AusCID Submission to the Productivity Commission Review Price Review of Airport Services….

Building on reform success.

The Australian Council for Infrastructure Development

July 2006

Executive Summary

The privatisation of Australia's airports has been a major policy success. What has emerged is an industry that is world's best practice in operational and safety terms and that has been able to support unprecedented levels of growth in a highly volatile security and commercial environment. Investors have been attracted to the sector paying good prices to the Government at the time of sale and following on with strong commitments to fund renewal of old assets, improvements to quality and services and provide new capacity.

This success, especially since 2002, has in no small measure been due to the regulatory decisions taken by the Howard Government in May 2002. Moreover, these decisions were a watershed in Australian regulatory policy and have been a template for further reforms at a state and national level culminating in the Competition and Infrastructure Agreement signed by COAG in February 2006.

There is no case for the re-imposition of price controls – it has not been called for by the major airline lobby organisation in Australia. Further, doing so would severely damage investor confidence in the sector and lead to a significant slowing of investment activity just at the point in time when major capacity augmentation is required and already being planned. Such a policy back flip would negatively impact on the policy credibility of the Commonwealth, and Australian governments generally, precisely at the time when all jurisdictions are looking to the private sector to make major investments in infrastructure assets.

AusCID believes that there is a case for the Commonwealth to put in place a permanent monitoring regime for Melbourne, Sydney, Brisbane, Adelaide and Perth Airports – no other airport need be involved. This regime should not be seen as probationary – major airports have done enough to have earned the Government's policy trust. All available evidence points to the fact that outcomes negotiated by airports and airlines are superior to those that occurred under the close supervision of the ACCC between 1997 and 2002.

There should be a fall back mechanism to deal with situations where airports do not comply with the Government's principles. Any regulatory involvement by the ACCC should only occur after a decision made by a party other than the ACCC. Any pricing decisions must be made in accordance with the Government's principles – the ability of the ACCC to unilaterally impose a single till should be removed.

Some other reforms are required which largely go to adding clarity around the principles the Government sets for airport behaviour.

The challenge for the Commission and the Government from this review is to make a good regime better. Australia deserves world's best practice airports and Australia's world's best practice airports deserve a world's best practice regulatory regime.

Introduction

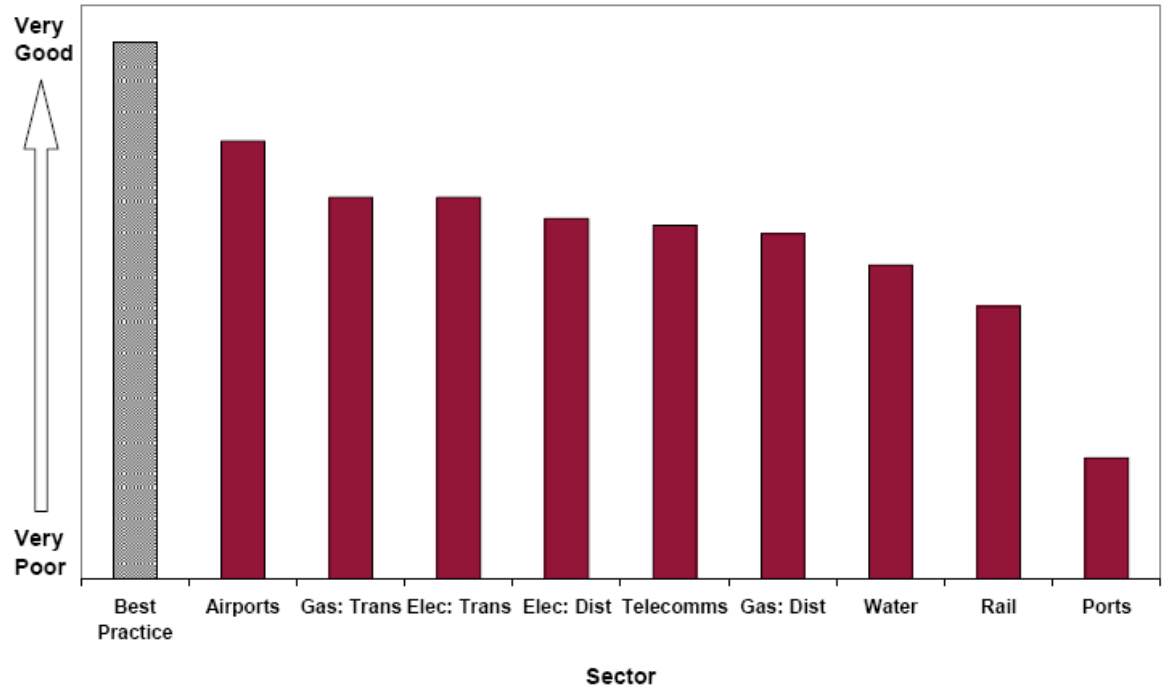
AusCID is the principal industry association representing the interests of companies and organisations owning, operating, building, financing, maintaining and otherwise providing advisory services to private investment in Australian public infrastructure.

The Council formed in 1993 and currently has 73 members, drawn comprehensively from all economic infrastructure sectors.

AusCID is in a unique position to represent the views of airport owners and debt financiers and combine them with the views of airport operators. AusCID's members would account for around 75% of the invested equity in Australian airports, largely on behalf of Australian superannuation funds and through investment vehicles listed on the Australian Stock Exchange – Australia's airports are truly Australian owned.

The proposals advanced by the Keating Labor Government, implemented by the current Government, to privatise the Federal Airports Corporation by granting long term leases over individual airports is one of the great successes of the reform agenda that started in the 1990s. Moreover the issues surrounding the regulation of airports, and indeed some airport operators themselves, have been at the forefront of the regulatory policy debate especially in relation to the provision of what might be seen as intermediate industrial services (provided business to business) in a vertically separated industry. It is AusCID's view that the decision to remove airport controls in 2002 is one of the most significant regulatory reforms undertaken by the Howard Government.

The airport regime is clearly the foundation for the ports regimes implemented more recently in Victoria and South Australia. These regimes have been rated the best regulatory frameworks in Australia in AusCID's *Regulatory Scorecard* compiled for it by Access Economics. This scorecard is included in full as an appendix to this submission. As shown below the airports regime, from an industry wide perspective is closest to best practice, although this is in part due to the very poor quality of port regimes in some states. The challenge for Government flowing from this inquiry is to place the airports regime closer to best practice levels.



The airports regime along with the Commission's reviews of it, the *Prices Surveillance Act*, the Gas Code and the National Access Regime laid the policy framework for the Competition and Infrastructure Agreement reached by COAG on 10 February 2006 – an Agreement AusCID supports.

Broadly, this body of policy development has led to the establishment of a number of important principles:

- The decision to regulate, and the advice to government on regulatory policy, should be provided by organisations other than regulators.

- The focus of regulatory policy must be delivery of long run economic efficiency in the allocative, productive and dynamic efficiency sense. Distribution should not generally be the focus of regulatory policy and in particular, holding down prices for their own sake should not be an objective of regulatory policy.

- Commercial outcomes are preferred over regulated ones.

- Where possible, light handed regulatory approaches, such as price monitoring, are preferred over more interventionist approaches.

- Regulation should only be imposed a clear case can be made that the benefits of such regulation out weigh the costs including the risks associated with regulatory error leading to under-investment

Whilst care must be taken in interpreting the levels of investment that have occurred in Australian airports since privatisation and particularly before and after the removal of price controls, a number of facts about investment are clear:

- Investors have far greater confidence in the current regime than they did in the one that existed in the immediate post sale period.

- Investment decision making is far timelier than was previously the case.

- Regulatory gaming by airlines, especially to advance their interests over those of competitor airlines, has been largely eliminated.

This submission does not seek to address regulatory design issues or discuss the performance or conduct of individual airports in any detail. This is in part because airports themselves have different views on issues and that these issues play out in different ways in different places. Indeed, it is interesting to note that the views of airports vary even when they have quite similar groups of shareholders. This should be seen as a good thing as it demonstrates that the policy objective of increasing ownership and management diversity has been achieved. Further, it also reflects positively on the governance approaches adopted by AusCID's members involved in these businesses.

The first section of this submission briefly reviews the outcomes in the industry. The second looks at those issues that investors consider to be important in regulatory regimes, even successful lighted handed ones such as this. The third section looks at those issues that investors feel need to be addressed as part of the outcomes of this review without necessarily offering at this stage suggestions of what those outcomes might be.

A regime working well

Australia's airports are critical to the nation. It is regularly commented that Melbourne-Sydney is the third densest aviation route is the world which undoubtedly means Melbourne and Sydney Airports are among them most important pieces of infrastructure in Australia. Smaller airports ensure communities have access to air services that in turn enable them to have access to services in major centres. The advent of low cost carriers such as Impulse, Virgin Blue and more recently Jetstar has seen airports, both large and smaller, play a key role in the promotion of aviation services to regional centres historically underserved by Qantas and Ansett, or indeed not served at all from many population centres. This has not only improved access to services but opened up tourism and other regional development opportunities.

The Australian airports sector has shown incredibly resilience in the face of a number of major shocks: the Asian Financial Crisis, the September 11 terrorist attacks, the collapse of Ansett and the Bali bombings. It is important to remember also that these are newly formed companies emerging in many cases from the Federal Airports Corporation with little of the corporate structure that one expects from modern corporations. Since 2002 the flexibility provided by the regulatory regime has been critical to the industry's resilience.

The export of travel services exceeds the value of coal exports by around 50%. It also exceeds the combined value of wool, wine, LNG, medicaments, copper, iron and steel and dairy products. The export of travel services is vitally dependant upon Australia's airports. Other business services exports exceeds the individual value of each of the goods sectors mentioned above as well as passenger motor vehicles, nickel, aluminium and wheat. This only further demonstrates the importance of Australia's aviation infrastructure in creating amenity in our cities from which high skilled knowledge based workers produce business services in an increasingly competitive global market.

The Commission will be aware that each time the ACCC has released its monitoring reports it has commented on the level of prices prevailing today in comparison with those in place prior to the removal of price controls. Prices have increased, as they would have if prices controls had remained in place. However, the most disingenuous thing about the ACCC's commentary is it refuses to make comment on the appropriateness of these prices. Moreover, it implies some form of inappropriate conduct yet the pre-tax returns on aeronautical assets reported by the ACCC are largely in single digits with two exceptions and these are still below 15%. These returns are not excessive and AusCID notes that not even the airline lobby organisation BARA has suggested returns under the current regimes are unreasonable.

The ACCC publishes a number of charts that show that, putting aside existing capital commitments undertaken by the FAC, investment in aeronautical services has accelerated in recent times. After the Commonwealth announced the abolition of price controls in preference for a monitoring regime in May 2002, by mid July that year Melbourne Airport had announced five year commercial agreements with airlines for airport services including capital expenditure of $150 million mainly related to providing infrastructure for the Airbus A380. It has been reported by those involved on both sides of these negotiations that the agreements reached, which were acknowledged by airlines as best practice at the time, would not have been achieved by a regulator.

More importantly looking forward are the investment intentions of major airports. Melbourne Airport has indicated it intends spending around $500 million on aeronautical facilities in the next five years whilst Brisbane airport has recently announced a $2 billion bond program to finance, among other things, a new runway. It is AusCID's very strong view that the confidence that its members have in advancing capital of this magnitude is in large part due to the current regulatory framework.

Many airports have reached agreement with their airline customers in 2002. Two of them, first Melbourne and later Brisbane, have won the prestigious IATA Eagle Award for their dealings with airlines since price controls were removed. It is inconceivable that these airports would have won these awards from airlines if the Government had not taken the policy decisions that it did in 2002. It is interesting to note that not even BARA is calling for the reimposition of price controls.

These facts, almost of themselves, indicate that there is no need or justification to reimpose any form of price control at any Australian airports.

Regulatory issues of concern to investors

Airport investors would be very concerned by any moves to impose more intrusive forms of regulation. The imposition of a price cap, such as that proposed by the Commission as Option A in its last report, or even worse through the reinventing of the regime in place between 1997 and 2002, would be a retrograde step. Investors could be reasonably expected to defer any investment that may be subject to price control until it was clear the processes by which future prices would be set. If other regulatory processes are any guide, and in particular the ACCC's process when it considered prices at Sydney Airport in 2000, then one could expect a process that would consider Melbourne, Sydney Brisbane, Perth and Adelaide would take well in excess of a year. Costs would most likely be in excess of $1 million for each airport. If current conduct is any guide, the outcome would probably be prices not dissimilar to those that would be reached through negotiation but at far greater cost and without the non-price benefits airlines have received under the new contractual framework.

Further, such a reversal in policy would not only be contrary to the COAG Agreement, it would virtually destroy the regularly policy credibility of the Commonwealth which to a large extent has developed off the back of the airports regime.

Whilst it does not appear that the Government is minded to "turn back the clock" on airport regulation, it is important to keep in mind the consequences of doing so, especially from the perspective of those who the Government will continue to rely upon to advance capital. The following is a brief discussion of some of the issues that investors generally have with price regulation.

Regulatory risk

Regulatory risk takes two forms. The most commonly understood is that which arises from the decision making activities of regulators and the impact that those decisions have on prices. These are not just issues about allowable returns but uncertainty about methodology and what expenditures will be allowed into operating and capital cost bases. The issue of non-aeronautical revenues is also an important issue in the case of airports. The extent of this risk depends on a range of factors including which regulator is involved, how mature the framework is, the nature of the financial exposure that regulatory decisions create and the individual firm's abilities to manage this risk.

The response to this type risk is usually to delay capital commitment until such time as these issues are clear if that it is at all possible. The delay that was experienced in increasing capacity in the Dampier-Bunbury Gas Pipeline is directly a result of the uncertainty created by the decision making of the Western Australia Gas Regulator that also ultimately led to the break-up of Epic Energy. In a similar vein, the administration of the airports' price control regime by the ACCC became so unpredictable that the board of Melbourne Airport reached the point where it refused to undertake any aviation related investment until it had a final pricing decision from the regulator even in relation to government mandated security requirements.

Regulatory risk also arises from regulatory policy making. That is, the policy decisions that government and others make about what infrastructure to regulate and in broad terms how. Whilst there is has been a general policy trend to wind back regulation which AusCID welcomes, many infrastructure owners are subject to the application of Part IIIA of the Trade Practices Act which ultimately enables the Australian Competition Tribunal to imposed compulsory arbitration by the ACCC on an infrastructure provider even though that provider may have been complying fully with other tenets of government policy.

The risk of the imposition of regulation, either by government policy or judicial decision making means that investments undertaken today in good faith are subject to significant value loss in the future. How this might affect investment behaviour is unclear and probably will remain so until regulation is re-imposed on a non-regulated business and that business is exposed to adverse arbitration.

This situation could arise with the current airports regime. This is why AusCID believes it is now time to commit to a permanent airports monitoring regime, not another probationary period. Reforms should be put in place to ensure that whatever principles the government develops for airport conduct, that compliance with such principles will guarantee to investors that price controls (including forms of compulsory arbitration such as Part IIIA) will not be imposed.

Regulatory conduct

It is AusCID's long held view that regulators have been primarily motivated by removing rents from regulated firms and to a lesser extent looking after the (short run) interests of users and consumers. In many cases the regulatory regimes they have been asked to administer have been vague and possessed conflicting objectives.

The outcome of this approach is ultimately to present infrastructure operators with a set of prices which are below those needed for them to cover their long run costs. In the short run, given that such a large proportion of costs are sunk this is little damage done but in the long run, investment is not forthcoming leading to socially sub-optimal levels of supply and in many cases, diminution of competition in related markets as incumbents hoard access to essential infrastructure. Also, by holding down prices, regulators run the risk of stifling innovation and skewing investment to less risky projects.

The focus of regulatory policy must be delivery of long run economic efficiency in the allocative, productive and dynamic efficiency sense. Distribution should not generally be the focus of regulatory policy and in particular, holding down prices for their own sake should not be an objective of regulatory policy.

AusCID believes that the ACCC's conduct during the current monitoring period has not been acceptable. In particular it has placed great emphasis on price increases since 2002, never commenting on the inefficiently low levels of prices that existed at the time or the level of investment that has taken place and continues to take place. Moreover, it has not reflected on the fact that these increases were negotiated and accepted by the users of the airport or that it itself approved the largest price increase of any major Australian airport.

The ACCC's conduct has been such that investors would be very concerned if in the future advice on airport regulatory policy was only sourced from the ACCC. For this regime to be credible going forward investors expect Government to source advice, in a public way, from an organisation such as the Commission that does not have a vested institutional interest in the outcomes of such policy and certainly not one that has shown such scant regard for the Government's policy decisions.

Timeliness

Major regulatory decisions rarely are completed within six months. If some form of appeal process is involved, the minimum time fame appears to be a year. The current Part IIIA process at Sydney Airport is now entering its third year. These processes are necessarily inferior in timeliness to commercial negotiation because of the need to demonstrate due process and transparency through the publication of issues papers, draft decisions, final decisions and so on.

Regulators usually are concerned with the precedents they may be setting for the regulation of the firm concerned, the industry in question and sometimes totally unrelated industries. Whereas commercial negotiating parties can focus on the issues of strategic importance for them, regulators feel obliged to scrutinise all operating and capital cost elements, often commissioning independent experts to inquire into operational aspects of the firm's business.

This sort of conduct is probably inevitable. Processes could be speeded up by providing better qualified resources to regulators and narrowing the range of matters they are required to consider. The best way to speed up regulatory decision making is to construct policies that reduce the number of regulatory decisions that actually need making.

That said, AusCID acknowledges that circumstances may arise where the parties cannot, or will not agree. This could be for any number of reasons. It is AusCID's view that reliance on Part IIIA, even in its soon to be amended form, does not serve the interests of airport investors, airlines or the travelling public. AusCID is aware of proposals that will be put to the Commission in relation to dispute resolution and urges the Commission to give careful consideration to how disputes within this regime going forward might be resolved without sole reliance on Part IIIA.

Issues for resolution

Clarity of Regulatory Principles

Irrespective of the form of regulation what investors value most is clarity. It appears to AusCID that, in a number of regards, the issues that have arisen in the airports regime have been in part due to a lack of clarity in the monitoring framework and the review principles. Whilst the precise approach to these issues is one of the areas of diversity in AusCID's membership mentioned above, what AusCID's members are of one mind on is the need for clarity.

The Commission's Issues paper has identified a number of these issues, namely:

- Definition of aeronautical services
- Asset valuation issues
- Pricing structures
- Reporting methodologies

AusCID urges the Commission to make solid recommendations on these and any other issues where current ambiguity is causing tension in the regime.

Regulator as last resort – keep them away from the bargaining process

When the Commonwealth privatised the Federal Airports Corporation its stated policy was "*over time, the Government wants to see airport operators negotiate directly on pricing and investment*"[1]. When the Commission reviewed airport price controls in 2002 it found

> *The notion of promoting commercial agreements has immediate appeal because they could circumvent the need for high level regulatory involvement. However the Commission considers that any such arrangements, to be successful necessarily must be negotiated voluntarily (by both sides), without automatic recourse to the regulator and without prescriptive requirements*.[2]

During the period that effective price controls were imposed on airports, no commercial agreements were put in place between airports and airlines for general airport services.

If negotiations occur in an environment where the user can turn to a regulator to set some or all of the access terms and conditions then there is very little incentive for that user to reach a conclusive agreement. Put simply, given the conduct of regulators that has been experienced in Australia and particularly when the ACCC oversaw airport investment, users will believe that the point at which negotiations break down, the supplier's final offer, is the worst outcome that they will achieve. Given that the costs of proceeding down the regulatory path are then small relative to the potentially large gains (and potential losses virtually non-existent) why would users possibly agree?

[1] Press release issues by the Treasurer the Hon Peter Costello, 25 June 1997.

[2] Productivity Commission (2002) *Price Regulation of Airport Services*, Inquiry Report No. 19, January, pxxxiv.

Events have shown that the removal of the ACCC from airport pricing and investment decisions was a necessary condition to achieving the Government's policy objective in relation to negotiated outcomes. Further, to bring the regulator closer to this process would simply increase the likelihood of the sort of gaming conduct described above, especially given the attitudes that the ACCC has displayed toward the regime since 2002.

AusCID accepts that there ultimately needs to be a mechanism that resolves disputes between parties. Wherever possible these should be commercial in nature, even if the parties need to be guided to them by Government policy. In particular, involvement of the ACCC in dispute resolution should be seen as an absolute last resort and one which is only invoked when airports are clearly acting in contravention of the Government's guidelines – the latter being a decision not made by the ACCC. Even then, AusCID believes that measures should be put in place to ensure the ACCC makes no decisions that lead to pricing outcomes that are not consistent with the guidelines, especially in relation to the Government's stated policy preference for the dual till. Clearly, Part IIIA does not meet these criteria.

Continuation of the regime

The Commission has previously indicated the view that price monitoring should be used as a transitional arrangement between more intrusive forms of regulation and no regulation. AusCID largely supports this view but believes in the case of airports there is merit in the notion that a permanent monitoring regime with appropriate dispute resolution mechanisms be put in place. Part of that process would be periodic reviews by the Commission such as this one. Such reviews are an important way of ensuring Australia's regulatory infrastructure is kept to the same high standards as its aviation infrastructure but do not imply an industry "on probation".

A permanent regime will reduce incentives for gaming. The notion that "airports are on probation" may encourage airlines to confect disputes and misrepresent airport conduct in the hope that such probation will be cancelled and more interventionist regulatory polices imposed that give greater emphasis to the short term interests of airline shareholders particularly through creating direct gaming opportunities with a price setting regulator.

That said AusCID does believe that the coverage of the current regime is too wide. Cairns Airport, the sixth largest in Australia, is not subject to regulation in any meaningful way. BARA's submission clearly indicates that airlines have had no difficulty in reaching acceptable agreements with that airport. It is AusCID's view that those airports which are smaller than Cairns – Canberra and Darwin - should not be subject to formal monitoring going forward.

A SCORECARD OF THE DESIGN OF ECONOMIC REGULATION OF INFRASTRUCTURE

REPORT BY
ACCESS ECONOMICS PTY LIMITED

FOR THE

AUSTRALIAN COUNCIL FOR INFRASTRUCTURE DEVELOPMENT

JULY 2006

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ACCESS ECONOMICS

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EXECUTIVE SUMMARY

The Australian Council for Infrastructure Development (AusCID) commissioned Access Economics to develop a scorecard with which to evaluate the design of economic regulation of Australia's key infrastructure sectors. The focus is on economic regulation which directly sets prices or revenue for access to, or use of, services provided by infrastructure owners, as summarised in the table below. The report does not cover areas such as safety or environmental regulations.

Industry Sector	Components of Regulatory Regime	
	Assessed	Not assessed
Airports	Price monitoring for aeronautical services at core regulated airports National Access Regime (Part IIIA Trade Practices Act)	Aviation support services such as Airservices Australia Civil Air Safety Association (CASA) regulation Non-aeronautical services at majors airports Minor airports
Ports	Pricing of services provided by the port authorities Access to port infrastructure owned by port authorities	Services provided at the port by parties other than port owner (i.e. stevedoring) Intermodal connections
Rail	Rail access regimes and associated user charges, as they relate to freight transport	Pricing of passenger rail services
Water	Price regulation of water for both bulk and household use and in both rural and urban areas	Quantity restrictions or trading schemes
Telecommunications	Telecommunications-specific access and anti-competitive conduct regimes Retail price controls Interaction with Australian Communications and Media Authority and the Australian Communications Industry Forum	
Gas	Access and pricing regulation under the National Gas Code of transmission and distribution pipelines	Price regulation of gas retailing
Electricity	Access and pricing regulation under the National Electricity Law & Rules of transmission and distribution service providers	Price regulation of electricity retailing

This scorecard does not rate the decisions, or outcomes, of each jurisdiction's regulatory regime or the industry that it regulates. Rather it focuses on the extent to which the regime in each jurisdiction is *designed* in a way that is likely to foster good decisions and outcomes. Good decisions and outcomes are those which encourage

efficient resource allocation by appropriately balancing the need of investors to earn a reasonable rate of return on capital and the interests of infrastructure users to obtain services at minimum feasible cost. This is true for both efficient use of existing infrastructure and efficient investment in new infrastructure for future use. Hence the focus is on scoring the enabling legislation and other guidelines underpinning each regime against good regulatory design principles.

The rating focuses on four broad areas of good regulatory design that have been found to promote good regulatory outcomes. These design principles are:

1. **Independence**
   - Is the regime sufficiently independent from Government?
   - Is the regime sufficiently independent from industry and other stakeholders?
2. **Efficiency focused**
   - Is the regime's primary objective to promote efficient resource allocation?
   - Does regulation only apply where rigorous cost-benefit analysis has shown a net benefit from regulation?
   - Are there mechanisms to periodically review the need to regulate?
   - Does the regime make use of best practice regulatory tools?
3. **Transparency, predictability and consistency**
   - Are decision-making processes clear and transparent?
   - Is appropriate guidance given to the regulator on the exercise of regulatory discretion?
   - Does the regime make sufficient use of public consultation?
4. **Accountability**
   - Are independent, timely and streamlined appeal mechanisms available?
   - Does the regulator publish reasons for its decisions?
   - Are regulatory policy/coverage decisions made by a separate body from that charged with implementation?
   - Does the regime operate in a timely manner?

These criteria are not an exhaustive test of regulatory design, and other factors, such as the efficiency and efficacy with which a regime is implemented, will influence the quality of regulatory outcomes. There are certainly cases where a well-designed regime produces a poor decision, or where a badly-designed regime manages to produce a quite sensible outcome. That said, focusing on the means, rather than the ends, should encourage regimes with a higher probability of producing socially-optimal outcomes.

A scorecard is ultimately subjective, and represents our best judgement on the relative strengths and weaknesses of the regimes examined. For this inaugural scorecard, preference has been given to indicators which can be relatively easily verified and tested. It is intended that future versions of the scorecard will be accompanied by methodological improvements as further information becomes available.

Results from the inaugural scorecard are in the following table. Each sector and jurisdiction are rated on a scale of Very Poor, Poor, Fair, Good and Very Good, where "n.a." denotes "not applicable" to that jurisdiction (for example, where only a national regime exists). A rating of "Fair" indicates that the regime has mediocre design, compared with best practice design principles. It does not necessarily mean "fair" as used in other contexts such as "unbiased" or "equitable".

Jurisdiction / Sector	Comm' wealth	NSW	VIC	QLD	SA	WA	TAS	ACT	NT	Overall Sector Rating
Airports	Good	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	**Good**
Ports	n.a.	V.Poor	Good	Poor	V.Good	V.Poor	V.Poor	n.a.	V.Poor	**Poor**
Rail	Fair	Fair	Good	Poor	Good	Good	n.a.	n.a.	Good	**Fair**
Water	n.a.	Fair	Good	Fair	Fair	Poor	Fair	Good	V.Poor	**Fair**
Telecomm	Fair	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	**Fair**
Gas: Trans	Fair	n.a.	n.a.	n.a.	n.a.	Fair	n.a.	n.a.	n.a.	**Fair**
Gas: Distb	n.a.	Good	Good	Fair	Good	Fair	Fair	Fair	Fair	**Fair**
Elec: Trans	Fair	n.a.	n.a.	n.a.	n.a.	Fair	n.a.	n.a.	n.a.	**Fair**
Elec: Distb	n.a.	Good	Good	Fair	Good	Fair	Fair	Good	Good	**Fair**
Overall Jurisdiction Rating	**Fair**	**Fair**	**Good**	**Fair**	**Good**	**Fair**	**Poor**	**Good**	**Poor**	

The results show that most of Australia's infrastructure regulatory regimes are rated as being mediocre to good, compared with best practice design principles. A more detailed analysis of regulatory design in each infrastructure sector is contained in the main body of the report.

No jurisdiction or sector was able to achieve an Overall rating of Very Good. Only the regulation of ports in SA was able to meet enough good regulatory design principles to achieve a Very Good ranking. As "best practice" is a continually evolving concept, even the sole regime currently rated as Very Good (let alone the rest) will need to keep evolving to maintain the current ranking – the "best practice" goal posts will keep shifting out.

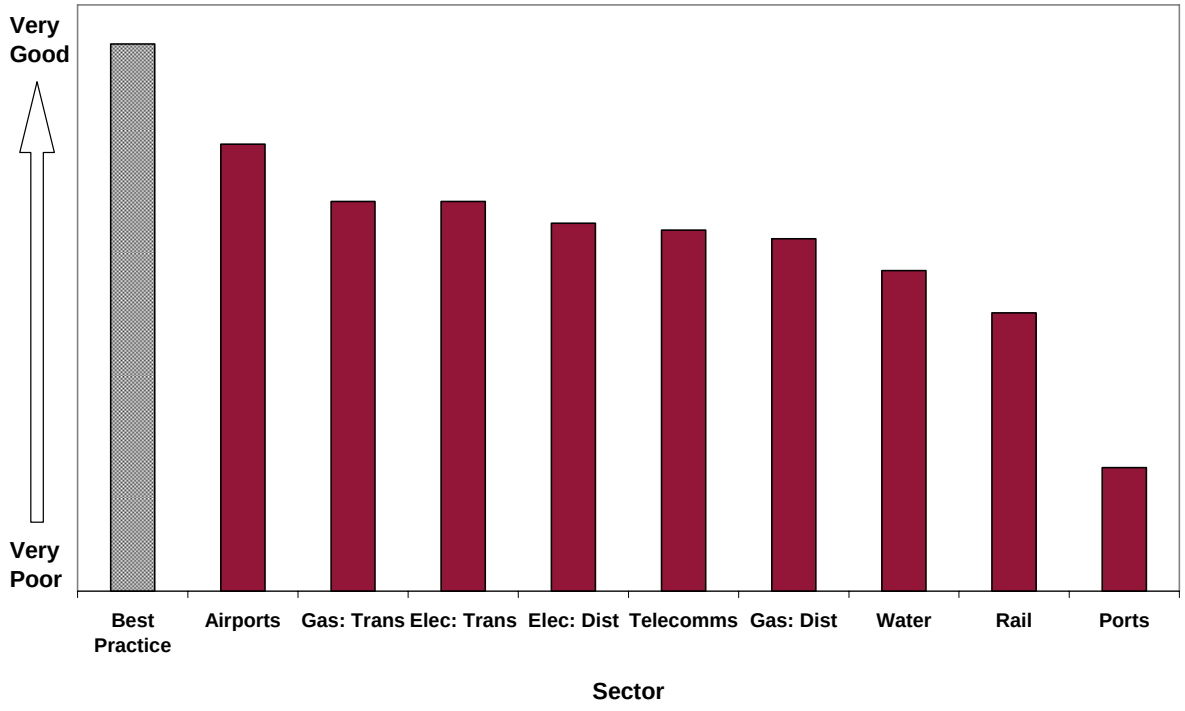
A number of regimes also received a grade of Very Poor regulatory design. This included port regulation in NSW, WA, Tasmania and port and water regulation in NT. These regimes lacked an independent or transparent regulatory process, with pricing and access decisions made inside publicly owned corporations. This is not to suggest that public ownership, on its own, is incompatible with good regulatory

outcomes, but that the design of the regulation in these jurisdictions is considered less likely to produce good outcomes. The design of regulation in some other sectors with publicly owned infrastructure, including Victorian ports and NSW water authorities scored relatively well.

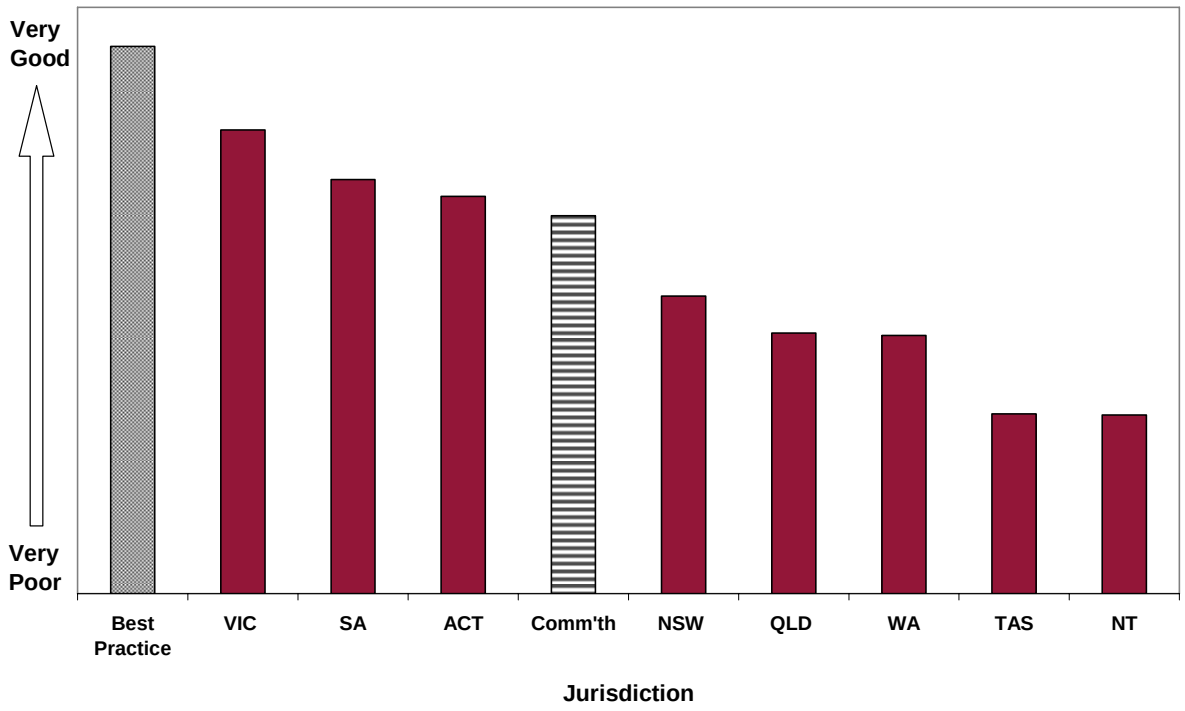
Smaller jurisdictions also tended to perform relatively poorly in the scorecard, although this should be interpreted with caution. Where the level of regulatory activity is smaller, it may be not as necessary for a regulator to produce large amounts of explanatory material (thereby scoring points on transparency and accountability) in order to promote good regulatory decision-making. Inefficiencies in smaller jurisdictions may also be less costly to society compared with regulatory errors in the nation's largest gateways and major facilities.

The following charts provide an indication of the relative differences between sectors and jurisdictions.

Design of Economic Regulation by Sector



Design of Economic Regulation by Jurisdiction



Access Economics

July 2006

THE CURRENT REGULATORY ENVIRONMENT

The infrastructure sectors of the Australian economy include both essential services (water, telecommunications, gas and electricity) and means of transport (rail, airports and ports). These industries are subject to a number of regulatory regimes including economic regulation.[3] Economic regulation refers to regulation that imposes obligations on infrastructure owners and/or service providers in regard to access to the infrastructure or essential service, and also directly limits their pricing and investment discretion.[4]

In Australia, infrastructure sectors were historically dominated by government owned monopolies with entry prohibited by legislation. In many cases the monopolies were vertically integrated across a long supply chain consisting of elements with natural monopoly characteristics and elements that are inherently contestable or could become competitive. Following *The Committee of Inquiry into a National Competition Policy for Australia* (the Hilmer Report) Commonwealth, State and Territory Governments agreed on an ambitious reform agenda to open up sectors of the Australian economy which had been sheltered from competition. The Competition Principles Agreements (CPA) also drew together pre-existing Council of Australian Government (COAG) commitments to reform energy and transport infrastructure (known as the 'related reforms').

Regulatory reform under the CPA has focused on:

- **Structural reform:** separating regulatory and commercial functions, reviewing the merits of separating natural monopoly from potentially contestable service elements and of separating contestable elements into smaller independent businesses;
- **Competitive neutrality:** ensuring businesses that remained government owned faced similar commercial and regulatory obligations as privately owned competitors;
- **Prices oversight:** establishing independent regulators to set, administer or monitor prices charged by service providers with monopoly or significant market power.
- **Third party access arrangements:** providing legal avenues for firms to use natural monopoly infrastructure which it would not be economically efficient to duplicate, on fair and reasonable terms for both parties.[5]

There has also been some progress towards greater integration and consistency in the regulation of infrastructure between jurisdictions. The current regulatory environment for each infrastructure sector scored is briefly summarised below.

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[3] Infrastructure sectors are also subject to many forms of regulation common to other sectors of the economy as well as to some sector-specific technical regulation relating to, for example, inter-operability between firms and quality of service.

[4] All forms of regulation, including environmental, health and safety regulations will have an ultimate effect on the pricing and other business decisions of regulated firms.

[5] Adapted from Productivity Commission (2005) *Review of National Competition Policy Reforms*, Inquiry Report No. 33, Canberra, 28 February, p.14.

Airports

The economic regulation of the major capital city airports is undertaken at a Commonwealth government level under the *Airports Act (Cth) 1996*. When airports were privatised in the late 1990s a transitional price regulation system was also introduced, with a five-year, CPI-X annual cap on prices charged for aeronautical services at the 11 largest privatised airports. Following a Productivity Commission inquiry in 2002, government policy has since moved towards a more light-handed regulatory regime. This includes price and quality of service monitoring for core regulated airports[6] and reliance on the generic access regime set out in Part IIIA of the Trade Practices Act rather than an aviation-specific regime.

The Australian Competition and Consumer Commission (ACCC) undertakes the monitoring function and the government has committed to review the current arrangements after five years, or earlier if there is evidence of unjustified price increases.[7] In October 2002 Virgin Blue applied to the National Competition Council (NCC) for a recommendation that various aeronautical services at Sydney domestic airport be declared under the National Access Regime. In early 2004 the Minister, based on the recommendation of the NCC, decided that the service not be declared. Virgin Blue subsequently sought review of the Minister's decision in the Australian Competition Tribunal. On 12 December 2005 the Tribunal released its decision overturning the Minister's decision and declaring the services, although this decision is currently being appealed.

The scorecard evaluates the design of the price and service quality monitoring regime for aeronautical services at the core regulated airports and the National Access Regime as it applies to airports. It does not consider the provision of aviation support services by Airservices Australia or licensing by CASA.

Ports

Port infrastructure is regulated by State and Territory governments. In most jurisdictions, ports are operated by publicly owned corporations, although there are some private operators.

In South Australia and Victoria the major services of ports (navigation, channel access, berthing and cargo marshalling) are subject to price regulation in the form of a price monitoring regime. Pilotage and towage services are no longer regulated in Victoria, and in South Australia require price notification only. There are also port

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[6] The airports subject to the price monitoring regime are Sydney, Melbourne, Brisbane, Perth, Canberra, Adelaide and Darwin.

[7] See *Government Response to the Productivity Commission Report on Price Regulation of Airport Services* 13 May 2002 downloadable at http://www.treasurer.gov.au/tsr/content/pressreleases/2002/024.asp. The Government is expected to soon release terms of reference for the next review, which will be completed by October 2006 (The Hon Warren Truss MP *Speech to the Australian Airports 24th National Convention and Industry Exhibition*, Hobart, 14 November 2005).

specific access regimes.[8] Both the price monitoring and access regimes are administered by the State's multi-sector regulator: the Essential Services Commission of South Australia (ESCOSA) and the Essential Services Commission (ESC) in Victoria.

In Queensland prices charged by port authorities are not regulated per se, but the Queensland Competition Authority does authorise reference tariffs for access for terminals that have been declared under the *Queensland Competition Authority Act (Qld) 1997*. In the other States there is no independent oversight of prices charged by ports but the shareholder Minister must approve any changes in prices or pricing structures.

The scorecard assesses the regulatory regime that applies to use of port infrastructure supplied by the port owner and associated charges. It does not assess the regulation of stevedoring services or the interaction of port facilities with other modes of freight transport such as road or rail.

Rail

Economic regulation of rail occurs at both the State and Commonwealth level. In September 1997 COAG agreed to the establishment of the Australian Rail Track Corporation (ARTC) to provide seamless interstate rail services. The ACCC has accepted an access undertaking from ARTC pursuant to the National Access Regime.

There are also state based access regimes in place in New South Wales, Victoria, South Australia, Western Australia, Queensland and the Northern Territory. These are overseen by the multi-sector regulator in each State, except that the South Australian regulator (ESCOSA) is also responsible for the NT regime. The scorecard assesses these access regimes as they apply to freight rail networks. Access to rail for the provision of passenger services, and the pricing of passenger services is not assessed.

[8] The Victorian access regime was certified by the Treasurer in 1997 as an effective regime under Part IIIA of the TPA, but this certification has since lapsed.

Water

Reform of the regulation and management of water resources was included in the CPA, and more recently with the agreement of COAG to the National Water Initiative. Each State has responsibility for regulating water prices, and in many cases water authorities remain publicly owned. In NSW, Victoria, Queensland, Tasmania and the ACT prices are set or approved by the state regulator. In South Australia and Western Australia the Minister – not the regulator – sets prices. However, these prices are reviewed for consistency with the COAG pricing principles. In the Northern Territory prices are set by the Regulatory Minister. Regulation of both bulk/rural water and household/urban water prices have been considered together where relevant for scoring purposes.

Telecommunications

Telecommunications is regulated by the Commonwealth Government. The primary economic regulator is the ACCC which oversees the telecommunications-specific access regime (Part XIC of the *Trade Practices Act*), the anti-competitive conduct regime (Part XIB of the *Trade Practices Act*) and regulatory reporting requirements. In addition, the Minister determines a system of retail price controls for Telstra following recommendations from the ACCC, which monitors compliance. Another Commonwealth body, the Australian Communications and Media Authority administers the universal service obligation, customer service standards and technical regulation. The industry's self-regulatory body, the Australian Communications Industry Forum, issues codes of practice, including for consumer protection. The scorecard represents a judgement of the overall performance of all these regulatory elements against the scoring criteria, with particular weight placed on Part XIB, XIC and the retail price controls.

Gas: Transmission

Following the Parer review, gas transmission in all states except Western Australia will be regulated by the newly formed Australian Energy Regulator (AER), which has been established under legislation as part of the ACCC. The AER will assume the ACCC's current functions in this area. These include considering and approving access arrangements submitted by transmission providers under the National Third Party Access Code for Natural Gas Pipeline Systems (The Gas Code), and arbitrating disputes. Decisions regarding which pipelines are covered by the Code, i.e. are made subject to regulation, are made by Ministers on the recommendation of the National Competition Council. The Gas Code includes a requirement for providers of covered pipelines to set reference tariffs based on justified input costs and a reasonable rate of return on capital invested. The Gas Code has been certified as an effective access regime under Part IIIA of the Trade Practices Act.

Gas: Distribution

It is expected that, in time, the AER will assume responsibility for regulation of gas distribution as well as transmission pipelines. However, at present each State and

Territory except for the Northern Territory is the responsible regulator for application of the Gas Code to the distribution pipelines in its jurisdiction.

Economic regulation of gas retailing is not covered in this scorecard. Most States and Territories have moved towards full retail contestability in natural gas retailing, although most still set prices and other conditions which are offered to small customers in the absence of the customer selecting another offer.

Electricity: Transmission

The AER has assumed responsibility for the economic regulation of electricity transmission providers under the National Electricity Law, again for all States except Western Australia. The National Electricity Law and Rules also deals with matters related to the technical operation of the National Electricity Market and these are administered by the Australian Energy Market Commission. The AER's responsibilities include regulating transmission providers' revenues as well as establishing service standards and a range of monitoring and investigation activities. The National Electricity Law and Rules have been supplemented by explanatory material issued by the AER as its Statement of Regulatory Principles, although these do not have the status of law.

Electricity: Distribution

Under the National Electricity Law network pricing for electricity distribution is regulated at a State level, based on similar principles as apply to electricity transmission. That is, state regulators are expected to apply the principles set out in the National Electricity Law. The exception is Victoria, which retains some of its own laws regarding distribution pricing. Electricity distribution and retail regulation are expected to be transferred to the AER by the end of 2006.

BEST PRACTICE REGULATORY DESIGN PRINCIPLES

The intent of the scorecard is to assess the extent to which the design of each regulatory regime achieves best practice in the design of economic regulation. As such, the scorecard focuses on higher level issues of regulatory principles and processes, rather than a detailed examination of particular regulatory determinations or outcomes.

This scorecard does not rate the decisions, or outcomes, of each jurisdiction's regulatory regime or the industry that it regulates. Rather it focuses on the extent to which the regime in each jurisdiction is *designed* in a way that is likely to foster good decisions and outcomes. Good decisions and outcomes are those which encourage efficient resource allocation by appropriately balancing the need of investors to earn a reasonable rate of return on capital and the interests of infrastructure users to obtain services at minimum feasible cost. This is true for both efficient use of existing infrastructure and efficient investment in new infrastructure for future use. Hence the focus is on scoring the enabling legislation and other guidelines underpinning each regime against good regulatory design principles.

The report does not imply that there are not tradeoffs in regulatory design or that other factors, such as the efficiency and efficacy with which a regime is implemented, will influence the quality of regulatory outcomes. There are certainly cases where a well-designed regime produces a poor decision, or a badly-designed regime manages to produce a quite sensible outcome. That said, focusing on the means, rather than the ends, should encourage regimes with a higher probability of producing socially-optimal outcomes.

Any scorecard or other attempt to distil all the relevant factors into a single number or letter necessarily involves some subjectivity, but the aim is to design a scorecard which is as objective as possible. Comparing regulation across different industries and jurisdictions requires some systematic approach in taking these factors into account. Comparison is aided by developing a scorecard for each regime. For the inaugural scorecard preference has been given to indicators which can be relatively easily verified and tested. It is intended that future versions of the scorecard will be accompanied by methodological improvements as further information becomes available.[9]

A well-designed regime tends to (but not always) produce sensible regulatory outcomes, which result in an efficient allocation of society's resources and appropriate signals for efficient investment.

[9] One possible refinement may be to develop metrics which examine the relative level of compliance costs a regulatory regime imposes. Due to variations in regime design and level of detail in regulators' annual reports, it was decided that a robust metric could not be determined at present.

Of course, this is not to say that good design is in all cases enough to ensure efficient regulatory outcomes. No matter how well designed, any regulatory regime can fall short of producing good outcomes, due to a range of other factors including human error, judicial activism, corruption, informational asymmetries, or because of political and tabloid pressure (even where the black letter design of the regime might make it 'theoretically' independent from government). While important, these factors are deemed to be outside the scope of the purpose of this scorecard, which focuses more specifically on design issues.

Design issues are an important matter in their own right, as experience in both Australia and overseas has shown that where regulatory regimes are not independent, transparent, accountable and do not focus on promoting efficient outcomes the risk of regulatory failure is greater, because there are not as many checks and balances built into the regime. The recently concluded COAG *Competition and Infrastructure Reform Agreement* commit all the Commonwealth, State and Territory Governments to improving the design the current infrastructure regulation to more closely meet these best practice criteria.

Independence

There is agreement that the regulator should be independent from the regulated entities and, as far as possible, from government influence. Independence increases the perception of neutrality and objectivity in regulatory decision making. Ultimately a credible and objective regulator will increase the confidence of all market participants and they are then more likely to participate further in infrastructure sectors.

Accountability

Independence does not imply that the regulator itself is not accountable. There should be procedures in place to scrutinise the regulator's performance against its objectives. Such procedures commonly include publication of decisions and the ability to appeal the regulator's decision in some cases. Another effective mechanism to promote accountability is to separate decisions on regulatory policy from regulatory activity. In other words, Governments or an independent body such as the National Competition Council or the Productivity Commission decide the threshold questions of whether to regulate, and if so what type of regulatory regime is most appropriate, before delegating responsibility for implementation and management of the regulatory framework to the appropriate regulator.

Transparency, Predictability and Consistency

The regulator should follow principles of good decision-making such as transparency, predictability, flexibility, administrative efficiency, timeliness and good communications. These principles also increase confidence in the regulatory regime, and impose a discipline on the regulator to make better decisions. Again this is a matter of degree. Good decision-making draws an acceptable balance between predictability and consistency on one hand, and flexibility and discretion on the other. Economic regulation inevitably trespasses on existing property rights and

so it is important that the uncertainty attached to regulatory decision making is limited as far as is possible without overly fettering the regulators' discretion to make the most appropriate decision.

Efficiency focussed

Economic regulation should only be used where there is evidence of persistent structural impediments to achieving efficient use of, operation and investment in infrastructure by relying on market mechanisms alone. Where the case for regulatory intervention has been made, it is still vitally important that, as far as possible, the regulatory regime is appropriately structured to try and achieve a reasonable proxy for efficient outcomes in the absence of a well functioning market. The regulation should be concerned not only about its impact in the regulated market, but also the effect in the markets for related good and services.

Regulation is not costless. Economic regulation is typically a particularly intrusive form of regulation. As a regulator can never have perfect information, there is also a risk of regulatory error. For these reasons an efficiency-focused regime should be as light-handed as possible, and only regulate such matters as is necessary to promote efficient outcomes. What needs to be regulated or how best to regulate it may change over time, so an efficiency-focused regime will also have provisions for the review of regulatory decisions over time.

RESULTS

The following tables summarise the degree of achievement of best practice, by jurisdiction and by sector, on a scale of Very Poor, Poor, Fair, Good and Very Good, where "n.a." denotes either not applicable or data not available (data on timeliness was not available for some jurisdictions).

Aggregate results

No jurisdiction or sector was able to achieve an Overall rating of Very Good. Only the regulation of ports in SA was able to meet enough good regulatory design principles to achieve a Very Good ranking.

As "best practice" is a continually evolving concept, even the sole regime currently rated as Very Good (let alone the rest) will need to keep evolving to maintain the current ranking – the "best practice" goal posts will keep shifting out.

A number of jurisdictions also received a grade of Very Poor regulatory design. This included port regulation in NSW, WA, Tasmania and port and water regulation in NT. These regimes lacked an independent or transparent regulatory process, with pricing and access decisions made inside publicly owned corporations. This is not to suggest that public ownership is incompatible with good regulation. Other sectors with publicly owned infrastructure, including Victorian ports and NSW water authorities scored relatively well.

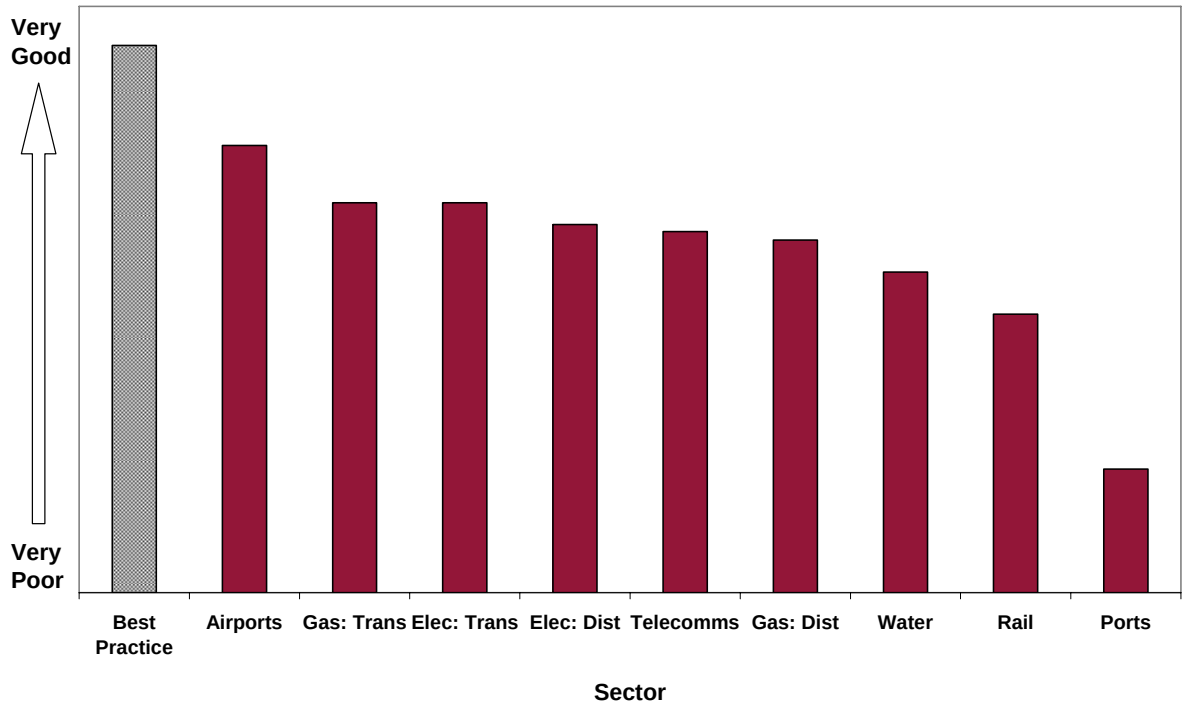
More generally, the point can be made that no one type of regulatory regime tended to outperform all others. This partly reflects the trade-off between the various regulatory design principles, but also illustrates the importance of designing the most appropriate regulatory regime for a particular industry, based on the nature of and degree to which market failure exists.

Smaller jurisdictions also tended to perform more poorly in the scorecard, although this should be interpreted with caution. Where the level of regulatory activity is smaller, it may be not be as necessary for a regulator to produce large amounts of explanatory material (thereby scoring points on transparency and accountability) in order to promote good regulatory decision-making.

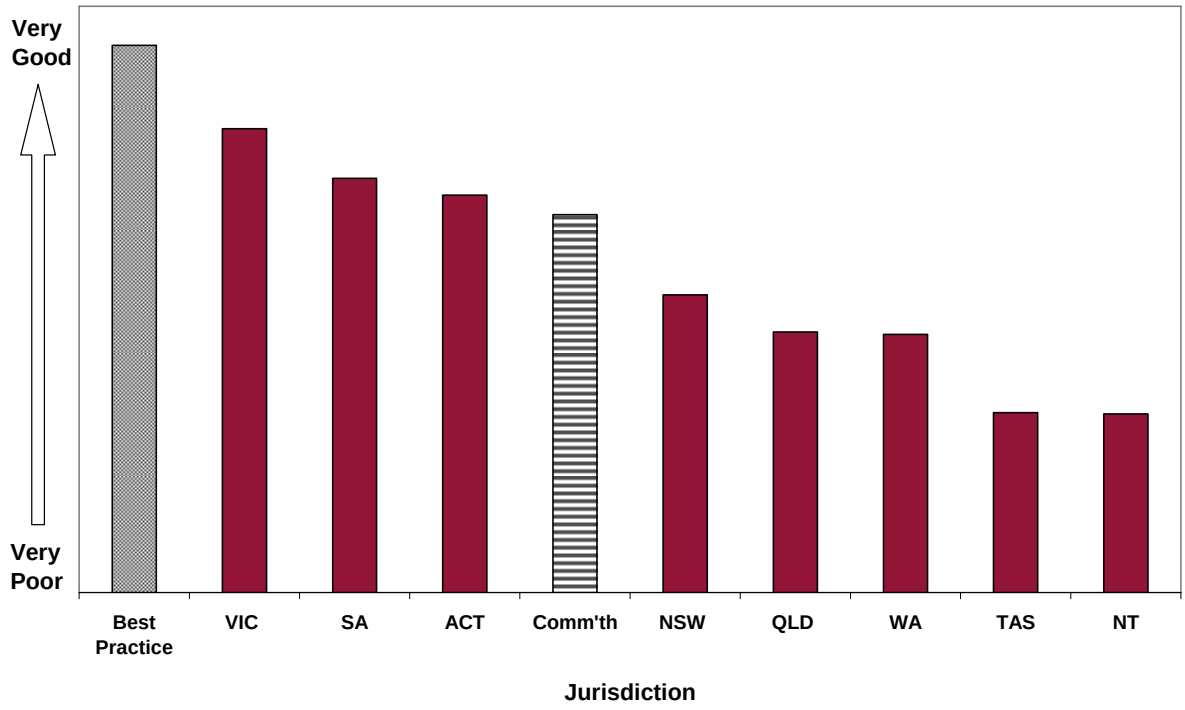
Jurisdiction / Sector	Comm' wealth	NSW	VIC	QLD	SA	WA	TAS	ACT	NT	Overall Sector Rating
Airports	Good	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	**Good**
Ports	n.a.	V.Poor	Good	Poor	V.Good	V.Poor	V.Poor	n.a.	V.Poor	**Poor**
Rail	Fair	Fair	Good	Poor	Good	Good	n.a.	n.a.	Good	**Fair**
Water	n.a.	Fair	Good	Fair	Fair	Poor	Fair	Good	V.Poor	**Fair**
Telecomm	Fair	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	**Fair**
Gas: Trans	Fair	n.a.	n.a.	n.a.	n.a.	Fair	n.a.	n.a.	n.a.	**Fair**
Gas: Distb	n.a.	Good	Good	Fair	Good	Fair	Fair	Fair	Fair	**Fair**
Elec: Trans	Fair	n.a.	n.a.	n.a.	n.a.	Fair	n.a.	n.a.	n.a.	**Fair**
Elec: Distb	n.a.	Good	Good	Fair	Good	Fair	Fair	Good	Good	**Fair**
Overall Jurisdiction Rating	**Fair**	**Fair**	**Good**	**Fair**	**Good**	**Fair**	**Poor**	**Good**	**Poor**	

The results show that most of Australia's infrastructure regulatory regimes are rated as being mediocre to good overall, compared with best practice design principles. The following charts provide an indication of the relative differences between sectors and jurisdictions.

Design of Economic Regulation by Sector



Design of Economic Regulation by Jurisdiction



A more detailed analysis of each sector is given under the following subheadings.

Airports

The regulation of the major capital city airports is generally considered good, with points gained for accountability and consistency across jurisdictions. Significant regulatory discretion as to the structure of the price monitoring regime translated into only a Fair score for the transparency and efficiency focus of the regime.

Jurisdiction / Criteria	Comm' wealth	NSW	VIC	QLD	SA	WA	TAS	ACT	NT	Overall Sector Rating
Independent	Good	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	**Good**
Focussed	Fair	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	**Fair**
Transparent	Fair	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	**Fair**
Accountable	Good	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	**Good**
Overall Jurisdiction Rating	**Good**	**n.a.**	**n.a.**	**n.a.**	**n.a.**	**n.a.**	**n.a.**	**n.a.**	**n.a.**	**Good**

Ports

Regulation of ports generally scored poorly, as in many jurisdictions ports are still government owned, and independent and transparent regulatory oversight does not exist. That said, a few jurisdictions have very well designed regimes, namely Victoria and SA, which were both rated Very Good. In these States the prices charged for port services are monitored by an independent regulator with the option for port users to seek relief under an access regime if commercially negotiated prices cannot be agreed upon.

These ratings do not simply reflect the decision of some jurisdictions to retain port authorities as public corporations, rather than having been privatised. Other infrastructure sectors also have significant public monopoly ownership. For example, most water authorities remain publicly owned, but there has been a movement to ensuring prices are set transparently and in accordance with the reasonable costs of provision and demand, resulting in higher ratings for the (also publicly-owned) water sector. As a result, public ownership does not necessary have to go hand-in-hand with poor regulatory design.

Jurisdiction Criteria	Comm' wealth	NSW	VIC	QLD	SA	WA	TAS	ACT	NT	Overall Sector Rating
Independent	n.a.	Poor	V.Good	Poor	V.Good	Poor	Poor	n.a.	Poor	**Fair**
Focussed	n.a.	Poor	Good	Poor	Good	V.Poor	V.Poor	n.a.	V.Poor	**Poor**
Transparent	n.a.	V.Poor	V.Good	Poor	V.Good	V.Poor	V.Poor	n.a.	V.Poor	**Poor**
Accountable	n.a.	V.Poor	Good	Fair	V.Good	V.Poor	V.Poor	n.a.	V.Poor	**Poor**
Overall Jurisdiction Rating	**n.a.**	**V.Poor**	**Good**	**Poor**	**V.Good**	**V.Poor**	**V.Poor**	**n.a.**	**V.Poor**	**Poor**

Rail

This was another sector where results were mixed. An area where many jurisdictions performed poorly was under the efficiency-focussed category. This reflects a lack of review mechanisms built into rail access regimes, and limited use of incentive pricing mechanisms.

Again, Victoria and South Australia performed better overall than other jurisdictions due to a greater focus on transparency and accountability mechanisms. The lack of consistency between jurisdictions brought down the overall rating for the rail sector.

Jurisdiction / Criteria	Comm' wealth	NSW	VIC	QLD	SA	WA	TAS	ACT	NT	Overall Sector Rating
Independent	Good	V.Good	V.Good	Poor	V.Good	Good	n.a.	n.a.	V.Good	**Good**
Focussed	Fair	V.Poor	Poor	Poor	Poor	Good	n.a.	n.a.	Fair	**Poor**
Transparent	Poor	Fair	V.Good	Poor	V.Good	V.Good	n.a.	n.a.	V.Good	**Fair**
Accountable	Good	Good	V.Good	Fair	Good	Fair	n.a.	n.a.	Fair	**Good**
Overall Jurisdiction Rating	**Fair**	**Fair**	**Good**	**Poor**	**Good**	**Good**	**n.a.**	**n.a.**	**Good**	**Fair**

Water

The water sector received an Overall rating of Fair. Victoria and ACT scored best, due to greater independence of the regulator to determine appropriate prices. Most jurisdictions scored well for transparency and accountability, due to the publication of transparency statements assessing the compliance of water authorities with COAG pricing principles.

Jurisdiction Criteria	Comm' wealth	NSW	VIC	QLD	SA	WA	TAS	ACT	NT	Overall Sector Rating
Independent	n.a.	V.Good	V.Good	Poor	Poor	Good	V.Good	V.Good	V.Poor	**Good**
Focussed	n.a.	Poor	V.Good	Poor	V.Poor	V.Poor	Poor	Fair	Fair	**Poor**
Transparent	n.a.	Good	Fair	Good	Good	Poor	Fair	Fair	V.Poor	**Fair**
Accountable	n.a.	Good	Good	Fair	Good	Fair	Good	Good	V.Poor	**Fair**
Overall Jurisdiction Rating	**n.a.**	**Fair**	**Good**	**Fair**	**Fair**	**Poor**	**Fair**	**Good**	**V.Poor**	**Fair**

Telecommunications

The design of the telecommunications regulatory regime currently falls some way short of best practice. There are some issues with timeliness, deficiencies in appeals mechanisms and a lack of separation between the body responsible for regulatory policy and the body responsible for implementation – for example the ACCC decides which services need to be regulated and then is also responsible for regulating them.

Jurisdiction / Criteria	Comm' wealth	NSW	VIC	QLD	SA	WA	TAS	ACT	NT	Overall Sector Rating
Independent	Good	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	**Good**
Focussed	Good	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	**Good**
Transparent	Good	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	**Good**
Accountable	Fair	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	**Fair**
Overall Jurisdiction Rating	**Fair**	**n.a.**	**n.a.**	**n.a.**	**n.a.**	**n.a.**	**n.a.**	**n.a.**	**n.a.**	**Fair**

Gas: Transmission

Overall, rated reasonably well, though lost points in the efficiency-focused category. This reflected the level of discretion given to regulator when making coverage and revenue decisions.

Jurisdiction Criteria	Comm' wealth	NSW	VIC	QLD	SA	WA	TAS	ACT	NT	Overall Sector Rating
Independent	Good	n.a.	n.a.	n.a.	n.a.	Good	n.a.	n.a.	n.a.	**Good**
Focussed	Poor	n.a.	n.a.	n.a.	n.a.	Poor	n.a.	n.a.	n.a.	**Poor**
Transparent	Good	n.a.	n.a.	n.a.	n.a.	Good	n.a.	n.a.	n.a.	**Good**
Accountable	Good	n.a.	n.a.	n.a.	n.a.	Good	n.a.	n.a.	n.a.	**Good**
Overall Jurisdiction Rating	**Fair**	**n.a.**	**n.a.**	**n.a.**	**n.a.**	**Fair**	**n.a.**	**n.a.**	**n.a.**	**Fair**

Gas: Distribution

Generally rated well, though could improve slightly in focusing on economic efficiency and for not using best practice regulatory tools to increase the rating under the efficiency-focused category.

Jurisdiction / Criteria	Comm' wealth	NSW	VIC	QLD	SA	WA	TAS	ACT	NT	Overall Sector Rating
Independent	n.a.	V.Good	V.Good	Poor	V.Good	Good	Poor	V.Good	Good	**Good**
Focussed	n.a.	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	**Poor**
Transparent	n.a.	Good	Good	Good	Good	Good	Good	Good	Good	**Good**
Accountable	n.a.	Good	Good	Good	Good	Good	Good	Fair	Good	**Good**
Overall Jurisdiction Rating	**n.a.**	**Good**	**Good**	**Fair**	**Good**	**Fair**	**Fair**	**Fair**	**Fair**	**Fair**

Electricity: Transmission

Overall, rated quite well. Lost points for transparency due to the uncertainty and level of discretion surrounding the application of the regulatory test.

Jurisdiction / Criteria	Comm' wealth	NSW	VIC	QLD	SA	WA	TAS	ACT	NT	Overall Sector Rating
Independent	Good	n.a.	n.a.	n.a.	n.a.	Good	n.a.	n.a.	n.a.	**Good**
Focussed	Fair	n.a.	n.a.	n.a.	n.a.	Fair	n.a.	n.a.	n.a.	**Fair**
Transparent	Fair	n.a.	n.a.	n.a.	n.a.	Fair	n.a.	n.a.	n.a.	**Fair**
Accountable	Good	n.a.	n.a.	n.a.	n.a.	Good	n.a.	n.a.	n.a.	**Good**
Overall Jurisdiction Rating	**Fair**	**n.a.**	**n.a.**	**n.a.**	**n.a.**	**Fair**	**n.a.**	**n.a.**	**n.a.**	**Fair**

Electricity: Distribution

Scored well on most criteria, but lack of consistency between jurisdictions in regulatory decisions reduced the overall ranking. Victoria was marked down under the independence criterion due to its derogation from the National Electricity Law with respect to distribution pricing tariffs.

Jurisdiction / Criteria	Comm' wealth	NSW	VIC	QLD	SA	WA	TAS	ACT	NT	Overall Sector Rating
Independent	n.a.	V.Good	Fair	Poor	V.Good	Good	Poor	V.Good	V.Good	**Good**
Focussed	n.a.	Fair	Fair	Fair	Fair	Fair	Fair	Fair	Fair	**Fair**
Transparent	n.a.	Good	Good	Good	Good	Good	Good	Good	Good	**Good**
Accountable	n.a.	Fair	Good	Fair	Fair	Fair	Fair	Fair	Fair	**Fair**
Overall Jurisdiction Rating	**n.a.**	**Good**	**Good**	**Fair**	**Good**	**Fair**	**Fair**	**Good**	**Good**	**Fair**

APPENDIX A: SCORECARD METHODOLOGY

This appendix sets out the methodology which has been used to construct a scorecard from the best practice principles identified in of the body of this Report.

SCORING CRITERIA

The various dimensions of best practice discussed in Section 2 have been translated into a number of scoring criteria against which each regime is assessed. These criteria have been grouped into five broad categories. These categories, and the assessment criteria used are set out below.

- **Independence**
  - Is the regime sufficiently independent from Government?
  - Is the regime sufficiently independent from industry and other stakeholders?
- **Efficiency focused**
  - Is the regime's primary objective to promote efficient resource allocation?
  - Does regulation only apply where rigorous cost-benefit analysis has shown a net benefit from regulation?
  - Are there mechanisms to periodically review the need to regulate?
  - Does the regime make use of best practice regulatory tools?
- **Transparency, predictability and consistency**
  - Are decision-making processes clear and transparent?
  - Is appropriate guidance given to the regulator on the exercise of regulatory discretion?
  - Does the regime make sufficient use of public consultation?
- **Accountability**
  - Are independent, timely and streamlined appeal mechanisms available?
  - Does the regulator publish reasons for its decisions?
  - Are regulatory policy/coverage decisions made by a separate body from that charged with implementation?
  - Does the regime operate in a timely manner?

Naturally, there is some overlap among criteria – for example while "publishing reasons" is important for accountability, it also contributes to transparency. As a result, the headings and groupings are mainly for convenience rather than an exhaustive list of all criteria which might impact on each group heading.

For each criterion a regulatory regime may achieve a score of 0, 1 or 2. Broadly speaking, the performance hurdles for each criterion are set as shown in the following table:

Score	Performance
0	Poor performance – regime satisfies few, if any, criteria of best practice
1	Intermediate performance – regime satisfies some criteria of best practice
2	Very good performance – regime satisfies all or almost all criteria of best practice

The landscape pages at the end of this appendix show in more detail the level of performance assessed as obtaining a score of 0, 1 or 2 for each criteria.

CRITERIA WEIGHTING

Each criterion has been assigned a weighting based on its importance, and the number of other criteria in each category. The weightings for the broad categories are shown in the table below.

Scorecard Category	Weighting
Independence	15
Efficiency Focus	20
Transparency/Predictability/Consistency	15
Accountability	25
Total	**75**

OVERALL SCORE

Once the weighting is applied and the results are aggregated, each regulatory regime is awarded an overall rating, corresponding with a weighted score as set out in the table below. The rating bands are not of uniform width, reflecting the view that a significant level of performance is required to meet the baseline rating of fair. A regime that meets best practice in every criterion would achieve a maximum score of 75.

Weighted score	Rating
0-28	Very poor
29-44	Poor
45-57	Fair
58-68	Good
69-75	Very Good

Where data is not available for some components of the scoring system, the rating is based on the available data, with ratings cut offs scaled appropriated to the reduced total.

ACROSS JURISDICTION AND SECTOR COMPARISONS

The results are aggregated to allow jurisdictional and sectoral comparisons. The overall score for each State/Territory is constructed by adding together the scores for the applicable sectors in that State/Territory. Each sector receives an equal weight in the overall score for each jurisdiction.

To obtain an overall score for each sector a weighted average of the scores of the regulatory regime of that sector in all States/Territories is obtained. The weighting used depends on the number of jurisdictions involved.

Where a sector is only regulated at a national level (eg airports and telecommunications) the sector average is equivalent to the score given to the Commonwealth regulatory regime. Where regulation is solely a State responsibility (eg ports, water) the weights applied reflect the jurisdictions' relative percentage share of GDP in 2004-05. Where regulation exists at both the Commonwealth and State level, the Commonwealth regime is allocated an arbitrary weighting of 25%.[10]

A loading is then added to the weighted average score to reflect the consistency of regulation across jurisdictions. That is, in addition to the score out of 75 described above, a further mark out of 10 is added depending on the degree of consistency across jurisdiction. The cut offs for each rating are increased by 13.3% to allow for a total score out of 85 rather than 75.

The following landscape pages detail the criteria and weights used in the rating of each sector and jurisdiction.

[10] Sensitivity testing has indicated that the weighting chosen for the Commonwealth overlay regime does not affect the final ranking.