



Australian Government

**Department of Resources,
Energy and Tourism**

Submission to the Productivity Commission on the Impacts of COAG Reforms

SUBMISSION OF THE DEPARTMENT OF RESOURCES, ENERGY AND TOURISM

The Department of Resources, Energy and Tourism (DRET) welcomes the review of the impacts and benefits of specified aspects of the COAG reform agenda (the Review), as set out in the Productivity Commission's Circular.

The Review covers specific COAG Reform Priority Areas (RPAs), set out on page 4 of the Circular. DRET's submission does not expressly address the Review's RPAs; however DRET considers that the Productivity Commission may wish to consider consequential issues arising from or in relation to the National Partnership Agreement to Deliver a Seamless National Economy (SNE).

DRET's submission is divided into three sections:

- the impacts and benefits on the National Mine Safety Framework (NMSF) – a SNE deregulation priority – flowing from the implementation of the nationally uniform occupational health and safety (OHS) laws, and the complementary work program of the harmonisation of OHS reform in the energy supply industry,
- broader impacts and benefits of the SNE agenda on the tourism sector, and
- the impacts and benefits on energy market reforms – a SNE competition reform priority – following the introduction of a second wave of SNE priorities in 2012.

Occupational Health and Safety Laws

DRET considers that COAG's deregulation reform in the area of OHS has positively impacted COAG's deregulation work on the NMSF¹ and should complement ongoing safety harmonisation work in the energy supply industry. The reasons for these positive associations are outlined below.

NMSF

The development of the NMSF commenced in 2002, initially by the Conference of the Chief Inspectors of Mines. Since 2005 it has been led by a tripartite Steering Group under the Ministerial Council of Minerals and Petroleum Resources.²

The NMSF is Deregulation Priority 21 of the SNE and its goal is to create a nationally consistent OHS regime in the Australian mining industry through the delivery of seven strategies. The most important of these strategies being: the delivery of greater national consistency in the State-based legislative regimes governing OHS in the mining industry. The NMSF does not propose to make changes to the legislative structure used to regulate the industry, but to facilitate legislative amendments that would deliver consistent principles and consistent outcomes.

Impacts

COAG's OHS harmonisation process has had a positive effect on the NMSF process. This is because the review of general OHS laws in States and Territories, under Deregulation Priority 1 of the SNE, has meant that OHS relating to the mining industry has been given a higher-level focus, at times. This is compared to a case where only the NMSF deregulation item was being progressed.

¹ As the Productivity Commission would be aware, DRET does not have portfolio responsibility for OHS at the Commonwealth level.

² The establishment of the Standing Council on Energy and Resources (SCER) will see the tripartite group meeting fall under SCER's auspices from September 2011.

Victoria, South Australia, Tasmania and the Northern Territory regulate the OHS activities of their mining industries through regulations under general OHS legislation. It was recognised from these States and Territory that the NMSF would need to be involved in the development of any mining specific regulations under the model OHS legislation. Accordingly, the drafting instructions developed by the NMSF Steering Group formed the basis of model OHS Mining Regulations, falling under the model OHS laws.

In relation to New South Wales, Queensland and Western Australia, who regulate OHS in their mining industry through separate mine safety legislation, these States will be collaboratively developing amendments to their respective legislation in line with the model OHS Mining Regulations under the model OHS laws. The three states have committed to undertake a coordinated approach to their legislative amendments to ensure a consistent, and where possible uniform, outcome is achieved.

This approach will deliver the NMSF goal of a base level of national consistency across all jurisdictions, which is further enhanced by uniformity between those states adopting the model OHS Mining Regulations and a greater level of consistency, and where possible uniformity, between those states maintaining mining specific OHS legislation.

Energy Safety Framework Harmonisation

DRET also considers that the OHS harmonisation process complements work underway to improve the harmonisation of energy safety standards across jurisdictions. A separate work program for this sector has been established to complement COAG's implementation of the nationally uniform OHS laws, underpinned by the development of the Intergovernmental Agreement (IGA) on Energy Supply Industry Safety.

The objectives of this IGA are to put in place a nationally harmonised safety framework for the energy supply industry, which ensures public and industry safety and contributed to the efficient delivery of energy network services by:

- a. facilitating greater labour mobility within and between States and Territories and transmission and distribution networks, in particular, to make possible improved emergency responses;
- b. lowering compliance burdens, particularly with regard to multi-jurisdictional energy supply industry owners and/or operators; and
- c. facilitating increased safety framework consistency across jurisdictions.

To guide this work, the IGA establishes the Energy Supply Industry Safety Committee, as a non-statutory policy and regulatory advisory body reporting to the Standing Council on Energy and Resources (SCER) through the SCER Standing Committee of Officials on the development and implementation of a nationally harmonised framework for energy supply industry safety.

SNE and its impacts on the Tourism Sector

DRET understands that the purpose of this Review is to focus on the fourteen completed RPAs (including OHS which was discussed above) and the vocational education and training reforms. Nonetheless, DRET would like to draw the Productivity Committee's attention to the fact that two of the current SNE deregulation priorities are of particular significance for the tourism industry. These are:

- environmental assessment and approvals process – a consistent and efficient system of environmental assessment and approval; and
- development assessment – improved development assessment processes which will provide greater certainty and efficiency in the development and construction sector.

The Investment and Regulation Reform Working Group (IRRWG) under the National Long-Term Tourism Strategy has undertaken an examination of the regulatory barriers which

negatively impact tourism investment decisions. The IRRWG has found land-use planning regulation, including both environmental and development assessments, entails complex and costly processes which act as deterrent to investment.

As the Productivity Commission found in its May 2011 report on planning, zoning and development assessments, the regulations and agencies involved in planning, zoning and development assessment are among the most complex regulatory regimes operating in Australia. Responsibilities cross all levels of government and, particularly at the local level can involve long drawn –out consultation processes which add time and cost for development proponents.

If a new or significantly renewed tourism project is to progress it is likely to require planning and development approval. Tourism developments, by their nature, are often 'mixed business', comprising a combination of functions including hospitality, accommodation, tourist attractions, recreational activity and retail.³ In light of this, tourism projects are often perceived as complex and the perception of complexity flows through to the timeframe for determining applications. For example, the average timeframe for determining a high-value tourism related project in Victoria is 305 days compared to 239 days for all high-value applications.⁴

Research conducted on behalf of the IRRWG found that the cost to tourism firms of going through the planning and development approval process is over 40 per cent more than for firms in other sectors of the economy.

The challenges of these layers of complexity are further compounded for the tourism industry by its composition. 93 per cent of all tourism businesses are sole operator, micro-businesses or small businesses. Only 6.5 per cent are medium sized, employing 20 to 199 people, and less than 0.5 per cent are large employing 200 or more people.⁵

It is likely many tourism projects are abandoned because small investors cannot sustain the costly delays they face or simply cannot navigate the complex planning systems.

In this regard, it is not yet apparent that the reform priorities of the SNE have produced any tangible benefits for the tourism industry.

DRET and the IRRWG are also continuing to work across portfolios to advocate for reforms which will provide for greater efficiency in development assessment. These include

- Nationally standardised land use definition and zoning to ensure tourism uses are commonly included as permitted uses in planning zones (definitions and zoning to be standardised according to the National Long-Term Tourism Strategy's Tourism Planning Guide).
- Integration of tourism demand forecasts in planning systems to ensure future tourism needs are included in policy development and zoning decisions.
- Commitment to end-to-end maximum time limits for development approvals to reduce costs and provide investor certainty (allowing assessment agencies reasonable access to stop the clock provisions to legitimately seek further information to make a decision).
- Harmonisation / consolidation of related approval requirements within and across jurisdictions (eg EPBC Act and state environmental legislation).
- Nationally consistent processes for escalating developments of state significance out of local council jurisdiction to the state level.

On 19 August 2011, COAG agreed to major reform of environmental regulation across all levels of government. The Commonwealth's commitment to greater use of strategic

³ VTIC&VEIC Submission to VCEC Inquiry into Victoria's Tourism Industry, December 2010

⁴ Tourism Investment and Regulation Review, Draft final report. LEK Consulting, May 2011

⁵ The Jackson Report on Behalf of the Steering Committee Informing the National Long-Term Tourism Strategy

approaches under the Environment Protection and Biodiversity Conservation Act to streamline approvals and increase business certainty is consistent with the National Long-Term Tourism Strategy and is expected create a more 'investment-friendly' environment. DRET is of the view that reform of development assessment processes should remain a priority for the second wave of the SNE reforms.

Second SNE and its implications for SNE One initiatives

As noted above, DRET understands that this Review's purpose is not to consider all completed RPAs. DRET further understands that the energy market RPA will be included in the Productivity Commission's next report or in later reports due in 2014 at the earliest. While energy will be a major component of one of those later reports, DRET notes that well functioning energy markets are key to the function of the SNE reforms, and that energy market reform therefore remains an important contributor to the competitiveness of the Australian economy.

To date the Ministerial Council on Energy (MCE), and now the Standing Council on Energy and Resources (SCER), has implemented major reforms through the creation of a number of national independent energy market institutions and the development of national laws covering both economic and non-economic regulation.

However, energy market reform is not complete – there are a number of reforms within the first tranche of SNE reforms which are as yet incomplete, for example in relation to retail price regulation, demand side reforms (including the roll-out of smart meters and completion of Stage 3 of the Australian Energy Market Commission's (AEMC's) Demand Side Participation Review) and ownership. In addition, the Commonwealth announced a number of further reforms, to be progressed through or developed with SCER as part of the Clean Energy Future package:

- Bringing forward a statutory review of the current network merits review appeal process to ensure it is delivering effective outcomes that are both fair for consumers and network businesses;
- Commissioning independent reviews to benchmark distribution network efficiency and to consider whether the current transmission investment and planning frameworks are providing the optimal level of investment, with particular emphasis on the capacity to transfer power between States through interconnectors.
- Assessing whether the incentives in the existing regulatory framework are delivering improved efficiency in network businesses and identifying opportunities to improve productivity, regardless of ownership structure; and
- Undertaking a scoping study for the establishment of an energy information hub to improve energy information disclosure that would provide consumers with easier access to their energy information currently held by retailers and distributors.

Issues associated with the introduction of electric and natural gas vehicles, as a special case of demand side participation, are also being considered through a parallel AEMC review. These reforms will be led by SCER, which will have ultimate responsibility for their implementation, but DRET sees value in their being supported through inclusion in the SNE. These reforms would usefully be in addition to those reforms already identified in the first wave of reforms which remain incomplete.