p>To ensure AEMO is operational by June 2009 an Implementation Steering Committee (ISC) has been formed to oversee the implementation process. The ISC comprises senior officials from the various jurisdictions and the Chief Executive Officers of the existing market operators. The latter also form the Transitional Management Committee which is charged with managing the practical aspects of the transition to the AEMO.</p> <p>The ISC has begun the process for appointing the independent selection panel so that it is in place by April 2008. This timing will allow the AEMO Board to be in place by around the middle of 2008. This will allow the Board sufficient time to undertake the necessary preparations for AEMO commencement.</p> <p>The ISC has also established a legal working group to develop the legislative regime required for AEMO to assume gas and electricity market operation functions and developed a strategy for stakeholder communication.</p>
June 2007	MCE to task the AEMC with development of a new transmission planning regime	<p><i>Completed</i></p> <p>On 3 July 2007 MCE tasked the Australian Energy Market Commission (AEMC) to develop the new transmission planning framework and national reliability standards to enable the establishment of a National Transmission Planning (NTP) Function for the National Electricity Market. The planning regime is intended to ensure a more efficient and coordinated approach to the development of the national transmission grid.</p>
June 2008	AEMC to advise MCE on new national transmission planning regime, including proposed Laws and Rules	<p><i>On track</i></p> <p>The MCE has directed the AEMC to provide a final report on the NTP Function, including Law and Rules, to the MCE no later than 30 June 2008.</p> <p>The AEMC released a Scoping Paper in August 2007 and an Issues Paper in November 2007 for stakeholder consultation on the development of the NTP Function. In August 2007, the AEMC published the Terms of Reference for the Reliability</p>

		Panel review into electricity transmission network reliability standards. In December 2007, the Reliability Panel released an Issues Paper seeking stakeholder comments on the review.
September 2008	AEMC to report on national framework for network reliability standards	<i>On track</i> The MCE has directed the AEMC to provide a final report on the national framework for network reliability standards by no later than 30 September 2008. The AEMC released an issues paper on 21 December 2007. Submissions closed on 8 February 2008. This input will be used in producing a draft report by 16 April 2008.
June 2008	MCE to review all remaining derogations in the national energy market framework COAG committed 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".	<i>Delayed</i> This initiative has been delayed as such a review is dependent upon the transfer of all national energy functions to the national legislation as agreement on a national framework (particularly in retail) may create new areas of difference. This work can commence within the specified timeframes, but its completion is dependent on the transfer of functions to the national framework. A review of both access and non-access issues will accordingly be completed after the retail functions have transferred. Legislation for the national framework is expected to be introduced by the end of September 2009. The review will accordingly progress after September 2009.
December 2008	MCE to report to COAG on remaining derogations	Reporting to COAG will also be delayed accordingly.
OTHER REFORMS		
June 2008	MCE to review energy CSO mechanisms	<i>On track</i> The Standing Committee of Officials (SCO) is preparing a response for COAG on a national review of energy Community Service Obligation mechanisms with a view to developing a consistent national framework which efficiently targets those in need. A draft report has been completed and will be provided to MCE at its May meeting, for reporting to COAG prior to June 2008.
December 2007	AEMC, NEMMCO, ASX to develop options to integrate spot and forward contract markets	<i>Delayed</i> The National Electricity Market Management Company (NEMMCO) and the Australian Securities Exchange (ASX) began work to develop a proposal to improve the settlement reallocation process. This work highlighted the need for a broader program of work to look at issues associated with the operation of energy financial markets more generally.

		SCO has since convened a working group of financial markets experts to consider the range of options for improving the operation of energy financial markets. This group will consult widely in developing advice to MCE by mid 2008 and will include a detailed draft AEMC rule change proposal.
June 2008	AEMC, AER and NEMMCO to address network support contracts, wholesale trading and settlement residue auctions.	<i>On track</i> This work stream is being addressed by the financial markets experts working group which will report by June 2008. AEMC, AER and NEMMCO will be involved in this process.
Ongoing	Western Australia and the Northern Territory to monitor the outcome of local and national energy market developments on an ongoing basis and consider the adoption of national institutions.	<i>Ongoing</i> Western Australia continues to monitor national energy market developments. Northern Territory is developing a draft policy position paper on the integration of Northern Territory into the national energy market.

Comment

The necessary work to establish the AEMO is well on track, with the only remaining issue to settle being the ownership matters. Ministers agreed in early March on the composition of a selection panel to advise on appointments to the AEMO Board, which is expected to be appointed in mid 2008. The Board will have, *inter alia*, responsibility for ensuring that AEMO commences operations in June 2009. In July 2007 the MCE delegated the AEMO the task of developing the new transmission planning framework to enable the establishment of the national transmission planning function. This work is on schedule with a final report scheduled to be submitted to MCE by the end of June 2008.

The CRC recommends that COAG note the good progress made in establishing the AEMO and new transmission planner and request that MCE resolve outstanding matters as soon as possible.

NATIONAL TRADE MEASUREMENT

The broad objective of a trade measurement system is to maintain fair market place practices in relation to the sale of goods by reference to measurement. The economic value of trade measurement in Australia is estimated at \$400 billion per year with 75 per cent of trade measurement transactions being between businesses, and 25 per cent are between business and consumers.

Responsibility for the trade measurement system is currently shared with the States and Territories which have traditionally administered their respective Trade Measurement legislation and delivered their own compliance programs. However, this arrangement has resulted in inconsistency and imposes avoidable additional regulatory cost on business, consumers and government.

In 2004, the Ministerial Council on Consumer Affairs agreed to commission a review of trade measurement, led by Victoria. This review identified the current trade measurement system as creating:

- additional costs for national industries imposed by having to comply with different requirements in each jurisdiction;
- inefficiencies when operating across State borders;
- lack of equity in cost recovery; and
- an inability to adopt new technologies and processes within timeframes required by industry.

At its meeting on 13 April 2007, COAG agreed to establish a national system of trade measurement funded and administered by the Commonwealth at an estimated cost of approximately \$29 million over four years.

The introduction of a national system of trade measurement will produce benefits sought by businesses, consumers and government. Traders will be able to institute one set of practices to comply with requirements across Australia, leading to cost reductions and efficiency gains. Firms that are licensed to verify the performance of trade measuring instruments will also comply with one set of requirements across Australia, and their workforces will be trained to one national competency standard thereby allowing national deployment of staff. Cost-recovery for services provided by government will be uniform, removing current inequities for businesses and consumers in different States. Government will be able to provide a framework for consistent and timely adoption of new technologies and processes by industry, and will have a single, technically sound policy platform on which to enter into international agreements.

As part of the COAG decision, the Commonwealth, States and Territories agreed to work together on transitional arrangements. The Commonwealth committed to maintain existing service standards in the administration of the new trade measurement system and to consult with New Zealand to explore opportunities for greater harmonisation. The States and Territories agreed to maintain necessary resources for administration of trade measurement, including staffing and funding, to ensure continuity of service and maintenance of existing service standards during the transition.

The National Measurement Institute, in the Commonwealth Department of Innovation, Industry, Science and Research, has responsibility for coordinating transition arrangements in collaboration with States and Territories and for on-going operation of the new system.

Key Milestone

COAG Milestone agreed April 2007		Progress to March 2008
2010	Establish a national system of trade measurement funded and administered by the Commonwealth.	<i>On track</i> More detail is included in the work plan below.

Work Plan

Set out below is the detailed work plan developed cooperatively between the Commonwealth and the States and Territories to give effect to COAG's decision.

Year	Output targets and status
2007-2008	<p><i>On track</i></p> <ul style="list-style-type: none"> • Establish reporting arrangements with the COAG Reform Council and States and Territories (completed). • Form Commonwealth transition team and nine Working Groups involving States and Territories (completed). • Produce transition plan (1st draft ratified with jurisdictions). • Review Regulation Impact Statement (RIS) requirements, and develop legislative drafting instructions and initial draft of legislation. (The Office of Best Practice and Regulation completed review of RIS requirements, public consultations completed, drafting instructions due March 2008.) • The Commonwealth model for trade measurement will be announced at COAG in March 2008. • Develop framework for appointments and licensing (model agreed with jurisdictions). • Audit State and Territory resources potentially involved in transfer to the Commonwealth (commenced). • Scope property, IT and communications arrangements (commenced).
2008-2009	<ul style="list-style-type: none"> • Update the transition plan. • Table legislation and draft regulations. • Establish a competency assessment system (including training processes) for inspectors and licensees. • Produce and implement capital and asset management plans. • Produce and implement IT and communications management plan.
2009-2010	<ul style="list-style-type: none"> • Update the transition plan.

		<ul style="list-style-type: none"> • Complete the regulatory framework, and implement a training program for its use. • Complete human resources transfer processes (for 1 July 2010 transfer). • Ensure “transition-ready” infrastructure – property, equipment, IT and communications.
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Comment

The establishment of a national system of trade measurement is progressing well. In the CRC’s view, priority for legislative drafting of the Act and associated regulations must remain high. The CRC notes that if the legislative framework is not available by January 2010 at the latest, there will be insufficient time to train staff in the operation of the new system before the planned implementation date of 1 July 2010.

The Commonwealth’s funding offer of \$29 million covers three years of transition and the first year of operation of the new system and was based on data supplied by States and Territories. It included expectations that States and Territories would fund the accumulated leave provisions of staff up to the point of transition to the Commonwealth, and that States and Territories would make available to the Commonwealth those specialised items of scientific equipment that were of no further use once the trade measurement function was transferred. Any change in agreement with these principles would affect the costs of delivery.

Following a briefing from the implementation team, the CRC further notes that it is of paramount importance to the effective operation of the new system that the majority of current skilled trade measurement personnel transfer to the Commonwealth. If this does not occur, the successful implementation of the arrangements could be compromised. Consequently, in the CRC’s view, every effort should be made to retain these staff during the transition period and to ensure that their transfer occurs without detriment to remuneration or conditions.

The CRC recommends that the Commonwealth Government give high priority to the drafting and passage of the necessary legislation and associated regulations and particular attention is paid by all parties to the staffing and equipment requirements of the new national trade measurement entity.

BUILDING REGULATION REFORM

In order to ensure a minimum necessary standard of building, governments have regulated the activities of the building and construction industry. The building sector is subject to a diverse range of regulations by all levels of government. Such regulation has traditionally been the domain of the State and Territory Governments, although cooperation and consistency at a national level has been increasing since the mid 1960s.

The Australian Building Codes Board (ABCB) was formed via an Intergovernmental Agreement (the IGA) in 1994 and was charged with progressing national reform initiatives. It has representation from all levels of government, as well as industry. Under the IGA, the Board is responsible for producing, maintaining and amending the Building Code of Australia (BCA) and is the lead player in the pursuit of nationally-consistent building codes, requirements and regulatory systems.

The BCA in particular, contains building standards aimed at achieving health, safety, amenity and sustainability objectives. There has been work over many years to secure a national approach to building regulation. Progress has been made, particularly in reducing differences in mandatory technical requirements across jurisdictions and changing the BCA to performance-based requirements, rather than prescriptive requirements.

In 2004 the PC produced a research report on Reform of Building Regulation. It found that, while progress has been made to bring a national approach to building regulation, this reform work is far from complete. The PC report recommended that the Commonwealth as well as the State and Territory Governments, should continue to be actively involved in building regulation reform (including funding). This resulted in a new and strengthened IGA for the ABCB, which was finalised on 26 April 2006. As a result of the PC report, sustainability was added as an objective of the new IGA.

COAG endorsed on 13 April 2007 a report on further building regulation reform identifying six commitments: removal of state-based variations to the BCA; reduced reliance on regulation; improved impact assessment processes; review of the BCA against COAG principles; reduced local government intervention in building regulation; and annual reporting to Building Ministers. The Building Ministers' Forum has submitted a progress report against these six commitments for consideration by COAG at the March 2008 meeting.

Key Milestones

COAG Milestones agreed April 2007		Progress to March 2008
May 2007	Validate or remove state-based variations to the BCA.	<i>Ongoing</i> Under the new IGA, State and Territory Ministers have committed to limiting variations, as far as practicable, to those arising from particular geographical, geological or climatic factors; requiring variations to be subject to regulatory impact

		assessment; and requiring variations to be approved by Ministers. The ABCB has implemented the strategy, removing a significant number of State and Territory variations and has committed to all variations in the BCA being eliminated by 2011.
June 2007	Review the BCA against COAG Principles	Completed The ABCB completed a review of the BCA against COAG principles in June 2007 and the final report was released in December 2007. While stakeholders were generally supportive of the current BCA, matters raised in the review can be considered in the context of the BCA amendment process.
Ongoing	Implement Annual Reporting – ABCB annual report to Building Ministers on variations to the BCA; duplication or inconsistency by States and Territories; and opportunities to improve national consistency.	Ongoing A first annual report was completed and provided to Building Ministers in September 2007.
Ongoing	Monitor State and Territory performance in relation to the Intergovernmental Agreement Recital C(ix) in order to facilitate reduced local government intervention in building regulation.	Ongoing A joint working group has been established to consider these issues and a framework has been developed to delineate planning and building regulations.
Ongoing	Encourage reduced reliance on regulation.	Ongoing The ABCB considers all non-regulatory approaches as part of its gatekeeper role, consistent with COAG good regulatory principles.

Comment

The PC report of 2004 found that increasingly, local governments have been imposing building requirements, via their planning approval processes, beyond the scope of the BCA. These relate to such matters as access for people with disabilities and bushfire, water, waste management, energy efficiency and salinity issues. This has created inconsistencies for building regulation across jurisdictions and undermines gains from national consistency.

The CRC has been advised that a pilot study commissioned by the ABCB of local government interventions has revealed increases to the cost of housing of up to 14 per cent in some instances. The CRC understands that the ABCB does not have the funding to support further work on this initiative and may seek funding from COAG once other avenues have been explored.

The Building Ministers' Forum is meeting on 6 May 2008 to discuss, among other matters, funding and governance issues. A review of the IGA for the ABCB may be brought forward from 2010 to help inform this process.

Notwithstanding the outcome of this process, and given concerns about housing affordability, the CRC considers that COAG should request its Business Regulation and Competition and Housing Working Groups to consider further the impact of local government interventions on the cost of housing and advise COAG of measures that might be taken to address the situation.

The CRC recommends that COAG commission its Business Regulation and Competition and Housing Working Groups to consider further the impact of local government interventions, including in relation to building regulation and development assessments, on the cost of housing and advise COAG of further measures that might be taken to address this situation.

RECOMMENDATIONS

The CRC recommends that:

1. *COAG commission the COAG Working Group on Business Regulation and Competition to:*
 - *assess the most efficient approach to the legislative drafting task for new national arrangements across jurisdictions, including through consultation with the Council of Parliamentary Counsel;*
 - *develop options to assist those jurisdictions with limited drafting resources to meet their current commitments and obligations; and*
 - *consider legislative implications as part of any proposals for new commitments.*
2. *COAG agree that it is important that the existing work program, aimed at enhancing the efficiency, productivity and sustainability of road and rail freight infrastructure continue and where possible be hastened. This includes assessing alternative models of road pricing such as mass-distance location pricing.*
3. *COAG set a revised timetable for completing the passage of the necessary legislation and the introduction of a nationally-consistent rail safety regulatory framework.*
4. *COAG ask the Business Regulation and Competition Working Group to consider how best to progress the national system of rail access.*
5. *COAG agree that all jurisdictions should complete and publish their port reviews as soon as possible, and act on the findings by the end of 2008.*
6. *COAG note that the progressive national roll-out of smart meters as previously agreed by COAG is important and should continue in accordance with the agreed timeframes.*
7. *COAG note the good progress made in establishing the AEMO and new transmission planner and request that MCE resolve outstanding matters as soon as possible.*
8. *The Commonwealth Government give high priority to the drafting and passage of the necessary legislation and associated regulations and particular attention is paid by all parties to the staffing and equipment requirements of the new national trade measurement entity.*
9. *COAG commission its Business Regulation and Competition and Housing Working Groups to consider further the impact of local government interventions, including in relation to building regulation and development assessments, on the cost of housing and advise COAG of further measures that might be taken to address this situation.*