

# NATIONAL COMPETITION POLICY – RESPONSE TO DRAFT REPORT

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*ACCI SUBMISSION*  
*TO THE*  
*PRODUCTIVITY COMMISSION*

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## NATIONAL COMPETITION POLICY – RESPONSE TO DRAFT REPORT

### 1. Summary

The Productivity Commission's draft report into National Competition Policy (NCP) is a valuable contribution to public debate on the need for continuing economic reform in Australia.

The Report found that NCP has brought substantial benefits to the Australian community, particularly by increasing productivity, reducing prices to business, and helping meet environmental and social goals. It argues that reforms need to continue, to ensure that these benefits are maintained and increased in the future.

These conclusions are in line with ACCI's submission to the Productivity Commission's Inquiry.

ACCI supports the arguments in the draft report that:

- There should be continued reform for energy, water, freight transport and communications.
- Legislation reviews should continue, with strengthened gatekeeping arrangements to prevent unwarranted restrictions on competition emerging in new or amended legislation.
- NCP should be expanded to promote nationally coordinated reform in health care and natural resource management.
- Jurisdictions should agree on NCP principles that: clearly explain NCP objectives and principles; encourage sound analysis; provide for independent monitoring of progress; prevent backsliding; consider distributional and adjustment issues; and require communication with the community.

However, ACCI disagrees with the nomination of health as the most important issue. For business, workplace relations reform and training reform are more important.

ACCI considers that the Commission did not place enough emphasis on the need for NCP involvement in reforms to industrial relations and vocational education and training (VET). The Commission argues that these reforms are not suited to involvement by the Council of Australian Governments (CoAG). While this may be true, ACCI believes that this does not preclude the reforms from being included in NCP. There are many NCP reforms that have not *formally* involved CoAG (for example, much of the legislative program).

The Commission examined the Vocational Education and Training (VET) sector, but not in sufficient detail, concluding that skill shortages do not necessarily require specific remedial action by governments. ACCI is very concerned that this finding may mean that governments do not focus on addressing this problem. In addition, the PC report does not take account of the full range of barriers to competition in the National Training System (NTS).

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ACCI does, however, support the Commission's conclusion that the process of VET reform needs reinvigoration and greater policy attention is needed to improve the quality and responsiveness of education and training systems at primary, secondary and tertiary levels. These matters need to be urgently addressed to ensure that education and training in Australia meets the needs of employers.

The Commission argues that workplace relations reform is important: "taking advantage of opportunities to make Australian labour markets more responsive and flexible is likely to be very important in enhancing future standards of living". It reaches a similar conclusion in relation to the challenge of increasing workplace participation, given our ageing population. These findings strongly support the submissions made by ACCI. Flexible labour markets are not an optional extra in today's global economy, slowing or winding back reforms would cut living standards and, as the Commission concludes, these challenges "assume greater significance than in the past".

ACCI is, however, disappointed that the Commission has argued that these reforms should not be included as part of NCP. ACCI considers that NCP would be a useful vehicle for encouraging harmonisation and further reform.

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## **2. Background**

The Australian Chamber of Commerce and Industry (ACCI) is Australia's peak council of business associations.

ACCI is Australia's largest and most representative business organisation. Through our membership, ACCI represents over 350,000 businesses nationwide, including: Australia's top 100 companies; over 55,000 medium sized enterprises employing 20 to 100 people; and over 280,000 smaller enterprises employing less than 20 people.

Businesses within the ACCI member network employ over 4 million working Australians.

ACCI members are 36 employer organisations in all states and territories and all major sectors of Australian Industry.

Membership of ACCI comprises State and Territory Chambers of Commerce and national employer and industry associations.

ACCI members actively participate in developing national policy on a collective and individual basis.

As individual business organisations in their own right, ACCI members also independently develop business policy within their own sector or jurisdiction.

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### 3. Framework issues

#### 3.1 COAG and NCP

Many times in the draft report, the Commission uses NCP interchangeably with COAG oversight<sup>1</sup>. The Australian Government, States and Territories agreed to set up NCP, so the *framework* for NCP has been agreed by COAG. However, COAG does not oversee all individual reforms. In particular, the legislative reform program is largely determined outside COAG. So COAG does not have *direct* oversight over a substantial part of NCP.

Therefore, ACCI argues that the Commission is misdirected in assuming that COAG must have oversight over all NCP reforms. ACCI submits that COAG can continue to delegate the reform program to the National Competition Council (NCC) or other relevant bodies (such as the Australian Energy Regulator).

#### 3.2 Criteria for NCP reforms

As the Commission points out in its draft report, competition-related measures could play a part in a large number of economic reforms. It is therefore necessary to ensure that NCP (and other reform programs) are not swamped by the size of the reform program.

The Commission has argued that a reform should be a priority for NCP where:

- *reform is likely to bring substantial benefits for the Australian community;*
- *competition-related measures could usefully form part of the reform package required to deliver those benefits; and*
- *there is likely to be a high return from using a nationally coordinated reform framework overseen by CoAG or another national leadership body.*<sup>2</sup>

ACCI broadly supports these criteria. However we reiterate our concern outlined above that the Commission is confusing NCP with CoAG oversight.

#### 3.3 Evaluation of reforms against criteria

As outlined in more detail in the rest of this submission, ACCI disagrees with the Commission's assessment that workplace relations and education and training should not be included in the NCP agenda in the near future.

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1. For example, Overview p xxxiii – health care is a “prime candidate for a nationally coordinated reform approach under the auspices of CoAG” and p xxxiv for education and training “compared to health, the need for nationally coordinated reform framework and program, and hence for CoAG involvement, appears less urgent”

2. Productivity Commission, (2004) Overview, p xxvii f

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ACCI considers that these areas do fit in well with the criteria the Commission uses (see Section 3.2 above).

It appears that the Commission believes that workplace relations and education and training particularly fail the test that these areas will benefit from a “nationally coordinated reform framework overseen by CoAG or another national leadership body”. While ACCI agrees coordination is fundamental and COAG cannot oversee everything, we reiterate that other bodies can oversee NCP reforms.

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## **4. Workplace relations**

### **4.1 Introduction**

ACCI welcomes the Commission's observations on the importance of further reform to Australia's labour market and workplace regulations<sup>3</sup>.

In particular, we welcome:

- the recognition that regulation of work is central to other areas of reform;
- the argument that our workplace relations system can determine the success in reforming other areas<sup>4</sup>; and
- the Commission's recognition of the growing importance of labour market and workplace relations reform into the future (particularly with the ageing of the Australian population).

ACCI put these arguments in our original submission to the NCP inquiry.

### **4.2 Importance of workplace relations reform**

ACCI welcomes the Commission's findings on the importance of workplace relations reform and its links to enhancing competition:

*Indeed, it is apparent that the flexibility of Australia's labour markets continues to be reduced by various restrictions on competition. These include constraints on reform associated with union coverage arrangements, limits on competition associated with the award system and exemptions for some key labour market arrangements from coverage under the TPA. Specifically, under section 51(2), matters relating to certain employment agreements and arrangements and restrictive provisions in employment contracts are exempt from the anti-competitive conduct provisions of that Act.*

*More broadly, issues such as union and workplace rigidities affecting the scope to improve training regimes, the impact of unfair dismissal laws on employment incentives within the small business sector in particular, and the multiplicity and sometimes overlapping rules and regulations in regard to awards and industrial conditions, are all relevant in looking for opportunities for performance improvement.<sup>5</sup>*

### **4.3 Harmonisation of workplace relations regulation**

ACCI suggests that the Commission should consider the costs and wastage inherent in Australia maintaining overlapping state and federal systems of workplace regulation.

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3. Productivity Commission, (2004) Section 10.5, p.279

4. Op cit.

5. Productivity Commission, (2004) Section 10.5, p.282

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ACCI has identified scope for greater harmonisation in workplace regulations as an immediate key priority for reform. Such a key challenge may appropriately be recognised as a priority affecting NCP reform.

### 4.4 Workplace relations – a priority for CoAG?

The Commission considers that competition-related reform has a role to play in improving the efficiency and effectiveness of the labour market.<sup>6</sup> This is welcomed by ACCI. The perspectives of competition policy provide an additional foundation for ongoing workplace relations reform.

ACCI however requests the Commission reconsider the following conclusion from its report:

*... the Commission questions whether CoAG involvement in labour market reform would be helpful at this time. Views on the extent and significance of impediments to the effective operation of the labour market differ, as do ideas about potential solutions. These differences are particularly apparent at the political level and lessen opportunities for pursuing a cross-jurisdictional reform agenda.<sup>7</sup>*

We accept that views will differ, and that there are political differences between governments that affect this area.

However, this reinforces rather than diminishes the importance of including consideration of workplace relations reform within future NCP deliberations. One of the main outcomes of NCP has been to encourage reforms in jurisdictions that may not have otherwise occurred, because of political and other differences. It has also encouraged, to some extent, similar policy outcomes between different jurisdictions<sup>8</sup>. These observations support ACCI's position that workplace relations should be considered within NCP.

The Commission is inconsistent in arguing that differences between jurisdictions argue against including workplace relations reform in the NCP agenda. When discussing health, the Commission argues "there is little agreement evident across jurisdictions about the way forward" (pxxxiii). Yet the Commission argues that health is the most important area for inclusion in the NCP forward agenda.

The Commission also observed that:

*...in the area of wages and conditions setting, there may be advantages in diversity that facilitates jurisdictional competition and policy learning — though again the transactions costs of retaining divergent and potentially overlapping regulatory regimes are a relevant consideration.<sup>9</sup>*

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6. Op cit.

7. Productivity Commission, (2004) Section 10.5, p.283

8. In addition, ACCI supports improvements to NCP to ensure reforms are more consistent between jurisdictions.

9. Productivity Commission, (2004) Section 10.5, p.283

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ACCI does not agree that jurisdictional competition and policy learning succeed in workplace relations. Rather than jurisdictions transferring ideas for greater flexibility, productivity, efficiency or deregulation, in Australia most regulatory transfer involves additional regulation and prescription. As is the case in so many facets of workplace regulation, politics has been much more important than policy rigor.

In addition, the jurisdictional competition argument is inconsistent with the position taken in other sections of the report, which implicitly dismiss jurisdictional competition. One of the main reasons why NCP is needed in many policy areas is because jurisdictional competition does not work in these areas (otherwise, jurisdictional competition would drive jurisdictions to implement reforms without NCP). Why should jurisdictional competition succeed in workplace relations, but not in other areas?

ACCI repeats our call for there to be an express recognition in the final report of the Commission, of the importance of workplace relations reform in any ongoing NCP reform process.

We maintain that workplace relations reform can validly form part of NCP considerations and that it should be identified as a priority for reform.

### **4.5 Casual Employment**

The Commission makes a brief and largely negative comment on casual employment in its NCP report<sup>10</sup>. We agree with the Commission that there can be multiple impacts of particular reforms, and that only looking to one side of the outcome can be deceptive.

ACCI has consistently opposed any inherent assumptions that the increase in casual employment is of itself a negative labour market development.

Far from being a negative to be traded off against other gains, opportunities for casual employment can in themselves be a positive outcome of labour market change.

Many Australians are gaining additional opportunities for work because of casual employment, which would be denied if only traditional full-time employment dominated. This includes students, parents and those seeking to bridge periods of work into retirement.

Casual work, like so many areas of workplace relations, is clearly more multi-faceted and complex than is often portrayed.

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10. Ibid, p.280

## **5. Employment, Education and Training**

### **5.1 Background**

The purpose of introducing National Competition Policy into markets is to ensure markets operate in a competitive manner. In this context:

- The education and training sector provides outputs that contribute to the economy as a whole. The quantity and the quality of the labour force is affected by the effectiveness of the education and training system in providing market needs in this area.
- The education and training sector constitutes a market in itself. It is a mixture of public and private providers, which provides some anti-competitive tensions.

Other key human services such as health and aged care experience similar circumstances. Competition is inhibited in the education and training sector largely on the supply side, particularly because of different funding models applying to private providers and lack of third party access to public infrastructure.

The Commission’s draft report does not pay sufficient attention to the importance of this effect on competition in its findings. ACCI agrees that Australia must have an education and training system of high quality to encourage the necessary skills to compete globally. Some of the required skills include employability skills, as identified by ACCI and the Business Council of Australia (BCA) in the report *Employability Skills for the Future*. The education and training sector is currently responding to the findings of this report and has commenced incorporating these skills into relevant curricula and frameworks.

Employability, academic and technical skills that are responsive to demand will contribute to Australia’s future labour market needs. ACCI does not agree that the need for NCP reform is less urgent in this area.

### **5.2 Assessment of current reforms**

It is true that major reforms have been introduced into the higher education sector but the full impact of these measures is yet to be understood and it is not clear whether further reform will be needed, especially in the workplace relations area.

It is also true that policies to reform VET are, in theory, in place. However, this theory does not always translate into practice and it is the interpretation of these policies at the state and territory level that has encouraged a lack of competition. The required “commitment” identified in the report for jurisdictions to implement previously agreed changes assumes a willingness on their part to do so. That willingness is not always evident and cannot be relied on to ensure a competitive market.

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- Competition payments under NCP (if they continue) could be a useful means to encourage jurisdictions to implement previously agreed changes.

The application of User Choice funding models provides an excellent example of how agreed policy has not been implemented even though states and territories would argue the policy is in place. The operation of caps, priority lists, the exclusion of some industries as well as thin market arguments contribute to a lack of true User Choice in some jurisdictions. Firms that operate across borders often complain of the different rules that apply in different jurisdictions and of the different arrangements for funding of training when trying to meet their needs. This lack of competition has serious implications for the VET sector and should come under the purview of NCP.

Further, improvements to the quality of teaching should not be left wholly to the states and territories. While there is much good work happening in this area, there is a leadership role for NCP to play in relation to issues that go beyond geographic boundaries and traditional thinking. For example, Science, Technology and Mathematics have been identified as critical to Australia's capacity to participate in and gain benefit from emerging scientific know-how. Another example in this category is the provision of quality careers information, service and support for students. The emphasis in teacher education courses on particular aspects of current educational thinking such as in the areas of numeracy and literacy is another area where a nationally consistent approach will result in better market outcomes.

### **5.3 Need for reform**

ACCI agrees that NCP should be paying attention to health. However, to argue that because attention is needed in one area, then another area should be downgraded is to neglect the gravity of allowing non-competitive practices in the education and training sector and the education and training market. It is timely to pay attention to VET now, rather than considering it at some future date, should progress in the VET area be slow.

ACCI agrees that improving the quality and responsiveness of education and training systems at primary, secondary and post-secondary levels is an important area of policy attention. Also of importance is the interface between the VET and the higher education sectors. Free movement between these sectors and new market responsive combined courses offered by these institutions could see greater competitive pressure and demand driven outcomes.

All of these reforms are important for the provision of a skilled labour force to meet the needs of business and industry in Australia. This need is particularly urgent in relation to skill shortages. ACCI does not agree that the current level of high vacancies is part of the periodic skill shortages that characterise all labour markets and therefore does not require remedial action by governments. Reports indicate that if attention is not paid to skill

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shortages, then within a four-year period, sufficient pressure on wages will occur, contributing to inflationary pressure.

ACCI therefore considers that the Commission made significant errors by downgrading the importance of training reform and by not assessing it as a top priority for the NCP agenda.

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## **6. Water**

Water reform demands a nationally co-ordinated approach, not only because of its considerable importance, but also because many water issues extend beyond State boundaries. In particular, the Murray-Darling basin is in Queensland, New South Wales, Victoria and the Australian Capital Territory. Activities upstream have the potential to affect water quality in downstream States located within the Murray-Darling Basin. Accordingly, water policy formulation and implementation is most appropriately pursued through an intergovernmental framework such as the CoAG. Attempts by individual governments to act unilaterally will risk failing to achieve the broader economic benefits offered by a comprehensive national approach.

Industry welcomes the progress made to date on water issues through the NCP arrangements in conjunction with the National Water Initiative (NWI). The NWI represents a coherent, national water management strategy, which offers large potential efficiency gains in terms of the collection, distribution and use of water resources. At the core of its proposals lie measures to facilitate the functioning of market mechanisms, such as: water allocation rights, the ability to trade these entitlements, cost-recovery pricing, improved information systems and the identification of externalities. The absence, or inadequacy, of such mechanisms will compromise the allocation of water to its highest value usage, which may include increased environmental flows.

ACCI agrees with the Productivity Commission's draft proposal in relation to NCP water reforms. Outstanding reforms in this area should be finalised and the state governments need to immediately recommit themselves to the NWI. As recently as 25 June 2004, CoAG agreed to implement the reforms outlined in the NWI. The State government withdrawal from the NWI during the recent Federal election campaign had little to do with the substance of the agreement. In effect the State governments, while recognising the necessity of the NWI, were willing to abandon it for the sake of an ambit claim against Commonwealth finances.

ACCI believes that arrangements should be put in place to ensure discipline on the implementation of proposed reforms and to prevent backsliding by participants. Some options to achieve this include bringing the NWI within the scope of the NCP arrangements or making payments from the Australian Water Fund conditional upon State governments proceeding with the NWI, in the same manner that NCP payments are conditional upon progress made toward implementing NCP arrangements. Western Australia and Tasmania, who declined to sign the NWI Agreement earlier this year, would thereby be encouraged to participate in the NWI reforms. The remaining states and territories would also face ongoing financial incentives to implement the NWI should competition payments not be extended beyond 2005-06.

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## **7. Energy**

The energy sector contributes significantly to Australia’s economic prosperity and standard of living. The reliable availability of competitively priced energy is fundamental to the international competitiveness of Australian industries.

Exports of energy commodities, technologies and resources have also contributed to wealth and job creation. The nation’s economic prosperity is determined by access to energy at competitive prices. ACCI adheres to the following general approach to energy policy:

- Supports the development by government of a comprehensive, integrated, long term, market responsive and output-based energy policy that promotes a fully contestable national grid with full interconnectedness.
- Expects that a national energy policy should underpin Commonwealth Government policy responses to a range of issues including investment, infrastructure, innovation, transport, regional development and climate change.
- Advocates a competitive market in the generation, transmission and sale of all forms of energy.
- Supports an assessment of Australia’s long-term energy needs to ensure an appropriate supply of energy to meet the demands of industry.
- Calls on government to encourage a more streamlined energy regulatory environment so that industry is not burdened with duplication, inconsistencies and competing aims.

ACCI agrees with the Productivity Commission that the NCP electricity and gas reforms have been central to efforts to create an efficient national energy market in Australia. While governments have largely implemented the NCP energy reforms we endorse the need for further reform as has been identified by the Commission.

The Productivity Commission identified the following issues the Ministerial Council on Energy should give priority to (ACCI’s response is also provided).

### **7.1 Generator market power**

Productivity Commission:

*Resolving whether generator market power in particular regions is still excessive and if there is a need for further disaggregation of government owned generation businesses<sup>11</sup>*

ACCI considers governments should divest ownership in their power generating assets while ensuring this is accompanied by the adoption of

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11. Productivity Commission, (2004) Section 8.1, p.175

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competitive market structures. We believe this is necessary to lock in wider benefits such as the confidence of the private sector in the operation of the market and to provide the right circumstances to encourage further investment.

### 7.2 Reintegration

Productivity Commission:

*...assessing whether processes for screening the competition implications of any reintegration in the electricity industry need strengthening<sup>12</sup>*

ACCI is not in favour of sector specific measures such as a separate merger regulation regime to deal with concerns relating to integration across the energy supply chain. The existing economy wide regulatory safeguards should be sufficient to deal with mergers in the electricity sector.

Such a move may also be premature as we await the full development of the NEM and the expected inter-regional trade in electricity flowing from transmission reforms. The potential competitive benefits resulting from these reforms still need to be considered.

### 7.3 Greenhouse & energy

Productivity Commission:

*Contributing to the development by CoAG of a more effective process for achieving a national approach to greenhouse gas abatement (see below)<sup>13</sup>*

ACCI agrees it is critical that policy responses to achieve greenhouse gas abatement and adaptation to climate change are part of a national strategy and not some fractured state-by-state policy. Further it must maintain and promote Australian industry's profitability and productivity.

To deliver substantial, least-cost greenhouse gas abatement it is essential that a national approach be applied. The effect of piecemeal measures is that certain industries, dependent upon location and output, will bear a disproportionate cost burden placing pressure on their domestic and international competitiveness.

ACCI's has the following position on emissions trading:

- ACCI supports, in principle, emissions trading as an option to abate greenhouse gases. However, ACCI notes that more work needs to be done to develop an appropriate and comprehensive model, taking into account the effect on trade-impacted industries and sectors.
- In the absence of an agreed model for an emissions trading scheme, ACCI supports broad-based mechanisms such as fiscal measures (for example, research and development incentives, accelerated depreciation

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12. Ibid, p.175

13. Ibid, p.175

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and investment allowances) and negotiated agreements (for example, extending the Greenhouse Challenge Program).

- ACCI opposes fragmented state-based policies. And further notes that, if Australia develops an integrated national strategy on climate change, it should be consistent with an international system.

While ACCI supports emissions trading in principle and is exploring how such a model may work for Australia, in the absence of an effective comprehensive global approach to addressing climate change that equalises the cost of abatement globally, a trading scheme applied unilaterally in Australia could impose significant economic costs.

There appears to be merit in CoAG considering how it may be able to help achieve a national approach to abatement and ACCI would be interested to consider this.

Finally, given the significance of the stationary energy sector in terms of its contribution to greenhouse gas emissions we support the National Framework for Energy Efficiency, which is being developed and implemented by the Ministerial Council on Energy (MCE). Successful outcomes in this area could make major contributions to greenhouse gas abatement.

### 7.4 Price & access regulation

Productivity Commission:

*...improving the efficiency of retail price and access regulation, with particular emphasis on achieving nationally consistent principles and ensuring there are appropriate incentives for investment<sup>14</sup>*

ACCI agrees energy supply security is of paramount importance to Australian industry and we are supportive of measures designed to encourage on-going investment in all forms of energy infrastructure. As we have observed internationally, prolonged underinvestment in generation and transmission infrastructure can have serious implications for energy users, and there are often significant lead times to correct this problem.

However, as the Commission observes:

*Getting the right balance between preventing monopoly pricing and providing sufficient incentives for new investment is far from easy<sup>15</sup>*

We agree that the MCE could play a role in exploring ways to improve the efficiency of retail price regulation with a particular emphasis on facilitating the responsiveness of both demand and supply to changing market conditions.

### 7.5 Monitoring of reform

Productivity Commission:

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14. Ibid, p.175

15. Ibid, p.174

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*...establishing a process for independent monitoring of the implementation and outcomes of the energy reform program and a stocktake of progress in 2009<sup>16</sup>*

Recognising that the MCE energy reform program is outside the NCP arrangements, it is sensible to consider a separate monitoring process. We agree this assessment should take place in five years or earlier especially to consider the competitive impact of transmission reforms.

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16. Ibid, p.175

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## **8. Freight Transport**

ACCI's policy objectives for transport include:

- competitive neutrality between land transport modes;
- more comprehensive and integrated national land transport/use planning;
- the orientation of federal, state and local government land transport expenditure toward investments of national economic significance;
- land transport user charging and pricing being determined on the basis of full cost recovery and market forces, with any community service obligations funded from consolidated public revenue; and
- land transport policies be developed and implemented within the broader context of integrated and intelligent (utilising electronic commerce) transport systems.

The Productivity Commission identified the following as outstanding areas for reform, while saying "Governments should complete all outstanding freight transport matters under the NCP legislation review program."<sup>17</sup>:

*CoAG should sponsor the development of a longer-term strategy for achieving a national freight system that is neutral across transport modes.*

*As an immediate priority, CoAG should sponsor the development of a national reform agenda for the rail sector that integrates current work in this area and establishes clear timelines for the implementation of reform.<sup>18</sup>*

ACCI agrees with the areas included for future attention and is especially encouraged to see recognition for greater national co-ordination of the rail reform agenda. Rail remains a significant contributor in the movement of both bulk and non-bulk freight and without this focus the sector runs the risk of been overlooked in the wider reform agenda.

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17. Ibid, p.175

18. Ibid, p.186

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Telecommunications services are a key input to industry and resonate as an issue of contemporary relevance in the Australian business community. ACCI's recent *Pre-election Survey 2004* identified the *Level of Telecommunications Costs* as the leading business concern with respect to infrastructure. Almost two in three businesses surveyed nominated the *Level of Telecommunications Costs* as an issue of either major or moderate concern to their business. In the context of the wider survey, these results suggest a relatively high priority placed upon telecommunications costs by the business community.

ACCI notes, and agrees with, the Productivity Commission's conclusion that future CoAG involvement in telecommunications industry reform does not appear to be necessary at this point in time. The Federal government, its agencies and regulators, dominates the regulation of the industry and as a result there would be little productive contribution made by including state governments in the process. Nevertheless, there are important ongoing reform initiatives taking place in the telecommunications industry outside of the NCP arrangements. ACCI supports the general direction and objectives of these reforms.

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## **10. Government Competitive Neutrality**

To the maximum extent possible government businesses should be subject to the same commercial disciplines facing their private sector competitors. The extension of the TPA to government trading enterprises activities is fundamental to ensuring that government and private sector businesses compete on an equal footing. Government trading enterprises have a comparatively poor record in terms of financial performance. The following point was made in the Productivity Commission’s recent published monitoring report:

*Despite the intent of governments to operate GTEs on a commercial basis, over 60 per cent of monitored GTEs earned less than the long-term bond rate in 2001-02. An even greater number of GTEs failed to earn a commercial rate of return, which includes a margin for risk.<sup>19</sup>*

A private sector business that chronically fails to generate sufficient revenues to meet its obligations to its debtholders faces a high probability of bankruptcy. In contrast, losses made by government trading enterprises are made good by taxpayer funds. Whereas inefficient private sector businesses are effectively forced to cease operations, their public sector counterparts can incur ongoing losses while facing little incentive to return their operations to profitability. Moreover, inefficient taxpayer subsidised government trading enterprises can end up driving lower cost private sector competitors out of business. These outcomes have significant negative efficiency implications, which extend beyond the expense imposed upon Australian taxpayers.

ACCI agrees with the Productivity Commission’s assessment in the Discussion Draft:

*...there still appears to be considerable scope to improve general governance arrangements for businesses remaining in public ownership, as well as some opportunities to fine tune the competitive neutrality regime.<sup>20</sup>*

While industry agrees with the broad principles outlined in the *Commonwealth Competitive Neutrality Policy Statement*, the emphasis now needs to shift to effective implementation and enforcement of the policy. ACCI strongly supports the continuation of the current competitive neutrality regime. However, further consideration needs to be given to the efficacy of the oversight arrangements and the role of the complaints mechanism.

At present penalties for non-compliance with competitive neutrality principles are non-existent. Similarly, private sector businesses that are adversely affected by such conduct are provided with no remedy in

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19. Productivity Commission, (2003)

20. Productivity Commission, (2004) Section 8.1, p.184

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damages. ACCI believes compliance needs to be subject to increased discipline, including the possible imposition of sanctions for serious violations. Anti-competitive conduct by public sector organisations should be subject to more stringent enforcement. ACCI seeks a review of the monitoring arrangements and enforcement mechanisms of the current competitive neutrality regime.

Extending the TPA to government trading enterprises has also been an important element of competition reforms to date. The TPA now binds the Crown in so far as it ‘carries on a business’. Unfortunately, the term ‘business’ is not explicitly defined in the Act. To the extent that any legislative guidance is provided, the meaning of business is defined to exclude certain traditional government activities such as imposing taxes and granting licences, and to include a business not carried on for a profit. No exhaustive, or at least indicative, legislative provision clearly defines what constitutes carrying on a ‘business’. Nor are the factors relevant to the making of such a determination articulated in the Act.

The definition of ‘business’ is a threshold issue of great importance to the effective application of the TPA to government trading enterprises. The absence of a comprehensive legislative definition leaves the matter to be determined largely by the courts. ACCI believes this is undesirable, effectively requiring the Australian judiciary to render policy determinations on issues of competitive neutrality. This potentially compromises the impartiality of the judiciary and causes ongoing uncertainty, which tends to undermine the position of private sector industry.

While this issue will be ruled upon by the High Court in the *NT Power Generation* case, whatever the determination, ACCI is of the opinion that legislative clarification is required and that the issue is a policy matter best dealt with at the Parliamentary level. The *NT Power Generation Case* involved a government authority refusing access to infrastructure used to distribute electricity. The authority claimed that despite operating an enterprise involved in the generation and sale of power it was exempt from the application of the TPA because it was not carrying on a business.

ACCI supports a review of the application of the TPA to government business. The review should be conducted with a view to identifying potential gaps in coverage and drafting remedial legislative amendments.

Federal, state and territory governments are currently empowered by s51(1), through either legislation or regulation, to exempt government trading enterprises from the competition provisions of Part IV of the TPA. While acknowledging that public interest considerations may motivate governments to provide such exemptions, justifications for doing so should be clearly articulated and subject to continual reappraisal. ACCI believe the approach suggested by the ACCC would be preferable for establishing exemptions. The power to authorise anti-competitive conduct embodied in section 51(1) of the TPA should be repealed and replaced by an authorisation process subject to a public interest test. Such a mechanism

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would enhance transparency and accountability while imposing an increased level of discipline on the authorisation of conduct, which is *prima facie* contrary to the public interest. ACCI urges further examination of this reform option when CoAG meets to discuss NCP arrangements in 2005.

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## **11. Health care**

The Productivity Commission has sought a major review of the provision of health care services in Australia.

*CoAG should initiate an independent public review of Australia's health care system as a whole. This should be the first step in the development of an integrated reform program to address structural problems of long standing that are preventing the health care system from performing to its potential. The review should include consideration of the determinants of future demand for and supply of health services; health financing issues (including Federal/State responsibilities and their implications); coordination of care (including with aged care); the interaction between private and public services; and information management. It could also incorporate the proposed CoAG review of medical workforce issues.<sup>21</sup>*

From the perspective of delivering sound public policy ACCI is concerned regarding the apparent inefficiencies in the provision of health care services and the growing share of health spending as a percentage of GDP, accounting for 9.3% in 2001.

Furthermore, the real growth in health spending in the decade to 2001 was 4.6%, which was well above many OECD countries. ACCI is concerned with this trend, which will continue to grow as the ramifications of an ageing population are felt. This of course poses significant future problems for public expenditure.

While demographic influences will continue to place pressure on our overall health budget there is particular concern that the existing system is not well placed to deal with these changing circumstances. There is entrenched waste and inefficiency in the health system, safety and quality problems in Australian hospitals and chronic workforce shortages in particular areas of health care.

Despite accounting for around 10 percent of the economy, the health sector has mostly avoided or has not benefited from the benefits of micro-economic reform, which has swept through the national economy in the past ten years. Typical performance benchmarks, which are common across most industry sectors, are largely unavailable in the health sector.

A review as recommended by the Commission should be supported as a means of identifying the main contributors to burgeoning health costs. However, ACCI does not consider that a health reform agenda should come at the cost of other reforms, particularly to training and workplace relations.

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21. Ibid, p.xlii

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## **12. Dumping**

ACCI concurs with the recommendation of the Productivity Commission relating to dumping: “The Australian Government should conduct the previously scheduled review of anti-dumping at the earliest possible date.”<sup>22</sup>

Such a review should be analytical, objective, rigorous and transparent, and ideally undertaken by the Productivity Commission.

Such a review should consider, inter alia, whether Australia’s existing dumping regime is WTO-consistent, pro- or anti-competitive, promotes industry efficiency and competitiveness, and appropriately addresses consumer and producer benefit and detriment.

While not wishing to address each and every issue such a review could usefully consider, as ACCI stated in an official policy research paper (ACCI 2004):

*“The Australian Chamber of Commerce and Industry:*

- *recognises the legitimate role of a balanced, objective and analytically rigorous antidumping regime within international and national trade laws. As such, we do not stand with those calling for the abolition of such laws, but are open to considering options for improving such laws, including improving their interactions with competition law;*
- *opposes the incorporation of ‘public interest tests’ into Australian antidumping law and practice or that of the World Trade Organisation, reflecting their inherent subjectivity, inconsistency of application and considerable vulnerability to political misuse (that is, distorting decision-making by incumbent governments for electoral advantage at the cost of good economic and policy rigor);*
- *calls for cumulation provisions and rules to be removed from national antidumping regimes, given their potential to improperly capture ‘innocent bystanders’ (traders) in antidumping actions, and to produce biased – false positive – findings of dumping.*

*However, insofar as national governments wish to preserve cumulation within their antidumping regimes, it should be limited to cumulation of market shares in injury determination where collusion between the defendants can be proven;*

- *considers Australian antidumping law to be fundamentally sound, in its compliance with our multilateral trade law obligations, and well as in our own national law and their enforcement. As such, we see no need for any substantive changes at this point in time, with the exception of a prohibition of accumulation; and*

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22. Productivity Commission, (2004), page xxxix

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- *recognises successive Australian Governments have accepted in principle and in practice the replacement of antidumping laws by more expansive competition laws, most notably in the trade and economic arrangement with New Zealand.*

*However, multilateralising such an approach - replacing antidumping rules with competition laws within the World Trade Organisation - should be considered a longer term objective.*

*In the near term, the Working Group on Trade and Competition Policy, operating under the auspices of the World Trade Organisation, should continue to examine the linkages between, and viability of substituting, antidumping and competition laws.”*

ACCI envisages making a substantive submission to any review of Australia's dumping laws and policies.

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