MINERALS COUNCIL OF AUSTRALIA

SUBMISSION:

ANNUAL REVIEW OF REGULATORY BURDENS ON BUSINESS

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EXECUTIVE SUMMARY AND RECOMMENDATIONS

This submission is provided by the Minerals Council of Australia (MCA) in association with Associate Members of the MCA – the Chamber of Minerals and Energy of Western Australia, the New South Wales Minerals Council, the Queensland Resources Council and the Tasmanian Minerals Council – and the Victorian Division of the Minerals Council of Australia.

This inquiry is very important

Economic prosperity and growth depend on stable, well performing government institutions and markets. The regulatory system – the laws or other government rules that influence or control the way people and businesses behave – provides the nuts and bolts to implement legislation and government policies. It thus represents a vital part of the institutional framework to enable society to achieve its objectives.

The prosperity Australia has enjoyed over the last two decades is partly the result of past deregulation. Paradoxically, in recent years, Australian governments at all levels have been adding new rules and regulations faster than they have removed or simplified existing rules. This must not continue. Our international competitors continue to improve so we must be ever vigilant in reducing the regulatory burden on Australian business – that is, the dead weight, compliance and opportunity costs – and thereby improving the sustainable development of the economy for future generations of Australians.

A once in a generation opportunity

With its vast natural endowment in minerals resources Australia is well positioned to capitalise on the strongest global sector growth in a generation. This is because the global economy is a couple of years into a supercycle of mineral resource demand, underpinned by a shift in the engines of growth from OECD to non-OECD countries as a range of countries – notably China, India, Russia and Brazil – go through an industrial revolution comparable to that of Japan and the USA in the past.

All Australian's have an interest in mineral sector and thus economy-wide efficiency

The minerals industry represents about 8 per cent of the national economy, is Australia's largest export earner, provides the socio-economic fabric to much of regional and remote Australia and underpins vitally important demand and supply relationships with the manufacturing, construction, transport, energy and services sectors of the economy. Given the strong growth in demand for mineral resources principally due to industrialisation in developing countries, all Australians have a stake in ensuring sustainable value in the legitimate exploitation of our mineral endowment – what we consider to be generating enduring value beyond "life of mine".

However, in a highly globally competitive market and a globally structured industry, **significant minerals endowment *does not* automatically equate to competitive strength (or comparative advantage).** World markets are rapidly changing the way they do business as both developed and emerging economies diversify their sources of supply and seek to better influence contract prices.

Clearly**,** maintaining an economy sufficiently flexible to meet the challenges of the global market will be a never-ending challenge. Australia cannot afford to become complacent and believe that governments have largely completed their task in reforming the economy, just as industry cannot suspend or inhibit continued improvement in efficiency, technology and productivity.

The sector coverage of the terms of reference are too narrow

The importance of the Productivity Commission's five year *Review of Regulatory Burdens on Business* is that it should identify reforms to enhance regulatory effectiveness and efficiency in form and function, improve national consistency, reduce duplication and overlap in Commonwealth/ State/Territory regulation and improve the capacity and performance of regulatory bodies. The process should also stimulate/facilitate greater microeconomic reform more generally.

Regulation impacts all aspects of the minerals sector's value chain. Given the importance of minerals in the economy it is in the national interest that such regulation is efficient and least cost.

However, the Inquiry's terms of reference limit the ability of the Commission to address the impact of government regulation on the full range of minerals sector activity**.** Specifically**,** in 2007 they focus on the burdens on primary industry businesses – including mining exploration and extraction. The minerals sector's wealth creation chain goes well beyond exploration and extraction and includes mineral processing (eg. smelting and refining) and commodity transport, both vital to overall efficiency and performance. In fact it is estimated around a third of minerals sector activity is outside "mining", as defined for this inquiry.

If this Inquiry is to render real value add to the productivity of the Australian economy, it is critical that the Productivity Commission appreciates that minerals production is a much broader activity than, exploration and pure extraction. In particularly, it also includes minerals processing and privately owned transport infrastructure. In addition, the minerals industry is impacted by the efficiency of the broader economy, including the transport (of industrial inputs, intermediate products and

export and other final products), financial services and construction sectors.

The Jurisdictional coverage of the Terms of Reference are too narrow

The minerals industry seeks *minimum effective regulation* that is performance-based (non-prescriptive) as far as possible. We also advocate the development of operational guidelines for government and industry that underpin the performance-based approach in order to remove subjectivity. Regulations should:

- be targeted at the identified problem or issue and not impose unnecessary burdens;
- be only used where it is demonstrably the most economically efficient way of addressing the problem or issue in question; and
- assist the minerals industry meet the criteria of community acceptance and in underpinning its implied 'social licence to operate'.

Minimising the 'regulatory burden' on business is not about minimising regulation itself – regulation is necessary to achieve the objectives of a modern state. What is required is an overarching national framework to consider both the development of and the harmonisation of regulations among jurisdictions. **The Council of Australian Governments should therefore be invited to approve an expansion of the scope of the review to cover all jurisdictions and ideally all three levels of government**.

Moreover, national assessments of regulations should be accompanied by arrangements for jurisdictions to work together and with industry in order to harmonise and improve the efficiency of regulation across Australia. To ensure the effectiveness of regulations, governments should also outline clearly their administrative and compliance requirements in a whole-of-government way, otherwise administrative problems arise from poorly defined responsibilities between agencies both within and between jurisdictions.

The minerals industry recently assessed the regulations in all Australian jurisdictions for exploration and mining project approvals and has provided the resulting Reports to the Commission. These studies found that over time, long-standing areas of regulation, such as mining tenement administration, have been refined to the point where systems work efficiently and well.

Although systems may differ between jurisdictions, they are broadly similar and well understood by industry and agency staff. Problems tend to arise in the design of relatively new areas of regulation, such as environmental management, cultural heritage and access to land. In addition, poor administration and the plethora of regulations impacting major project investment imposes unnecessary burdens on business. Investment proponents typically have to deal with many areas of Commonwealth/State/Territory bureaucracy, with multiple agencies and with many Acts of Parliament and other regulations.

Capacity constraints are the key economic issues of the moment

For the foreseeable future the global resource base is not likely to be a major constraint to supply – rather the limiting factors to supply are production constraints, barriers to investment and market, access. Australia is well placed to capitalise on the structural change in the market, but in striving to meet increasing global demand the industry faces the absolute limits of supply capacity.

The minerals industry is keenly aware of its responsibilities in addressing capacity constraints and maintaining its social license to operate.

The industry's vastly improved environmental and social stewardship in its core business of converting natural endowment to societal capital (ie providing both financial and non-financial benefits) has contributed to the industry's social licence to operate. Governments need to complement industry's contribution by ongoing improvement in the regulatory licence issued by government.

The minerals industry has advocated that Australia should use the proceeds of the current minerals expansion to invest in nation building and wealth creation for future generations rather than for measures such as tax cuts that stimulate domestic spending. Australian Government Budget policy has continued to adhere to sound macroeconomic principles and significant road, rail and port investment by State/Territory governments is under way.

Government's involvement needs to be broader still if Australia is to fully capitalise on the opportunities of the strongest global market growth in a generation, and the remarkable transformation in the industry's operations in its commitment to sustainable development. Government and industry in partnership must address key capacity constraints to growth:

- **occupational health and safety** – systems are prescriptive, inconsistent and inefficient and deliver "after the fact" retribution rather than preventative nationally consistent regulations ensuing no reduction in standards;
- **human capital** – the industry needs an additional 70,000 people by 2015, a significant increase on present employment levels; the vocational education and training system needs reform to ensure it is market rather than trainer provider driven;
- **land access** – regulatory project approvals covering exploration and mining licences and environmental approvals are cumbersome, complex and inconsistent. In addition, Native Title Representative bodies need to be better

resourced by government to ensure smooth and timely negotiations with minerals companies for land access;

- **transport infrastructure** – institutional reforms are required to improve the national consistency and efficiency of Australia's infrastructure regulations. The fundamental point in addressing systemic failure in Australia's mineral export corridors is the efficiency and effectiveness of the whole transport and logistics chain – not merely an element of it;
- **energy and water** – the National Water Market and National Energy Market should be fully operational and energy and water reforms for international competitiveness must continue;
- **climate change** – we are working for a global solution to reconciling energy demand with greenhouse gas abatement and adaptation providing a suite of complementary transition measures, step-change technologies and market discovery mechanisms;
- **regional development** – clarification of the respective roles of industry and government in the development of sustainable communities is an urgent priority. For too long, the minerals industry has had to act as a proxy for governments (Federal, State and Local) in providing social infrastructure in regional and remote areas, despite the high levels of taxes and royalties generated from these regions.

A third wave of regulatory reform

Australia needs a "third wave" of regulatory reforms founded in a partnership between government and industry that redresses the artificial constraints to growth and optimises the financial, environmental and social dividends of our business to the benefit of all Australians now and into the future.

The two "waves of economic reforms" over the past two and a half decades (financial/tariff/budgetary reform and competition and other micro-economic reforms) vastly improved Australia's competitiveness and productivity, and laid strong foundation for the minerals industry's continued investment and growth. But they also exposed inherent weaknesses in the capacity of markets and the constraints of the regulatory system to accommodate critical environmental and social considerations.

The MCA's recommendations focus on how to improve the:

- regulatory laws or other government rules that influence or control the way people and businesses behave;
- extent to which the processes are well designed to achieving the regulatory goal without adversely affecting industry's wealth creation process; and
- adequacy of resources provided to regulatory agencies and the efficiency with which they are employed.

RECOMMENDATIONS

The MCA recommends:

- The terms of reference for the Review of Regulatory Burdens on Business be expanded to enable the Productivity Commission:
  - to review the burden of the stock of State/Territory and relevant Local Government regulation on business, particularly in preventing the remedying of regulatory capacity constraints to growth; and
  - to ensure regulatory burdens on the full value chain of the minerals industry are adequately considered.

Occupational Health and Safety (OH&S)

- Priority be given to the implementation of the National Mine Safety Framework as the basis for achieving national consistency in occupational health and safety regulation:
  - all legislation should be risk management based and framed around the concept of acceptable risk;
  - regulatory regimes should encourage reporting of incidents to share lessons learned and provide the basis for continuous improvement in safety outcomes;
  - standards applied and actions taken by regulators should be consistent across jurisdictions; and
  - codes of practice and guidelines should be developed and applied on a national basis and provide consistent parameters for mining operators.
- There should be a nationally consistent approach to enforcement policies with graduated enforcement measures applied. Prosecution should be limited to cases where there is evidence of gross negligence or wilful misconduct, causing fatalities or other serious injuries.

Vocational education and training and higher education

The Vocation Education and Training (VET) reform agenda ensure there are no regulatory impediments by:

- focusing on education, training, employment and the workforce in line with industry needs;
- redirecting public funding of training to areas of greatest need within the national economy and in the case of the minerals industry to the metal trades and semi skilled areas; and

- delivering nationally consistent and streamlined pre-employment training for secondary students and school leavers in the traditional trades in greatest demand.

To promote movement of people and equipment around Australia, the MCA strongly supports mutual recognition of skills across jurisdictions.

Skilled migration

The minerals industry seeks a skilled migration system where:

- 457 Visa arrangements are flexible and avoid unnecessary processing delays;
- fast tracking processes are available for pre-qualified companies to ensure recruitment times are less than 3 months; and
- fast tracking of processing times is available for skilled occupations paid over a minimum salary cap;
- highly skilled occupations and those with identified skills gaps remain exempt from labour market testing;
- other skilled occupations to be registered with a Job Network member or other recruitment company to be done concurrently with the skilled migration application process rather that a mandatory 28 day registration period;
- continued access to employer sponsored visas for "labour hire" companies and their associated obligations, provided the labour hire company remains the direct employer of the 457 visa holder; and
- employers are to be denied access to the 457 Visa if they misuse the process.

Resourcing of Native Title Representative Bodies

- The Australian Government ensure adequate, performance-based resourcing to Native Title Representative Bodies, both in terms of human and financial capital, to assist them in providing a critical platform to the minerals industry to negotiate mutually beneficial outcomes with Indigenous Australians.
- The Australian Government provide core funding to Prescribed Bodies Corporate to ensure that they are functioning and effective organisations with capacity to:
  - meet their statutory requirements and obligations;
  - engage in agreement making with third parties; and
  - secure further assistance from existing programs.

Cultural heritage issues

- That a single heritage register is maintained by the Commonwealth, incorporating sites and artefacts of both National and State significance; and
- That the Commonwealth advocates nationally consistent cultural heritage identification and assessment processes and, where appropriate, the development of bilateral agreements to achieve desirable efficiency improvements and reduce compliance costs and delays in approval processes.

Minerals industry project approvals

The Australian Government working through the Council of Australian Governments (COAG) and with industry:

- improve all jurisdictions' project approvals processes and progress to nationally consistent processes without lesser environmental and community outcomes;
- ensure approval processes target the identified problem or issue and do not impose unnecessary burdens on industry in meeting the criteria that underpin its implied "social licence to operate".

Environment Approvals - Environment Protection and Biodiversity Conservation Act

- Establishment of Approvals Bilateral Agreements with all States as a matter of urgency.
- Those States that are yet to enter into Assessment Bilateral Agreements with the Commonwealth be encouraged to do so to achieve desirable efficiency improvements and reduce compliance costs and delays in approval processes.

Assessment of Site Contamination NEPM

- To overcome inappropriate use of data by regulators under the Assessment of Site Contamination National Environmental Protection Measure (NEPM) and the National Pollutant Inventory NEPM, specific guidance needs to be included to ensure that data users are aware of the limitations of the data and the contexts in which the data are designed to be used.

National Pollutant Inventory NEPM

- The Australian Government urgently address the lack of adequate resourcing for the National Pollutant Inventory (NPI), particularly in the areas of updating the Emissions Estimation Techniques for industry sectors and the provision of better contextual data for substances reported under the Inventory.
- Any expansion of the NPI through the inclusion of transfers reporting should be accompanied by adequate funding for full implementation.

- That the name of the NPI be amended to more accurately reflect its status as a national emissions and transfers register.
- That the Australian Government seek to ensure that the COAG agreed nationally consistent greenhouse gas and energy reporting system is established as a matter of priority to avoid the need to report greenhouse gases via the NPI.

Greenhouse gas and energy reporting regime

- The various Commonwealth and State Government Greenhouse Strategies and reporting initiatives and energy efficiency measures be harmonised as part of an effective national policy response to climate change and energy efficiency with strong policy co-operation and co-ordination across all Australian jurisdictions and led by the Commonwealth.

National water reform

- The Australian, State and Territory Governments ensure that adequate resourcing is provided to fully implement the National Water Initiative, including the specific provisions for the minerals industry.
- That the National Water Commission continue to drive water reform to ensure allocation of water to users and the environment based on sound science which allows for security of supply and trading to be established in an equitable market whilst pricing for the true cost of water and differential quality.

National Energy Market reform and consistency with evolution of an Australian emissions trading scheme

The Australian Government and State/Territory Governments continue to work to:

- progress ongoing reforms in energy regulation to ensure national consistency of regulations; and
- a smooth transition to the introduction of a national emissions trading scheme in Australia – led by the Commonwealth, specifically that:
  - establishes market signals that encourage the adoption of new technologies and energy efficiency measures rather than impose an indiscriminate punitive tax;
  - provides for a phased tightening of the disciplines (the cap of permitable allocations and penalty prices) as the market's capacity to deliver a change in industrial behaviour improves, as the science in support of a target of stabilised CO_2 atmospheric concentrations becomes clearer, as the economy is better able to accommodate the impact on competitiveness and economic growth, and in the expectation that a more global solution eventuates;
  - complements other mitigation measures, specifically the hypothecation of Government revenue raised to further pre-competitive research, development and initial deployment of low emission technologies;
  - is part of a comprehensive suite of policy measures and not promoted as a panacea to managing climate change;
  - is as comprehensive as practically feasible in its coverage of all sectors – estimated to be about 75% of industry – but that accommodates the specific circumstances of downstream transport and agriculture not as readily covered in such a scheme;
  - provides for transitions to a global system progressively integrating the national scheme into regional and prospectively other "international systems";
  - accommodates the long-run competitiveness challenges faced by the trade exposed and energy intensive industries to mitigate against "carbon leakage" ; and
  - is the only system in Australia run by the Australian Government replacing the multitude of various and varying State and Territory mitigation policies and measures.

Competition Policy – transport infrastructure

For the export infrastructure regulatory system to function efficiently and effectively there is a need to:

- better define regulatory objectives so that access proposals are evaluated on the basis of their "reasonableness" rather than requiring them to be optimal or "first best";
- reduce the fragmentation and inconsistency in regulatory arrangements across the country;
- improve the administration of competition policy and ensure regulatory delays do not hinder the delivery of needed infrastructure by:
  - streamlining its application across Australia "to ensure that universal and uniformly applied rules of market conduct apply to all market participants"; [1]
  - narrowing the scope of regulation to areas where it is clearly needed;
  - clarifying regulatory objectives, with a primary objective being to foster efficient investment in infrastructure capacity;
  - reducing the inconsistency in arrangements including considering an exemption of export supply chain collaborative processes where the interests of Australian consumers are not at risk; and

[1] Second Reading Speech, Competition Policy Reform Bill, 1995, 20 June 1995.

- Part IIIA of the *Trade Practices Act 1974* be amended to provide for an "efficiency override", whereby key infrastructure facilities could be declared exempt from third-party access by the Treasurer.

Freight transport

The Productivity Commission should undertake further consultation regarding institutional reforms with a view to improving the national consistency and efficiency of Australia's transport infrastructure regulations. In particular there is a need:

- to improve national consistency in hours of allowable infrastructure operation, introduce performance based regulations for the use of the different modes of transport and improve national consistency and shorten approval time lines in the planning processes to which a transport infrastructure investment proponent must adhere;
- for more consistent and coordinated strategic approaches to infrastructure planning and investment; and
- to ensure government regulations seek a fair and equitable recovery of road user charges from heavy vehicles and other road users to ensure there is no element of taxation of a business input.

Shipping cabotage

- A review of Australia's cabotage arrangements should be undertaken through completion of the Australian Government's Legislation Review Program, as recommended by the Productivity Commission in its report on National Competition Policy.
- If cabotage is preserved, it is very important that Continuous Voyage Permit (CVP) and Single Voyage Permit (SVP) arrangements remain in place.
- Noting that CVPs and SVPs are only required when unlicensed vessels are engaged on inter-state voyages and that the requirements for unlicensed intra-state voyages vary between individual States, these requirements need also to be reviewed and standardised.

1. INTRODUCTION

1.1 The Minerals Council of Australia

The Minerals Council of Australia (MCA) welcomes the opportunity to contribute to the Productivity Commission Annual Review of Regulatory Burdens on Business. The MCA represents Australia's exploration, mining and minerals processing industry, nationally and internationally, in its contribution to sustainable development and society. MCA member companies produce more than 85 per cent of Australia's annual mineral output. The MCA's strategic objective is to advocate public policy and operational practice for a world-class industry that is safe, profitable, innovative, environmentally responsible and attuned to community needs and expectations.

The submission is endorsed by the Chamber of Minerals and Energy of Western Australia, NSW Minerals Council, Queensland Resources Council, Tasmanian Minerals Council and the Victorian Division of the Minerals Council of Australia.

1.2 The Importance of the Inquiry

Regulation includes "any laws or other government 'rules' that influence or control the way people and businesses behave".[2] It is necessary in a modern state – indeed, regulation is part of the institutional framework that enables a society to achieve its objectives.

Australia's continued prosperity depends on the ongoing efforts of both business and government to improve efficiency and to innovate. Microeconomic reform has been a significant contributor to Australia's enhanced performance over the past two decades and governments have realised that ongoing regulatory reform is an important part of this wider economic reform.

Paradoxically, in recent years, Australian governments have been adding new rules and regulations faster than they have removed or simplified existing rules. Perhaps more so than any other industry this has adversely impacted the minerals sector because:

- regulation impacts all stages of minerals industry activities from grant of tenure, exploration, mining, processing, transport and closure to relinquishment of tenure; and
- to retain its competitiveness in highly competitive, international markets, the minerals sector relies on the efficiency of the overall economy providing it with key inputs.

Indeed**, efficient regulation is a precondition for sustainable industries.** For this reason the minerals industry has two specific areas of interest regarding regulatory reform:

(a) to ensure **regulation of the overall economy achieves desired outcomes efficiently** with minimum necessary direct control of economic agents by government authorities; and

(b) to ensure that **necessary economic regulation of the minerals industry is applied in the most economically efficient manner** to achieve identifiable outcomes without inhibiting innovation and improved practices by businesses.

The importance of this Inquiry is that it should identify reforms to enhance regulatory effectiveness and efficiency in form and function, improve national consistency, reduce duplication and overlap in Commonwealth/ State/Territory regulation and improve the capacity and performance of regulatory bodies. The process should also stimulate/facilitate greater microeconomic reform more generally.

1.3 The Sector and Jurisdictional Coverage of the Inquiry Terms of Reference are too Narrow

(a) The sector coverage of the Inquiry is too narrow

The inquiry's terms of reference ask it to examine in 2007 the burdens on primary industry businesses – including mining exploration and extraction – arising from the stock of Government regulation. Then in 2008 it is to look at manufacturing (including minerals processing such as smelting and refining), in 2009 at economic infrastructure

[2] Australian Government, Report of the Taskforce on Reducing Regulatory Burdens on Business, January 2006, p.3.

services and in 2011 at economy-wide generic regulations. The definition of "mining" for the purposes of the first review follows that of the Australian Bureau of Statistics.[3] But this is far to narrow a definition of "the minerals sector**". It is very important the Productivity Commission appreciates that mining is a much broader activity than exploration and pure extraction of minerals.**

As shown in **Table 1.1**, the minerals sector wealth creation chain goes well beyond exploration and extraction and includes mineral processing and commodity transport, both vital to overall efficiency and performance. In fact it is estimated around a third of minerals sector direct activity is outside "mining" as defined for this inquiry. Regulation impacts all aspects of this value chain and it is in the national interest that such regulation is efficient and least cost. **The Terms of Reference therefore in fact limit the ability of the Commission to usefully address the impact of regulation on the full range of the economic activity undertaken by the minerals sector.**

TABLE 1.1: THE MINERALS SECTOR WEALTH CREATION CHAIN

CHAIN ELEMENTS	TIME, COST AND QUALITY ESSENTIAL ASPECTS [4]	REGULATORY INTERSECTION
Exploration, discovery and conversion of resources to reserves	Access to land	OH&S, Cultural heritage, Native Title Act Environment Protection and Biodiversity Conservation Act Education and training State based tenure legislation Availability/access to pre-competitive geoscience information
Extraction – development, commissioning and operating a mine	Mining project approvals Environmental approvals Timely availability, cost and quality of skilled people, finance, technology, water, electricity and industrial inputs Quality of operation/process/output	OH&S, Skills and training, skilled migration Environment Protection and Biodiversity Conservation Act National Environment Protection Measures State regulations
Minerals processing – concentration of extracted product and smelting and refining	Timely availability, cost and quality of skilled people, finance, technology, water, electricity and industrial inputs Environment regulations Quality of operation/process/output	OH&S, Skills and training, skilled migration National Reform Agenda including the National Energy Market, National Water Market and Competition Policy reform Environment Protection and Biodiversity Conservation Act, National Environment Protection Measures, State regulations Skills and training, Quarantine
Transport to final consumers	Efficient transport and logistics networks, open sea and air lines of communication Access and pricing regimes and quality of service	OH&S, Land, air and sea transport regulations (including Australian security, safety and environmental aspects and intersection with international treaties such as the Safety of life at sea and Ballast water Conventions and the Bulk Cargoes Code) Competition policy, Skills and training, Quarantine, Port State Control

[3] Productivity Commission, *Annual Review of Regulatory Burdens on Business – Primary Sector*, Issues Paper, April 2007, Attachment A.

[4] Following the suggested performance measurements approach of McKinsey.

Employing the broader definition of the minerals sector shown in the above table,[5] the Australian minerals industry:

- represents about 8 per cent of this country's economic activity;
- comprises around 40 per cent of Australia's total export income;
- provides the socio-economic fabric to much of regional and remote Australia;
- underpins vitally important demand and in some areas supply relationships with the Australian manufacturing, construction, energy, financial services, process engineering, property and transport sectors; and
- is one of the most technologically advanced in the world and is at the forefront of new capital investment in Australia.

Therefore, there should be no contest that all Australians have a stake in ensuring sustainable value in the legitimate exploitation of our mineral endowment – what we call generating enduring value beyond "life of mine".

(b) The terms or reference are also too narrow in their jurisdictional coverage

The minerals industry seeks *minimum effective regulation* that is performance-based (non-prescriptive) as far as possible.

The scope of the Inquiry covers Commonwealth laws and regulations and their intersection with State/Territory laws and regulations. However, the burden of regulation impacting the minerals industry is the aggregate of Commonwealth, State, Territory and Local Government regulations. It is this totality of regulation that needs to be addressed by the inquiry and particularly the impact it has on preventing the remedying of regulatory capacity constraints to growth.

Minimising the 'regulatory burden' on business is not about minimising regulation itself – regulation is necessary to achieve the objectives of a modern state. What is required is an overarching national framework to consider both the development of and the harmonisation of regulations among jurisdictions. The Council of Australian Governments should therefore be invited to approve an expansion of the scope of the review to cover all jurisdictions and ideally all three levels of government.

Recommendation

- **The terms of reference for the Review of Regulatory Burdens on Business be expanded to enable the Productivity Commission:**
  - **to review the burden of the stock of State/Territory and relevant Local Government regulation on business, particularly in preventing the remedying of regulatory capacity constraints to growth; and**
  - **to ensure regulatory burdens on the full value chain of the minerals industry are adequately considered.**

1.4 Capitalising on the Supercycle of Demand for Resources – *an outline of this submission*

Australia's ability to export its minerals wealth has long benefited from the fact that the most dynamic part of the world economy is on our northern doorstep. Our exports to the region have increased over many years as Asian nations have steadily industrialised. In turn, much of the related Australian economic growth and wealth creation has been due to the growth of Australia's minerals sector.

With its vast natural endowment in minerals resources, Australia is well positioned to capitalise on the strongest global sector growth in a generation and to create wealth for future generations and turn that into societal capital for the benefit of our children and our children's children.

This has come about because we are a couple of years into a supercycle of demand. We can see at least several more years of strength in underlying global demand due to an epoch-making transformation in the global markets

[5] This definition is the same as that adopted by the Australian Bureau of Agricultural and Resource Economics, except that it excludes the iron and steel sector.

which has seen a shift in the engines of growth from OECD to non-OECD countries as a whole range of countries – notably China and India – go through an industrial revolution.

In a highly globally competitive market and a globally structured industry, **significant mineral endowment does not automatically equate to competitive strength.** Clearly, maintaining an economy sufficiently flexible to meet the challenges of the global market will be a never-ending challenge. Australia cannot afford to become complacent and believe that governments have largely completed their task in reforming the economy just as the minerals sector itself must continue to improve its efficiency, technology and productivity.

The minerals industry recognises it has a role to play to ensure the sustainability of the industry and maintenance of its "social licence to operate",[6] and has substantially transformed itself over the past five years – this transformation is summarised in chapter 2.

Government also has a clear role to play in enabling the minerals sector and the broader Australian economy to benefit fully from the fact that almost half the world is going through an industrial revolution. In particular, we need government:

- to address capacity constraints to national growth and development, including importantly any regulatory constraints across the value chain of the minerals sector (as summarised in the final column of Table 1.1). This is discussed in chapter 3 with details of the specific constraints to growth provided in chapter 5; and
- in all jurisdictions to apply the principles of efficient and effective regulation, and this is discussed in chapter 4.

We conclude the Australian Government has significant scope to improve the regulatory regime it directly manages and to influence the reform agenda in the States and Territories.

[6] The "social licence to operate" is an unwritten social contract with the communities in which the industry operates and is a necessary complement to government's regulatory licence and likely more enduring and conducive to the growth and profitability of our operations, and the social progress of our host communities.

2. THE AUSTRALIAN MINERALS INDUSTRY – AN INDUSTRY TRANSFORMED

Over the past five years in particular the Australian minerals industry has shifted its focus in defining performance beyond the narrower considerations of financial performance to include responsible social development and effective environmental management in its key determinants of success. Thus **the success of a modern minerals operation in contributing to Australia's wealth and prosperity is today measured in terms of the triple bottom line of social and environmental dividends, as well as financial returns.**

Further, the industry considers the intergenerational benefits of natural resource development should extend beyond the life of our mining operations. That is, that the wealth we generate from the conversion of natural capital into societal capital should be enduring within and between generations. Hence, **we consider our future inseparable from the global pursuit of sustainable development. This commitment and its translation into a commitment to continuous improvement in practice has contributed to the industry's social licence to operate and is critical to the maintenance of that licence.**

The industry has recognised:

1. that the safety and health of its workforce and the neighbouring community is its number one value and priority commitment, not subordinate to productivity, and not a factor of competitive differentiation;
2. that corporate social responsibility is not an adjunct to our business, it is our business – our core function is to convert natural endowment to societal capital, and that can only be achieved sustainably when there are real mutually beneficial considerations of the environment, our host communities, and the rights and interests of Indigenous peoples;
3. that the intergenerational benefits to communities and the nation as a whole of natural resource development should extend beyond the life of mine;
4. that the industry should aspire to continuous improvement and not merely meeting regulatory compliance; and
5. that Australia's geological "factor" endowment does not automatically equate to competitive strength – there is no guarantee that Australia's natural endowment of resources is alone sufficient to attract the necessary investment of global companies supplying into highly competitive global markets.

The result is that today's minerals industry is characterised by improved performance in key indicators of sustainable development. The industry has transitioned:

- from one of the worst industrial safety records of any sector in Australia to one of the best, though we are frustrated in achieving our goal of zero harm;
- from merely after the fact environmental remediation of mine sites and emissions to land, air and water, to before the fact, risk-based prevention and management;
- from the rehabilitation and reclamation of used mine sites to a beyond life of mine, longer term management for sustainable ecosystems;
- from an adversarial, litigious approach to native title to building mutually beneficial agreements for land access and sustainable Indigenous communities – indeed, there are more than 350 agreements in place, not one of which contests native title;
- from being publicly pigeon-holed as central to the global climate change problem to being part of the solution, and particularly in the research, development and demonstration of low emission clean coal technologies;
- from confrontationist, arms-length industrial relations to direct relationships between employers and employees for mutually beneficial workplace arrangements, instilling a stronger sense of each parties' rights and responsibilities;
- from a culture of regulatory compliance to a platform of co-regulation embracing industry's voluntary initiatives for continuous improvement aligned with host communities' expectations. This is emphasised through *Enduring Value – the Australian minerals industry's framework for sustainable development,* which is regarded as a world leading initiative;

- from a culture of decide, announce, defend to one of engage, listen and learn – this, principally with our host communities;
- from the creation of jobs to the creation of careers – reflective of the high-tech, innovative and multi-disciplinary nature of our business;
- from a white male dominated culture to the recognition of the value of women and Indigenous Australians in the workforce;
- from a minerals production focus to a new platform of minerals stewardship where participants in the lifecycle of materials bear a shared responsibility for minerals resource use efficiency and recycling; and
- from securing water access on "traditional" terms to a primary consideration of the ecological integrity of the surrounding water system – securing ecological flows and contributing to water use efficiency among all users in a specific catchment.

There is no doubt the last few years have been very positive for the minerals industry and we see the supercycle of demand continuing. However**, it is crucial that Australia does not become complacent but rather commits to an industry and government effort to build on the above industry initiatives and on previous government economic reforms.** These efforts should focus on addressing regulatory inefficiencies by removing constraints to growth so that the minerals industry can better contribute to the sustained growth and prosperity of current and future generations through the integration of financial progress, responsible social development and effective environmental management. **In particular, the minerals industry requires nationally consistent efficient and effective legislation – including in the area of environmental and project approvals.**

3. AUSTRALIA NEEDS A "THIRD WAVE" OF REGULATORY REFORM TO CAPITALISE ON INDUSTRIALISATION IN THE WORLD ECONOMY

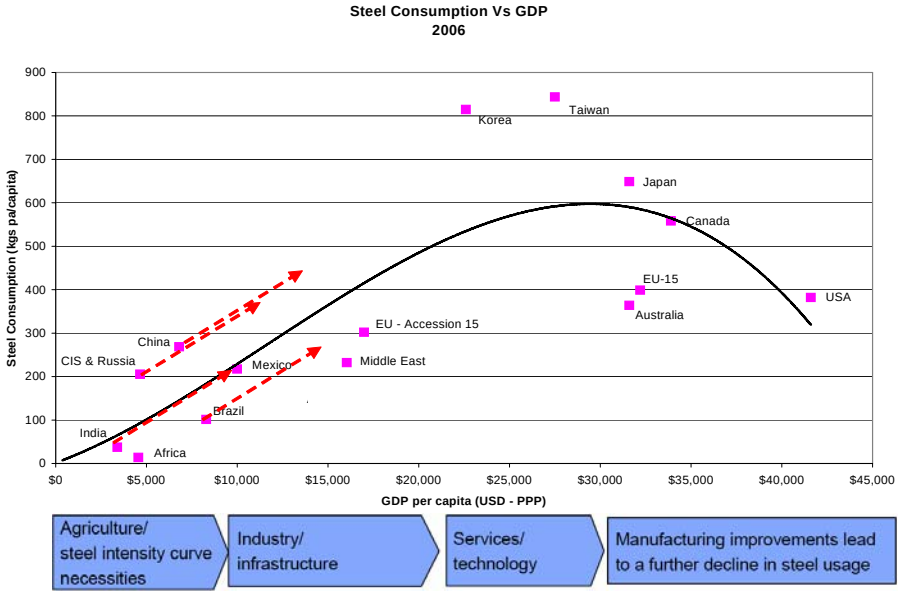
3.1 Capitalising on the minerals boom

The structural adjustment in the global market has been as profound as the minerals industry's operational transformation – albeit coming on much quicker than anybody expected.

Australia is two years into a "supercycle" of global demand – we can see at least several more years of strength in underlying demand and are buoyed by some analysts' optimism of a 10-15 year time horizon. The drivers are the underlying structural adjustment in the global economy and market, far more so than commodity cycles – this is the product of a number of key factors:

- the shift in the engines of global growth from the OECD to the non-OECD countries, and specifically what is known as the BRICs economies (Brazil, Russia, India and China);
- developing economies now account for more than half of the global economy and two-thirds of global growth, and their economies are increasingly relying on domestic demand growth than export sales to power their growth;
- the emergence of a significant global phenomena – "the Asia factory" – where parts and components are supplied by countries like Japan, the Republic of Korea and Chinese Taipei, assembled in countries like China, Thailand, Vietnam and Indonesia, and exported to the developed economies of Europe, North America and Australia;
- as illustrated in **Figure 2.1** for steel consumption and **Figure 2.2** for electricity consumption, minerals and metals use is strongly correlated with GDP per capita reflecting growth in industrial production and associated developments such as urbanisation and productivity gains with rising incomes increasing purchasing power;
- per capita metals intensities increase with economic growth – and although developing economies now account for around 50% of the world's metals consumption, average per capita use is only a fraction of developed economies – there is significant upside demand growth, even when modified for product substitution. **Figure 2.3** illustrates this in the case of China's recent and projected demand for iron ore imports.

FIGURE 2.1: CHINA AND PROSPECTIVELY INDIA FOLLOWING THE INDUSTRIAL DEVELOPMENT PATH – STEEL CONSUMPTION AND GDP PER CAPITA

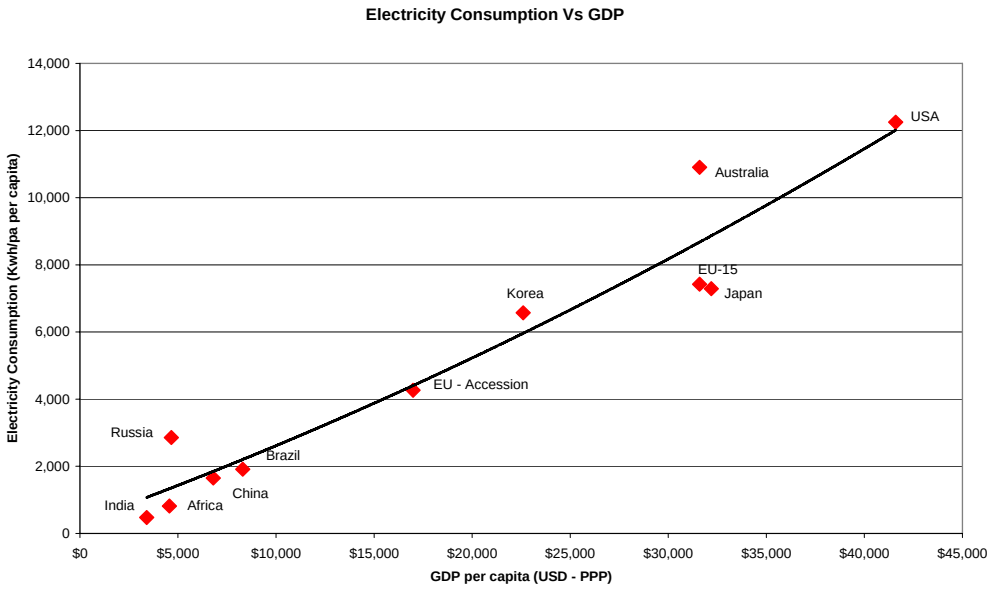


Source: Adapted from the Australian Logistics Council, presentation to the Road and Rail Freight Infrastructure and Pricing Reform Conference, Brisbane, 26 June 2007.

This underlying structural adjustment is leading to higher commodity prices and is likely to be sustained on a new plateau of price cycles – the extent of which will largely be determined by the dynamic between supply and demand.

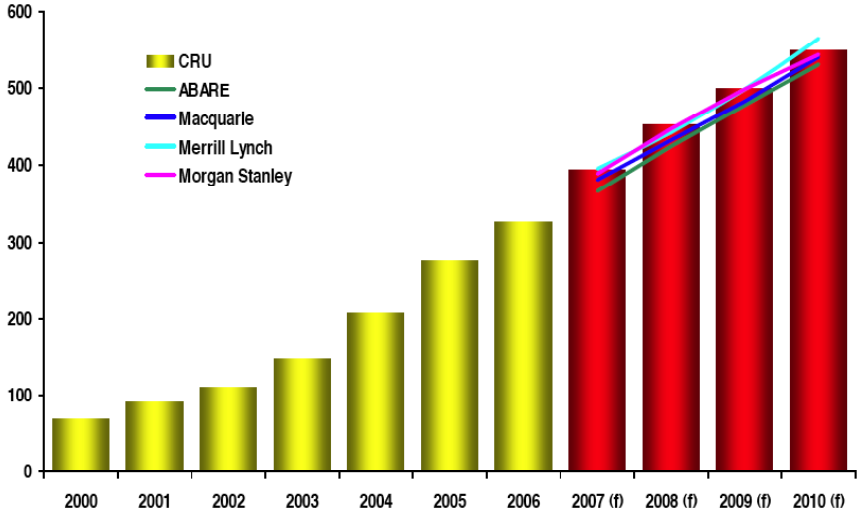
To date, increased demand has sponsored higher prices more so than sponsoring additional supply. Indeed, increased supply has virtually limped onto the market, hampered by a period of under investment during the late 1990s and early 2000s, and the current capacity constraints, which are a global phenomena.

FIGURE 2.2: ELECTRICITY CONSUMPTION AND GDP PER CAPITAL 2006 BY COUNTRY



Source: Australian Logistics Council, presentation to the Road and Rail Freight Infrastructure and Pricing Reform Conference, Brisbane, 26 June 2007.

FIGURE 2.3: CHINA'S IMPORT DEMAND FOR IRON ORE SINCE 2000 AND FORECAST GROWTH TO 2010



Source: Sam Walsh, Rio Tinto Iron Ore, Financial Community Visit presentation, 10 June 2007 and based on forecasts by CRU International, the Australian Bureau of Agricultural and Resource Economics (ABARE), Macquarie Bank, Merrill Lynch and Morgan Stanley.

The speed and costs of additional supply will be the key determining factor in the extent to which global prices moderate. Although commentators consider that prices will continue the long-term trend decline in real terms, prices are unlikely to return to the levels of the past decade when the industry return on investment was marginal. Since then cost structures have risen sharply.

Under this scenario Australia's economic future looks likely to emulate our recent past – with the emergence of the low income industrialising economies of Asia, Latin America, and prospectively Eastern and Central Europe, demanding an increasing share of Australia's exports. This should continue to generate incremental demand growth off a base of continuing strong demand in Australia's traditional minerals markets of Japan, Republic of South Korea, Chinese Taipei, the UK and Europe, fuelling our economic growth for decades to come.

3.2 We Need to Urgently Address Capacity Constraints to Growth

Australia is well placed to capitalise on the structural change in the market. However, in striving to meet increasing global demand, the industry faces the absolute limits of supply capacity. In fact, for some years the MCA has pointed out that **the real risk to the continued strength of the minerals industry's contribution to Australia's socio-economic prosperity is found in capacity constraints to our growth:**

- production and export capacity – impacted by port, rail, water and electricity infrastructure capacity;
- professional and trade skills shortages;
- exploration investment;
- processes of regulations – Occupational Health and Safety (OH&S), workplace arrangements and environmental and project approvals;
- capacity of regulators to effectively and efficiently implement regulations;
- professional capacity to implement sustainable development outcomes, particularly community engagement outcomes;
- availability of production inputs; and
- reconciling climate change management with energy/resource security.

As already stated, these capacity constraints are the key economic policy issues of the moment for the minerals sector. The minerals sector recognises it must play a part in addressing those constraints it can influence (eg. continuing to be the industry leader in training expenditure per employee, improving capacity to ensure implementation of sustainable development at our operations and managing long term contracts for the supply of key inputs to production). Other aspects of these constraints are founded both in "market failures"– that is, the inability of the market to fully function – and in the failures of government to address the constraints of the regulatory system and in the provision of social and physical infrastructure, particularly in regional and remote parts of Australia.

The MCA highly values the discovery power of markets and also recognises their limitations in addressing many aspects of these capacity constraints while maintaining standards. **But we are frustrated by the artificial constraints of Australia's outmoded Federal regulatory system and by governments at all levels using the industry as a surrogate for their responsibilities to provide essential social and physical infrastructure, particularly in remote and regional communities.**

Clearly, given the significant rise in commodity prices across the board, capacity constraints are a global phenomena. How quickly these are remedied is increasingly a factor of competitive differentiation in the global market. **The speed with which Australia addresses capacity constraints will determine the Australian minerals industry's success in retaining and expanding market share compared with other commodity producers around the world.**

So how well are we doing in addressing the constraints? On the face of it, we are only just keeping up with world volume growth, indeed, some of our international competitors are doing much better. Specifically:

- for Australian coal, nickel, alumina, zinc, aluminium and uranium, the export growth in value is **more on account of a growth in price than volume**. In terms of an international comparison, we have merely matched world export growth or we lag it;
- we have maintained our position in the production and export of iron ore (**Figure 2.3**)
  - though if the data were adjusted on the basis of iron content, Brazil's export growth would be superior to Australia's; and

  - South Africa is known to be bringing further production on stream and although this is from a series of smaller mines it is not insignificant;

- we have also maintained our position in gold and copper with our export volume growth significantly above our major competitors;
- in the case of thermal coal, Indonesia has clearly been a "volume beneficiary" and is now the largest exporter in the world, having drawn ahead of Australia in the past few years with its export growth well in excess of global demand growth (**Figure 2.4**). The Indonesians have the advantage that their incremental investment is far lower for a given level of coal exports when compared with Australia and other competitors. It is easier to invest in an additional barge - and barge the coal down a river to be loaded onto a panamax vessel - whereas in Australia we have to invest in rail and port infrastructure. In the longer term, however, barging may be slower and less cost effective. In addition, Indonesia's reserves of quality coals are not as large as Australia's. On the other hand, India has a preference for Indonesian coal, as shipping freight rates are lower compared to sourcing from Australia.

Figure 2.3

Australian Iron Ore Export Growth vs Brazilian & World Exports
Index 1990=100

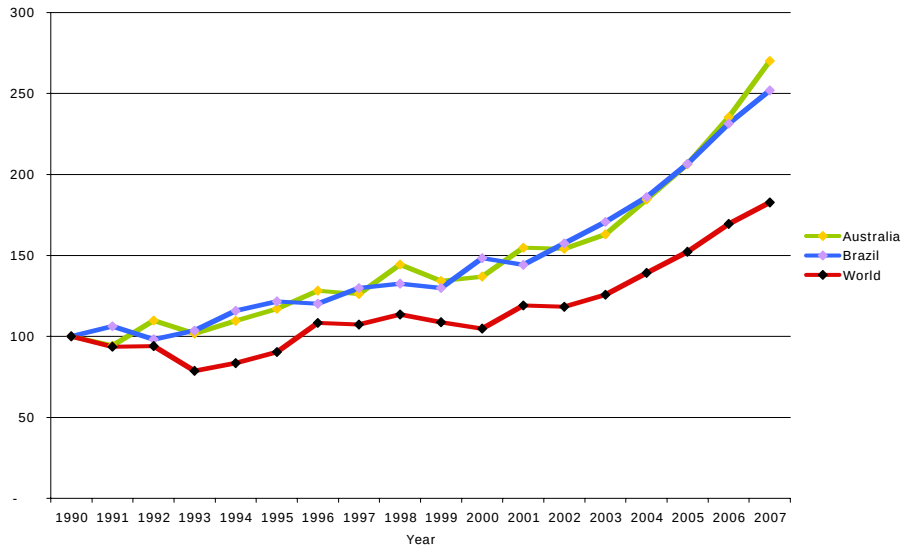
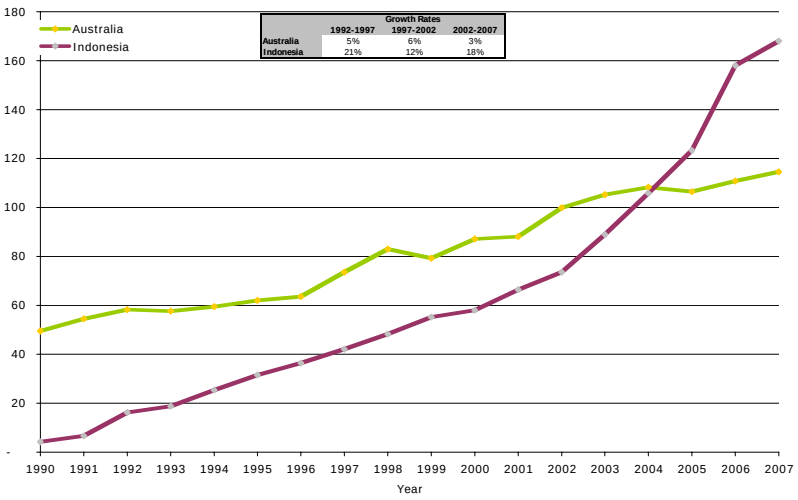


Figure 2.4

Australia vs Indonesia
Thermal Coal Export



Source: Xstrata Coal based on Australian Bureau of Agricultural and Resource Economics data

This underlines the point made earlier that having a significant minerals endowment does not automatically equate to enjoying competitive strength in the international market. Indeed, as has long been recognised by economists,

maintaining an economy sufficiently flexible to meet the challenges of the global market will be a never-ending challenge.

3.3 The Regulatory Reform Agenda

> Australia cannot afford to become complacent and believe that governments have largely completed their task in reforming the economy just as we cannot relent on continually improving the efficiency, technology and productivity in our industry and in those areas of the economy that contribute to our competitiveness (notably process engineering, design & construction, transport and logistics, and legal, banking, financial and insurance services).

To redress capacity constraints to growth requires a third "wave of reforms" centred on a new paradigm of collaboration between governments at all levels, industry, and external stakeholders (sometimes referred to as "civil society"). This must establish a platform to address the mismatch between the regulatory systems and the human, technological and institutional capacities of an era past, with the needs and expectations of a dynamic global industry and modern society. That is, a triple bottom line or sustainable development perspective to regulatory reform.

The product of that reform process should be enabling rather than prescriptive regulatory frameworks; capacity building in civil society, where government and industry contribute; and a significant injection of public funds into public infrastructure.

Given the historical structural adjustment in the world economy currently under way (including China's rising manufacturing power and Australia's resource supplying competitors investing in new production and exploration), there is a new urgency to Australia improving its competitiveness. Fundamental to Australia's ongoing competitiveness is the development of nationally consistent, efficient and effective regulation.

4. IMPROVING NATIONAL REGULATION

4.1 Minimum Effective Regulation

The MCA supports an approach to assessing business regulation that is based on high-level principles. One important principle involves the concept of *"minimum effective regulation". Such an approach* emphasises the need for regulation **that can both meet its objectives and do so at least cost to and minimal impost on companies**.

For regulation to meet the tests of "minimum effective regulation", it needs to satisfy a variety of criteria:

- **regulation should not be unduly prescriptive** – it should be specified in terms of performance goals or outcomes. It should also be flexible to accommodate different or changing circumstances and to enable businesses and final consumers to choose the most cost effective ways of complying. It should only be used where it is demonstrably the most economically efficient way of addressing the problem or issue in question;
- **regulation should be clear and concise** – it should be effectively communicated, be readily accessible to those impacted by it and must be readily understood by them;
- **regulation should be consistent with other laws, agreements and international obligations**;
- **regulation must be enforceable** – however, it should embody incentives or disciplines no greater than are needed for reasonable enforcement and involve adequate resourcing for that purpose. The MCA has a preference for a reliance on market outcomes. If regulation is thought necessary, preference should first be given to light handed regulation to achieve clear outcomes;
- **regulation needs to be administered by accountable bodies in an equitable and consistent manner by competent and adequately resourced regulators**;
- **regulation should be monitored and periodically reviewed** to ensure that it continues to achieve its aims.

Regulation that is deficient in meeting these criteria is likely to fail to achieve its objectives, impose unnecessary costs, impede innovation and/or create barriers to efficiency and productivity. In addition, government should not just seek to adopt the best regulatory approach available to address a defined problem. **Governments should also include an assessment of whether self-regulation, co-regulation or no regulation is the most efficient response**.

What the minerals industry wants is *minimum effective regulation* that is performance-based (non-prescriptive) as far as possible. We also advocate the development of operational guidelines for government and industry that underpin the non-prescriptive approach in order to remove subjectivity.

The minerals industry also wants regulation that assists it in meeting the criteria of community acceptance and in underpinning its implied 'social licence to operate'. Guidelines required for the implementation of regulations should be developed through an open and transparent stakeholder engagement process.

The overall intent of *minimum effective regulation* is to ensure that the regulatory regime is relevant, its policy objectives are sound and capable of being achieved, and that its administering agency is fully engaged in and committed to achieving the desired policy outcomes. The regulatory regime should be effective in establishing a minimum platform of performance that provides for adequate protection of the community, business and the environment, while establishing a clear, unambiguous set of consistent standards.

All the costs associated with the regime, such as its administration costs, its compliance costs and any economic opportunities foregone as a consequence of it, should be minimised. The proposed regime should represent the best regulatory approach to the problem being addressed, and should include consideration of the role for co-regulation and quasi-regulatory regimes.

4.2 Minimising the Regulatory Burden

Good regulation can help overcome market failure, ensure efficiency and enable a smooth-running society. Yet regulation can create more problems than it solves when it is inappropriately targeted, created for the wrong reasons or left too long unchecked. Where this is the outcome, the economy is unable to achieve its full potential as businesses incur unnecessary direct and indirect costs. Regulation therefore requires careful consideration at the drafting, implementing and review stages.

Minimising the 'regulatory burden' on business, then, is not about minimising regulation itself but improving regulatory outcomes.

The MCA defines the regulatory burden as the increased costs of compliance with inefficient or ineffective regulation relative to minimum effective regulation. It is a relative concept representing the opportunity cost of sub-optimal regulation:

- as such, **it represents a dead-weight loss to the community, the economy as a whole, and affected industries in particular**. These costs can relate to:
  - compliance costs;
  - delays, uncertainty and impediments to investment, innovation and/or operation;
  - human (individual and societal) costs;
  - legal costs associated with inappropriate use of criminal versus civil law, jurisdictional complexities, and violation of basic principles of due process and onus of proof, and
  - multiple compliance regimes for companies operating across more than one jurisdiction;
- **it also imposes regulatory burdens on governments that can also be considered dead-weight losses:**
  - administrative costs are higher than they need be where legislation/regulation is poorly designed and/or drafted and outcomes uncertain and/or poorly conceived;
  - inadequate staffing, both in terms of numbers and experience/skills, causes delays to investment or interruptions to production, reducing growth in production and employment; and
  - even where regulations are well designed, if the resources are not available to administer it efficiently and effectively then the system will fail the test of "minimum effective regulation".

While the Commonwealth has led the way and some States are attempting to follow in improving their approach to regulation, the general approach suffers from being too limited in coverage and from inadequate resourcing of independent, regulatory review agencies. For example, not all jurisdictions require the preparation of regulatory impact statements (RISs) for new legislation containing restrictions on competition. Even those States/Territories that do require this sometimes circumvent the requirements on the grounds of expediency.

The MCA supports the Council of Australian Governments (COAG) *Principles of Good Regulation*. Such systems to promote "good" regulation appear to be working reasonably well at the Commonwealth level, although, as Productivity Commission annual reports indicate, there is always room for improvement.

Much more needs to be done at the State, Territory and Local Government levels to improve national consistency, coordinate regulatory reporting and minimise the overall regulatory burden on business. Clearly the Commonwealth must play a key role in this process not only where Commonwealth legislation intersects with other jurisdictions – though that is important – but also in the national interest to ensure continuous improvement in the Australian economy.

The design of regulations could be improved by greater consultation with industry, more effective cost/benefit assessments and better definition of objectives. Given the amount of regulation relevant to the minerals sector at the State level, it is important that the minerals industry and government work together to improve the situation and move towards national consistency.

There has generally been no overarching national framework to consider harmonisation of regulations among jurisdictions. Even within jurisdictions, sun-setting regulations are usually considered piecemeal, rather than in a more holistic framework. The recent COAG decision following receipt of the Banks Taskforce report to set up inter-jurisdictional committees to review various areas of regulation 'hot-spots', such as Occupational Health and Safety, Development assessment arrangements and Environmental assessment and approvals processes, has been welcomed by the Minerals Council. National assessments of regulations should be accompanied by the development of arrangements for jurisdictions to sit down together, and with industry, to harmonise and improve the efficiency of regulation across Australia. Appropriate Ministerial Councils under the aegis of COAG could do this.

These processes should be informed by the recent Competition Principles Legislative Review where each jurisdiction worked in isolation from the others; so the opportunity for inter-jurisdictional harmonisation was lost. It

is therefore important that once the system of assessing and benchmarking regulations nationally is established, the reports to COAG should identify opportunities for inter-jurisdictional harmonisation.

4.3 Burdens Built into Regulatory Design

It is useful to distinguish between the design of the regulations themselves, and their administration. Both of these areas can result in regulatory burdens on business.

It should not be assumed that regulations are designed using best practice policy processes, nor should it be assumed that they are effective or efficient in achieving welfare enhancing objectives. While regulations should be designed to be efficient and effective, and should only be introduced if the benefits exceed costs, such analysis is rare in practice. The Office of Best Practice Regulation and the Banks Taskforce have both noted this in their reports. Some jurisdictions (eg. Western Australia) do not have a regulation review agency. Some do not systematically or rigorously require Regulation Impact Statements whilst others conduct such reviews as pro-forma exercises of little value. However, it is noted that the Victorian Competition and Efficiency Commission has recently introduced an improved review process.

The MCA has found that over time, long-standing areas of regulation, such as mining tenement administration, have been refined to the point where systems work efficiently and well. Although systems may differ between jurisdictions, they are broadly similar and well understood by industry and agency staff. Problems tend to arise in relatively new regulatory areas, such as environmental management, cultural heritage and access to land. It is inevitable that there will be learning required and teething troubles in new areas of regulation or in applying contemporary principles to old areas of regulation. However, in the MCA's experience, **jurisdictions could learn from each other or from the experiences of other areas of public policy in designing regulations to deal with similar issues.**

Ensuring that minimum efficient regulation criteria are met through both the policy development process and practical implementation is a challenge for any government, particularly given the ever-expanding reach and scope of governmental responsibilities. In a complex federal system like Australia's, where national and State/Territory responsibilities interact, it is particularly difficult – and this reinforces the comment made above that the terms of reference for this inquiry are too narrow.

Moreover, the increasing demands on governments to do more with less resources leads to pressure on resources available to administer regulatory systems. Even where the regulatory system is well designed if the resources are not available to administer it efficiently and effectively then the system will fail.

5. IMPROVING REGULATIONS PARTICULARLY IMPACTING ON THE MINERALS SECTOR

5.1 National Agenda Issues

5.1.1 Occupational Health and Safety (OH&S)

Minerals industry position

The MCA supports continued OH&S reform aimed at achieving:

- a nationally consistent, risk-based preventative system with minimal prescription that does not reduce standards;
- before the fact prevention and opposes "after the fact" retribution – no more evident than in current NSW law; and
- prosecution of all and any individuals regardless of their role and responsibility *in circumstances of demonstrable gross negligence or wilful misconduct*.

The MCA vehemently opposes the introduction of a separate statutory offence of industrial manslaughter either as a sentencing penalty or as a separate crime of industrial manslaughter.

Business aspires to zero harm in the workplace, but is frustrated in achieving improved OH&S outcomes by inconsistencies in legislation and its application, in particular where there is conflict between regulation and a safety culture of continuous improvement.

Current problems and barriers

The MCA contends that some OH&S legislation and its application hinders rather than assists business in achieving its objective of improved safety outcomes. A key concern is the perception by some public authorities responsible for enforcing OH&S laws that:

- 'business doesn't care' about safety;
- managers, executives and directors have the power to control every functioning aspect of a corporation; and
- every workplace injury or death is the result of systemic failure, and that such failure is always management's fault.

Factors that deflect business from the practical things that need to happen every day in the work place include:

- inconsistent and impractical OH&S legislation;
- conflicts within jurisdictions between OH&S regulations and other regulations;
- lack of understanding and emphasis by governments of the role of risk management;
- shortage of mine managers attributed in part to concerns about criminal liability;
- enforcement policies where the penalty is disproportionate to the level of fault; and
- increasing emphasis on prosecution as an initial response to non-compliance.

Legislative principles

The key OH&S legislative principle supported and adhered to by the minerals industry relate to 'duty of care' obligations, and are known internationally as the Robens principle.

The basis of the Robens principle is that 'everyone who is involved in work is held responsible for what they practically and reasonably control'. This should guide the design and application of all Australian OH&S laws. It means that everyone involved in work has shared responsibilities for work safety.

The current approach to OH&S regulation in the minerals sector is based on eight separate State/Territory legislative regimes resulting in inefficiency, unnecessary cost, complexity and uncertainty for industry.

The MCA supports:

- current efforts to establish and implement a nationally consistent OH&S legislative framework, within existing regulatory regimes; and
- the current focus on finalising and implementing the National Mine Safety Framework (NMSF) as providing the best opportunity to achieve the nationally consistent approach sought by most stakeholders.

The industry is extremely concerned at the inconsistent approach to the increasing use of prosecution as a first response enforcement measure to breaches of OH&S laws. Current inconsistencies across jurisdictions include penalties, length of jail terms, the nature of an offence subject to prosecution, the availability of defences and the basic rights of appeal. The MCA is particularly concerned with the OH&S laws and their application in NSW, and supports a policy platform for further reform there.

The MCA considers a national approach to OH&S regulation of the minerals sector an essential pre-requisite to the Australian minerals industry maintaining its global leadership in safety performance.

Recommendations:

- **Priority be given to the implementation of the National Mine Safety Framework as the basis for achieving national consistency in occupational health and safety regulation:**
  - **all legislation should be risk management based and framed around the concept of acceptable risk;**
  - **regulatory regimes should encourage reporting of incidents to share lessons learned and provide the basis for continuous improvement in safety outcomes;**
  - **standards applied and actions taken by regulators should be consistent across jurisdictions; and**
  - **codes of practice and guidelines should be developed and applied on a national basis and provide consistent parameters for mining operators.**
- **There should be a nationally consistent approach to enforcement policies with graduated enforcement measures applied. Prosecution should be limited to cases where there is evidence of gross negligence or wilful misconduct, causing fatalities or other serious injuries.**

5.1.2 Vocational education and training and higher education

The adequate supply of a skilled workforce is a major constraint going forward. The minerals sector in Australia will continue to expand over the next decade. The increase in predicted output is reflected in projected labour demand. By 2015, the minerals sector will require 75 per cent more employees than on the 2005 employment level. That is a net increase of 70,000 people: [7]

- semi-skilled workers and tradespersons will constitute approximately 70 per cent of the predicted growth in employment; and
- more than 7,500 additional professionals will be required

This demand is set against the current skills shortages in the trades in the minerals sector, as well as a national skills shortage in all areas of the trades. Competencies associated with mechanical and electrical trades are a high priority for the minerals sector, as are skills associated with semi-skilled workers such as miners and plant operators.

In addition, there is currently a chronic shortage of mining engineers, metallurgists and geoscientists in the minerals sector in Australia. While not as dramatic as the projected shortage of tradespersons and semi-skilled workers, this nevertheless poses a challenge, particularly in regard to the attraction and retention of students in mining engineering and science programs at tertiary level. In addition, in related areas, such as transport and

[7] D Lowry, S Molloy and Y Tan (2006) ***The Labour Force Outlook in the Minerals Resources Sector 2005-2015***, National Institute of Labour Studies, Flinders University, May. Report prepared for the Minerals Industry National Skills Shortage Strategy.

logistics, there is a severe shortage of workers – both land (eg. heavy vehicle and train drivers) and sea (eg. port and at sea pilots, officers, other skilled personnel) based.

An examination of the economy's ability to respond to the growing demand for skilled labour in the minerals sector indicates that there will be significant labour demand gaps. Labour shortages are likely to be a constraint on the growth of the minerals sector over the next decade.

The MCA is actively engaged in the reform of the Vocation Education and Training (VET) sector with minerals industry representation on the National Industry Skills Committee, the Institute of Trades Skills Excellence and the National Quality Council. The MCA policy position on VET is informed by the over-riding priority of attracting and retaining employees to the industry. The MCA seeks a VET system that:

- is driven by industry and business needs;
- recognises training providers as service providers;
- prioritises public resources to critical skill shortage needs in the mechanical and electrical trades;
- delivers quality training outcomes; and
- services industry at times and places that meet industry and employee needs.

Recommendation:

The Vocation Education and Training (VET) reform agenda ensure there are no regulatory impediments by:

- **focusing on education, training, employment and the workforce in line with industry needs;**
- **redirecting public funding of training to areas of greatest need within the national economy and in the case of the minerals industry to the metal trades and semi skilled areas; and**
- **delivering nationally consistent and streamlined pre-employment training for secondary students and school leavers in the traditional trades in greatest demand.**

To promote movement of people and equipment around Australia, the MCA strongly supports mutual recognition of skills across jurisdictions.

5.1.3 Skilled migration

The pace and scale of current development in the Australian minerals industry is unprecedented. Over the past 12 months, 35 major minerals and energy projects, valued at $5.5 billion, have come into production. A further 158 projects are under construction, committed or under consideration.

Despite the investment, the industry is confronted by capacity constraints foremost being in the availability of skilled employees. Despite a robust employment growth in 2005-06, the industry is suffering shortages of professional, trades and semi skilled employees.

The minerals industry considers the Australian Government's Skilled Migration Program to be a critical and immediate response to the acute shortage of employees facing industry in Australia today. The flexibility of the 457 Temporary Business Visa arrangements has provided the Australian resources sector with an effective instrument for sourcing skilled personnel as and when required from the global pool.

The minerals industry supports the role of governments in working collaboratively to strengthen the integrity of the sub class 457 visa, but requests that consideration be given to the risk of increasing red tape, cost and processing times. It is the industry's view that new measures should focus on correcting demonstrated instances of abuse.

Recommendation:

The minerals industry seeks a skilled migration system where:

- **457 Visa arrangements are flexible and avoid unnecessary processing delays;**

- **fast tracking processes are available for pre-qualified companies to ensure recruitment times are less than 3 months;**
- **fast tracking of processing times is available for skilled occupations paid over a minimum salary cap;**
- **highly skilled occupations and those with identified skills gaps remain exempt from labour market testing;**
- **other skilled occupations to be registered with a Job Network member or other recruitment company, to be done concurrently with the skilled migration application process rather that a mandatory 28 day registration period;**
- **continued access to employer sponsored visas for "labour hire" companies and their associated obligations, provided the labour hire company remains the direct employer of the 457 visa holder; and**
- **employers are to be denied access to the 457 Visa if they misuse the process.**

5.2 Land Access and Use

5.2.1 Resourcing of Native Title Representative Bodies

The MCA considers that appropriate governance and resourcing (financial and capacity building) of Indigenous representative structures is critical to meeting their statutory functions and achieving optimal outcomes in the interaction between the minerals industry and Indigenous interests. Government reforms have taken a narrow and overly onerous approach to improving the performance of such organisations, rather than building capacity for improved outcomes.

This is because Native Title Representative Bodies (NTRBs) are a critical component of the native title system but have been chronically under-resourced in fulfilling their statutory functions, which has delayed the negotiation of mutually beneficial agreements with industry and the resolution of native title claims. There is also a need for Government funding of Prescribed Bodies Corporate (PBCs), the entities which hold native title rights and interests upon the successful completion of a claim, to ensure appropriate capacity to meet their statutory functions, which include negotiating future acts with the minerals industry.

While the MCA recognises that there are some costs that are legitimately borne by industry, in terms of costs directly related to a specific commercial negotiation, we consider that it is paramount that government provides core funding to these organisations to ensure their effective functioning. This is for three key reasons:

- **impact on independence of negotiations (real and perceived):** the minerals industry has strong concerns that if we provide all of the capital for the organisations that this will impact on negotiations. Specifically, we consider that external parties would not consider the negotiations to be independent as they are fully funded by the company;
- **capacity of PBCs to engage with industry:** PBCs need to be established and capable of engaging with companies where there are potential projects in greenfields areas. Without some initial funding by government these organisations will simply exist as shelf-companies and will not have the capacity to engage. Agreements will only be easily negotiated in those areas where existing economic enterprise is providing a funding base to PBCs to enable them to operate; and
- **sustainable Indigenous communities:** the Government has been very strong on wanting to assist Aboriginal people to translate their rights in land into economic opportunities – and specifically to gain individual benefit from their lands. Without the provision of core funding, PBCs will not have the capacity to consider the development of independent economic enterprise, and will be restricted to their only economic development opportunities coming essentially from mining or pastoralist activities – this is counter to our objectives on regional development and does little to build economic independence and respect in Indigenous communities.

Accordingly, funding for non-statutory roles of NTRBs and PBCs related to regional development should be funded:

- through the shared responsibility of industry and government provided there is a clear distinction between industry's responsibilities in providing employment, training and enterprise development opportunities, and Government's responsibilities in providing integrated basic social services and infrastructure; and

- by government through appropriate use and distribution of mining royalties but not through cost-shifting to industry to make up the shortfall for government funding in non-statutory roles and responsibilities.

The lack of resourcing for NTRBs and PBCs has had business critical impacts – this issue is considered seminal to the industry's ability to effectively negotiate with Indigenous communities and to progress the implementation of the MCA MoU on Indigenous Employment and Enterprise Development.

Recommendation:

- **The Australian Government ensure adequate, performance-based resourcing to Native Title Representative Bodies, both in terms of human and financial capital, to assist them in providing a critical platform to the minerals industry to negotiate mutually beneficial outcomes with Indigenous Australians.**
- **The Australian Government provide core funding to Prescribed Bodies Corporate to ensure that they are functioning and effective organisations with capacity to:**
  - **meet their statutory requirements and obligations;**
  - **engage in agreement making with third parties; and**
  - **secure further assistance from existing programs.**

5.2.2 Cultural heritage issues

Australia's Indigenous heritage is a matter that needs to be taken into account in Australia's land management systems. Current cultural heritage regimes are unnecessarily complicated, with heritage registers maintained separately by the Australian Heritage Commission and State and Territory Governments.

In addition, the assessment of cultural heritage is imprecise, often leading to substantial delays in the project assessment and approval process. This is particularly the case in Western Australia where the States' heritage requirements are recognised as a significant impediment to accessing Indigenous lands for mining exploration and development.

Australia needs to develop a consistent approach to Indigenous heritage matters and to integrate Indigenous heritage conservation procedures with other land management procedures to avoid duplication and overlap between legislative instruments and requirements.

Recommendation:

- **That a single heritage register is maintained by the Commonwealth, incorporating sites and artefacts of both National and State significance; and**
- **That the Commonwealth advocates nationally consistent cultural heritage identification and assessment processes and, where appropriate, the development of bilateral agreements to achieve desirable efficiency improvements and reduce compliance costs and delays in approval processes.**

5.3 Project Development

5.3.1 Minerals industry project approvals

The MCA recently assessed the regulations in all Australian jurisdictions for exploration and mining project approvals and released the resulting audit [8] and scorecard [9] reports in 2006. These have been provided separately to the Commission for consideration as part of this inquiry together with a copy of the MCA's submissions to the Banks Taskforce on Reducing Regulatory Burdens on Business and to the Commission's

[8] Undertaken by URS Australia Pty Ltd

[9] The Scorecard research was conducted by URS, Enesar Consulting, GHD, Sinclair Knight Mertz and Environment Action – all of whom have key exploration and mining project approvals experience across Australia. The scorecard rated the relative performance of project approval procedures by jurisdiction and clearly identified the areas for reform across all jurisdictions. These findings were broadly consistent with those of the Productivity Commission's 2007 study on performance benchmarking of Australian business regulation.

inquiry into Performance Benchmarking of Australian Business Regulation. [10] The audit of project approval procedures:

- found that over time, long-standing areas of regulation, such as mining tenement administration, have been refined to the point where systems work efficiently and well. Although systems may differ between jurisdictions, they are broadly similar and well understood by industry and agency staff; and
- confirmed the significant burden on business caused by inefficient and ineffective project approval procedures:
  - problems tend to arise in the design of relatively new areas of regulation, such as environmental management, cultural heritage and access to land; and
  - poor administration and implementation of regulation imposes unnecessary burdens on business.

Regulatory project approvals in the latter two areas impacting exploration and mining licences are cumbersome, complex and inconsistent undermining smooth and speedy project approvals.

A national Dialogue of State and Territory minerals industry Councils and Chambers, convened and chaired by the MCA, has identified the need for nationally consistent, efficient, effective, timely and cost effective project approval procedures as a key area for reform across all jurisdictions.

As pointed out in chapter 4, the minerals industry seeks *minimum effective regulation* that is performance-based (non-prescriptive) as far as possible. We also advocate the development of operational guidelines for government and industry that underpin the non-prescriptive approach in order to remove subjectivity.

When making a submission for the development of a major project – or major (possibly related) infrastructure – there are inconsistencies between state/territory planning process requirements. For example, there are differing approaches concerning the requirements to be adhered to by investment proponents. There is also a lack of national consistency in hours of allowable infrastructure operation and regarding the operating rules for the same modes of transport (eg. train speed limits and operating requirements). Some of these differences may be for good reason (eg. the engineering capacity of a rail track limiting speeds) but others seem to simply be inconsistent with best available practice.

For some time, various jurisdictions have been seeking to improve their project development requirements and to develop better strategic approaches to infrastructure planning and investment licensing. These range from detailed approaches involving Major Project Facilitators and the use of one-stop-shops to none at all. The MCA is undertaking further research into this issue.

Initial research suggests there are useful learnings available across jurisdictions that could inform better practice. For example, in South Australia the Minerals and Energy Resources Division of Primary Industries and Resources South Australia plays a coordinating function in the regulation of the various activities requiring approval. A recent Parliamentary report recommends a broader government one-stop-shop be established to promote improved exploration and minerals development.[11]

While these developments are welcome, the different approaches across Australia all add to the time and cost of dealing with multiple regulators and different reporting formats and requirements. In addition, in terms of the adequacy of resourcing of regulators, a recent study for the Australian Logistics Council found that in regard to transport infrastructure planning and investment:

> *There is a broad concern about whether the skills are in place at the national and state levels for governments to undertake the kind of large-scale, integrated planning required to provide a long-term investment framework. That is, there is a relatively poor understanding of the transport industry on the part of administrators and planners.* [12]

Recommendation:

[10] MCA submissions to the Productivity Commission inquiry into Performance Benchmarking of Australian Business Regulation, October and December 2006.

[11] Parliament of SA, Natural Resources Committee Mineral Resource Development In South Australia, 8th Report, 5 September 2006.

[12] Meyrick and Associates, *op cit*, page 7.

The Australian Government working through COAG and with industry:

- **improve all jurisdictions' project approvals processes and progress to nationally consistent processes without lesser environmental and community outcomes;**
- **ensure approval processes target the identified problem or issue and do not impose unnecessary burdens on industry in meeting the criteria that underpin its implied "social licence to operate".**

5.3.2 Environment approvals - Environment Protection and Biodiversity Conservation Act

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) defines a broad range of matters as being of national environmental significance, requiring formal approval should minerals projects risk significant impact on these matters. The minerals industry has a strong track record of compliance with the provisions of the EPBC Act. However, we question the value add from duplication of state based environmental agencies where bilateral approval processes are not in place. The MCA does not seek a diminution of measures to protect the environment, but rather promotes improvements to the efficiency and co-ordination of legislation within and between jurisdictions.

A significant concern for the minerals industry is the potential for duplication of Commonwealth and State processes where bilateral agreements are not in place.

When a project is likely to have a significant environmental impact or impact on sensitive areas, it must be referred to the Minister for the Environment and Water Resources, who will decide whether the project requires an environmental assessment and a decision under the EPBC Act. The Commonwealth can delegate the supervision of the process to the relevant state, provided agreements are in place between the state and the Commonwealth that accredit the state's environmental assessment processes and systems. The current situation is summarised as follows:

	ASSESSMENT BILATERAL AGREEMENTS	**APPROVALS BILATERAL AGREEMENTS**
ACT	No	No
New South Wales	Yes	No
Northern Territory,	Yes	No
Queensland	Yes	No
Tasmania	Yes	No
South Australia	No	No
Victoria	No	No
Western Australia	Yes	No

The MCA is pleased that bilateral assessment agreements with NSW and the Northern Territory were effected earlier this year. However a significant concern for the minerals industry is the potential for duplication of Commonwealth and State processes where bilateral agreements are not in place. It is also notable that no approval bilaterals have yet been developed.

Where bilateral agreements between the Commonwealth and the States are not in place, the duplication of processes can turn into a major issue for the industry. Even when accreditation processes are in place, delays occur as the Department of the Environment and Water Resources is struggling to meet the deadlines for project assessments.

The MCA notes that a very significant package of amendments to the EPBC Act were approved by the Parliament in December 2006, covering several areas of the Act impacting directly on the minerals industry. While many of the amendments to the EPBC Act will improve the efficiency and effectiveness of its administration, the MCA also recognises that a number of the proposed changes will require significant additional resources.

The MCA has long advocated for a significant injection of additional resources into the Department to ensure the effective implementation of the proposed amendments and to enhance their ongoing administration. The MCA notes the provision of $70.6 million over four years for enhanced resourcing of the EPBC Act, as announced in the 2007-08 Federal Budget. The MCA considers that while these funds are now committed, the resources need to

translate into additional Departmental capacity. In addition, the MCA considers that additional resources are also required to enable the Commonwealth to take the lead in establishing bilateral agreements with all jurisdictions.

Recommendation:

- **Establishment of Approvals Bilateral Agreements with all States as a matter of urgency.**
- **Those States that are yet to enter into Assessment Bilateral Agreements with the Commonwealth be encouraged to do so to achieve desirable efficiency improvements and reduce compliance costs and delays in approval processes.**

5.4 Extraction, Minerals Processing and Environmental Management

5.4.1 National Environmental Protection Measures (NEPMs)

(a) Assessment of Site Contamination NEPM

The MCA is concerned that the Assessment of Site Contamination National Environmental Protection Measure (NEPM) leads to the inappropriate use of data by regulators, specifically the use of investigation levels for initial investigation as a trigger for clean-up operations. The current structure of the NEPM provides a staged approach to assessing a site, where an initial assay is done to determine if further investigation is warranted. However, if levels of contaminants are above a response level, then remedial action is required straight away. The specific problem being encountered is that there is strong evidence that suggests that regulators frequently confuse the investigation levels with the response levels for site clean-up and threshold categories required for reporting under the National Pollutant Inventory, resulting in a significant increase in the burden for companies.

The principal issue with this and some other NEPM's is the use of data and trigger levels in an inappropriate fashion. Two examples are:

- the use of trigger levels under the Assessment of Site Contamination NEPM; and
- the use of aggregated data from the National Pollutant Inventory in international emissions reporting (a job which the NPI was not designed to do).

Both of these issues relate to a lack of appropriate contextual information in these NEPM's.

On the other hand, the NEPM's can offer a vehicle for achieving national consistency in environmental standards as witnessed with the Ambient Air Quality NEPM.

Recommendation:

- **To overcome inappropriate use of data by regulators under the Assessment of Site Contamination National Environmental Protection Measure (NEPM) and the National Pollutant Inventory NEPM, specific guidance needs to be included to ensure that data users are aware of the limitations of the data and the contexts in which the data are designed to be used.**

(b) National Pollutant Inventory NEPM

The National Pollutant Inventory (NPI) has been under review since 2005, with the MCA maintaining an active engagement in this process. In addition to providing submissions to the review process, MCA member companies have continued their long-standing commitment to the NPI by providing technical specialists to the Australian Government to support the review.

The MCA has been actively involved in the development of the NPI since its inception, and mandatory data collection by member companies to support the scheme represents a significant cost to business. Given this ongoing contribution, it remains a significant disappointment that despite a large number of reviews to date, the NPI remains a little known and under-utilised resource, with poor alignment to company environment reporting.

For those members of the public who do visit the NPI website, the lack of accurate, current and plain english guidance on the interpretation of the data means that using the site is extremely difficult, if not impossible for the majority of users. These shortcomings, and the fact that the Department of Environment and Water Resources

has not had the resources to properly update the Emissions Estimation Technique manuals for the collection of data, are undermining the effectiveness of the NPI.

There is a need to update the Emission Estimation Technique (EET) manual relating to mining and other associated EETs as there are issues with perceived overestimation of some substances. Due to the lack of contextual information, there is the potential for double accounting to occur and clarification and guidance is required to ensure integrity of the dataset. There are many known instances where substance emissions have been counted more than once and the lack of contextual data exacerbates this issue. This may be further compounded by the inclusion of transfers without adequate resources to resolve the current issues, let alone incorporate new reporting requirements. Further due to lack of free text boxes to permit explanation and context, the data can not effectively be turned into useful information, such as informing the user of the database about the life cycle aspects associated with reuse or recycling.

There is a pressing need for a substantial and sustained increase in the level of resourcing for the NPI if the inventory is to meet the goals for which it was originally established. Given the ongoing lack of resources for the scheme, the MCA considers that proposed addition of waste transfers as a new reporting area should be postponed until current deficiencies are addressed. Should this new reporting area be added, this should be accompanied with a significant injection of resources to ensure that the scheme meets its stated objectives.

Accordingly, the MCA is disappointed by the decision of the Environment Protection and Heritage Council meeting in June 2007 regarding the amendment of the NPI NEPM to include the transfer of wastes, including tailings, and greenhouse gas emissions. The MCA considers that the inclusion of GHG emissions is fundamentally inconsistent with the broader policy role of the NPI as a mechanism to provide public information of emissions that may cause community health concerns, as well as the NPI's role in driving cleaner production in industry. Inclusion of GHG emissions is said to be an interim measure. But it is an unnecessarily duplication of work progressing at the instigation of COAG to streamline energy and greenhouse gas emission reporting. [13]

The MCA notes that these decisions further reinforce the need to rename the NPI the National Emissions and Transfers register, which would also bring the NPI into line with the nomenclature of other pollutant release and transfer registers (PRTR's) internationally.

Recommendation:

- **The Australian Government urgently address the lack of adequate resourcing for the National Pollutant Inventory (NPI), particularly in the areas of updating the Emissions Estimation Techniques for industry sectors and the provision of better contextual data for substances reported under the Inventory.**
- **Any expansion of the NPI through the inclusion of transfers reporting should be accompanied by adequate funding for full implementation.**
- **That the name of the NPI be amended to more accurately reflect its status as a national emissions and transfers register.**
- **That the Australian Government seek to ensure that the COAG agreed nationally consistent greenhouse gas and energy reporting system is established as a matter of priority to avoid the need to report greenhouse gases via the NPI** (see section 5.4.2)**.**

5.4.2 Greenhouse gas and energy reporting regime

The minerals industry:

- strongly supports rigorous, comprehensive and nationally coordinated reporting of energy use and greenhouse gas emissions to inform government policies in this area; and
- supports the Commonwealth and COAG recommended streamlining approach as an intrinsically superior approach to inclusion of GHG reporting in the National Pollutant Inventory (NPI) even as an interim measure.

The industry accepts the precautionary principle underpinning the need for action to reduce human induced greenhouse gas (GHG) emissions. This action must take the form of a comprehensive suite of policies for a long

[13] More details are provided in the MCA submission to the Environment Protection and Heritage Council Committee, 21 May 2007.

term integrated policy approach that is environmentally effective, economically efficient, and socially and politically acceptable. It must be centred on:

- a government-industry partnership in the development and deployment of step change abatement/low emission technologies – this simply will not be driven by the market, pre-competitive technologies rarely, if ever, have been;
- efficient market mechanisms to determine a carbon price in a future carbon constrained world – an emissions trading system can be such a market mechanism, provided it:
  - is part of a suite of measures and not considered a panacea;
  - is structured so that the disciplinary measures (the cap and the penalty price) are aligned with the development and deployment of step-change technologies – ensuring there is capacity in the market to change industrial behaviour and not merely penalise it (and raise revenue);
  - accommodates the potentially long run competitiveness challenges faced by trade-exposed and energy intensive industries, to mitigate against distortions to resource allocation and "carbon leakage" (ie. an exodus of affected industries offshore without environmental benefit);
  - replaces the multitude of State and Territory differentiated policies and measures for national consistency across and within various jurisdictions,
  - makes provision for transitioning through short to longer term pricing and permit allocations, and provides for complementary measures for sectors (agriculture and transport) not readily comprehensively covered by a "cap and trade" system; and
  - transitions to a global system progressively integrating national emissions trading schemes into regional and eventually more international systems.

Business certainty will not necessarily be delivered on the basis of a future price of emissions, rather **certainty will best be served by a clear and sound policy framework within which price risk can be assessed and managed**.

The minerals industry strongly supports the adoption of a nationally consistent and co-ordinated approach to climate change and energy efficiency policy across all jurisdictions in Australia. Such an approach is essential if economically efficient, environmentally effective and socially equitable solutions are to be implemented.

Currently State/Territory Governments are moving ahead with the development and implementation of their own greenhouse policy strategies and reporting measures. In addition, the Council for the Australian Federation recently announced its intention to develop an Industry Mandatory Energy Efficiency program, which aims to mandate the adoption of opportunities that companies identify under Commonwealth legislation with less than a three year payback period. This has the potential to undermine three years of consultation that have led to the Commonwealth's *Energy Efficiency Opportunities Act 2006* and development of the associated 400 or so pages of regulations. This policy and legislative process was initiated by the Australian Government's Energy White Paper and represents an appropriate initial light handed regulatory approach to require industry to collect, consider at CEO/Board level and publicly report on energy efficiency opportunities (EEO) available to it. The scheme is to proceed for five years by which time Australia will have an emissions trading scheme (ETS) in place. It is likely the most efficient course would be to carefully review at that point the need for any continuing EEO arrangements in that new policy environment.

Mandatory implementation of identified EEO is likely to have a dysfunctional effect on company reporting and presumes that governments are better placed than company CEOs and Boards in prioritising decisions on EEO available to the company at any given time.

The Minerals Council is also concerned about the risks and uncertainties of un-coordinated national and State-based climate change measures. The MCA is strongly supportive of public GHG emissions reporting consistent with international standards and consistently applied nationally.

The most important criterion, from industry's perspective is that GHG emissions reporting in Australia should be managed in a single, national system, in accord with internationally recognised measurement and reporting guidelines like the Greenhouse Gas Protocol sponsored by the World Business Council for Sustainable Development and the World Resources Institute. Such a system would be efficient and the reporting consistent for industry and government.

The Minerals Council sees the reconsideration of GHG emission reporting under the NPI as an expensive and time-consuming process for what appears to be a short-lived exercise. Time could be better spent focussing on COAG's agreed national reporting system. The MCA is assisting government officials to achieve this desirable outcome both directly and through its membership of the Australian Industry Greenhouse Network.

Instead, the Minerals Council supports a rigorous, transparent, mandatory, nationally consistent (harmonised) energy and greenhouse reporting system backed by Commonwealth legislation (and intergovernmental agreement if need be) that:

- clearly defines the data set to be collected;
- clearly distinguishes what data submitted in the reporting system can be accessed by which government agencies;
- clearly specifies rules under which certain data can be publicly disclosed; and
- has mechanisms to enforce those rules and assure confidentiality when warranted.

Recommendation:

- **The various Commonwealth and State Government Greenhouse Strategies and reporting initiatives and energy efficiency measures be harmonised as part of an effective *national* policy response to climate change and energy efficiency with strong policy co-operation and co-ordination across all Australian jurisdictions and led by the Commonwealth.**

5.5 Physical Infrastructure

5.5.1 Competition Policy reform

(a) National water reform

While much has been achieved, water reform has been hampered by the difficult process of establishing the nature and extent of existing property rights, establishing the legal and market processes for trading those rights, and of ensuring demands for non-commercial uses (such as ensuring ecological flows) are accounted for. The minerals industry welcomes the recognition by governments in the National Water Initiative that the minerals industry's use of water involves unique factors for each project, which can include (but is not limited to) isolation, relatively short project duration, water quality issues, as well as the obligation to remediate or offset impacts.

Given the constraints on existing and future supplies, the MCA considers efficient and cost-effective access to limited water supplies for all competing uses (including in the minerals industry) can be achieved by ensuring:

- all water management decisions are based on sound science and stakeholder engagement, be transparent and have agreed timeframes for review;
- environmental flows are given priority to ensure ecosystem integrity is maintained and that these flows are allocated outside of a market arrangement;
- cultural heritage values are factored into the market and recognise these as distinct and separate to environmental flows;
- security of supply and recognises a market-based approach that enables additional water supply through secure trading systems;
- water allocations are guaranteed – they should not be able to be altered (reduced or removed) by government except in exceptional circumstances such as drought;
- risks associated with changes to water allocations due to exceptional circumstances are shared between government and industry – this is critical as the extremely variable nature of water supply in Australia has the potential to create substantial risks;
- the establishment of a national water market within and between States and Territories that is based on the relevant parameters of the region (catchments or basins);
- water trading schemes are structured to allow for allocations to be available to the highest value users;

- the effective operation of a national water market should not be limited by the application of any sector based subsidies or rebates, or artificial barriers or impediments to trade; and
- water pricing should be based on a user pays system that incorporates the full cost of capturing, storing, treating, distributing and managing the water, discounted where industry has made investment in the provision of public water infrastructure, which meets the needs of industry and community. The overriding principle in water pricing should be equality, rather than the ability to pay. In particular, the price of water should be set irrespective of its end-use, and should also include an externality component to promote resource stewardship. Importantly pricing arrangements should also reflect water quality.

An important goal of water reform is to clarify what needs to be achieved, and the costs of those decisions. While market reforms will help allocate water to its most highly valued *private* uses, those benefits may be undone if there is no clearly defined and predictable process for allocation to *public* uses, including ecological flows.

The MCA's emphasis on ensuring all water management decisions are based on sound science reflects its concern that some goals, such as the Productivity Commission's call [14] for more effective management of environmental externalities, appear not to have a clear path for delivery. This area would benefit from specific research funding to both better define externalities, and to assign an appropriate economic value. Similarly, opportunities for water recycling cannot be properly explored and assessed unless the costs of existing supplies are known, and this requires further reform to establish markets in which the value of water in alternative uses is revealed. This is particularly relevant for the minerals industry, where there is potential to both supply recycled water to other users, and to accept 'waste' water that would be otherwise unavailable to other users (such as treated sewage).

If Governments need to directly intervene in water markets in order to secure appropriate environmental flows, recognition of native title rights over water and other community good outcomes, the MCA notes that there is a potential for significant market distortions from governments entering, or being perceived to enter, the water market prepared to pay above market rates for water. Governments should take all reasonable steps to ensure that acquisitions of water for ecological flows do not lead to perverse outcomes.

Recommendation:

- **The Australian, State and Territory Governments ensure that adequate resourcing is provided to fully implement the National Water Initiative, including the specific provisions for the minerals industry.**
- **That the National Water Commission continue to drive water reform to ensure allocation of water to users and the environment based on sound science which allows for security of supply and trading to be established in an equitable market whilst pricing for the true cost of water and differential quality.**

(b) National Energy Market reform and consistency with evolution of an Australian emissions trading scheme

The MCA is a strong advocate for an open, competitive and integrated national energy market and supports the further development of the National Energy Market (NEM). But it is estimated the timetable has slipped by up to two and a half years. It is vital to maintain jurisdiction and industry commitment to efficient and timely development of an integrated NEM that improves reliability of supply, promotes greater interstate competition and trade, delivers effective customer choice and strengthens investor and community confidence in the market.

Key regulatory issues still to be addressed include:

- transfer of distribution and retail economic and non-economic regulatory functions to the national framework and cementing new institutional arrangements (the Australian Energy Regulator (AER) and the Australian Energy Market Commission (AEMC)). The delayed introduction of the economic regulatory package means arrangements will now not be in place in time to enable NSW and the ACT distribution businesses and the AER to prepare for upcoming regulatory resets (due to commence on 1 July 2009) to be undertaken under the new rule requiring transitional arrangements;
- set the regulatory framework enabling the AEMC to conduct reviews on the phase out of retail price regulation where effective competition can be demonstrated;

[14] Productivity Commission (2005), *Review of National Competition Policy Reforms*, Inquiry Report No. 33, 28 February, p. 200-209 (see http://www.pc.gov.au/inquiry/ncp/finalreport/index.html).

- implement reform initiatives announced by COAG in February 2006 and April 2007 including the progressive roll out of electricity smart meters, establishment of effective demand-side response mechanisms, mandatory separation of generation and transmission activities and creation of a National Energy Market Operator (NEMCO);
- introduction of the Retail Legislative Package into the South Australian Parliament (the lead jurisdiction). Delayed finalisation of the economic regulatory package has required rescheduling for a 1 July 2008 commencement (a six month delay); and
- commencement of effective competition assessments by the AEMC.

Continued, substantial investment in stationary energy infrastructure is necessary to meet Australia's economic and societal development objectives. Electricity investment is highly capital intensive and long-lived (for 5 or more decades), meaning that new investment brings with it implications that last for decades[15]. In such a situation, investor confidence requires a stable regulatory environment. Yet regulatory risk is not readily manageable. For example:

- significant new baseload investment will be required by around 2015. Planning, permitting and development timeframes mean that decisions on the timing, location, size and fuel type of these new investments will need to commence shortly; and
- transmission constraints currently represent major impediments to promoting efficient investment signals (both locational and timing). As such, certain transmission links in the National Electricity Market require augmentation in order for major capital investments to efficiently follow any future emissions trading regime.

Without a clear greenhouse gas emission policy framework there is a risk that investment in baseload capacity may be deterred. The MCA has therefore welcomed the recommended approach of the Prime Minister's Task Group on Emissions Trading and also the learnings from the National Emissions Trading Taskforce work by the States and Territories. It is vital that the best possible emissions trading scheme is introduced into Australia and that this scheme has regard to Australia's comparative advantages in energy resources and energy intensive, exporting and import competing activities. The MCA has set out its position on emissions trading in its submission to the Prime Minister's Emissions Trading Task Group [16] and requests that position be taken into account by the Commission – including the need for a suite of complementary abatement and adaptation policies and support for the development and demonstration of low emission, step change technologies.

Shaping the design of a future international greenhouse gas abatement scheme while maintaining Australia's competitive advantage requires:

- designing a transition so that competitiveness is not reduced in the medium to long term;
- developing mechanisms for progressive integration with other emissions trading schemes into regional and eventually more international systems with open-door policies for new countries and regions to 'opt in';
- identifying the interplay between step-change technology development and the development of market mechanisms;
- reinforcing the importance of driving international cooperation so that an effective set of responses can emerge;
- positioning Australia as a global leader in the development and deployment of low emission technologies, specifically carbon capture and storage; and
- meeting the requirement for a single, integrated, national Australian system.

Recommendation:

The Australian Government and State/Territory Governments continue to work to:

- **progress ongoing reforms in energy regulation to ensure national consistency of regulations; and**
- **a smooth transition to the introduction of a national emissions trading scheme in Australia – led by the Commonwealth, specifically that:**

[15] Energy Supply Association of Australia, submission to the Prime Minister's Task Group on Emissions Trading, 2007, page 2.
[16] Available at www.minerals.org.au.

- **establishes market signals that encourage the adoption of new technologies and energy efficiency measures rather than impose an indiscriminate punitive tax;**
- **provides for a phased tightening of the disciplines (the cap of permitable allocations and penalty prices) as the market's capacity to deliver a change in industrial behaviour improves, as the science in support of a target of stabilised CO_2 atmospheric concentrations becomes clearer, as the economy is better able to accommodate the impact on competitiveness and economic growth, and in the expectation that a more global solution eventuates;**
- **complements other mitigation measures, specifically the hypothecation of Government revenue raised to further pre-competitive research, development and initial deployment of low emission technologies;**
- **is part of a comprehensive suite of policy measures and not promoted as a panacea to managing climate change;**
- **is as comprehensive as practically feasible in its coverage of all sectors – estimated to be about 75% of industry – but that accommodates the specific circumstances of downstream transport and agriculture not as readily covered in such a scheme;**
- **provides for transitions to a global system progressively integrating the national scheme into regional and prospectively other "international systems";**
- **accommodates the long-run competitiveness challenges faced by the trade exposed and energy intensive industries to mitigate against "carbon leakage" ; and**
- **is the only system in Australia run by the Australian Government replacing the multitude of various and varying State and Territory mitigation policies and measures.**

(c) Competition Policy – transport infrastructure

The MCA is a strong advocate for competitive and integrated national public road, rail and port infrastructure, which is critical to the continued competitiveness of the industry and the economic and social welfare of all Australians.

All of the major rail systems are subject to some form of economic access regime however, regulatory processes, mechanisms for determining prices and the provisions for resolving disputes vary from system to system. Furthermore, the process of seeking an access determination by the relevant regulator (ACCC or State/Territory authority) can be both time consuming and expensive, typically taking many months and, for major infrastructure developments, a year or more.

Jurisdictional variations in structures and pricing policies add unnecessarily to the regulatory compliance burden both for minerals companies[17] and their independent transport service providers operating in more than one state. Clearly greater regulatory harmonization is necessary for the modern Australian economy. The MCA therefore welcomed the 10 February 2006 COAG communiqué recognizing this need.

The Pilbara iron ore industry owns and operates highly integrated mining, transport and ship loading assets. This has produced very high levels of efficiency. These efficiencies are a major source of competitive advantage for Australia's globally traded iron ore. In fact, this integration has become so advanced that the facilities operate as a unified production process.

The Prime Minister's Exports and Infrastructure Taskforce report [18] found **there was a stark contrast between:**

(a) **those parts of the economy** (eg. the Goonyella rail system and the Dalrymple Bay Coal Terminal at Mackay and the Hunter Valley rail system into the Port of Newcastle, NSW) "**where economic regulation sits between investors in export related infrastructure and users**" (page 2); and

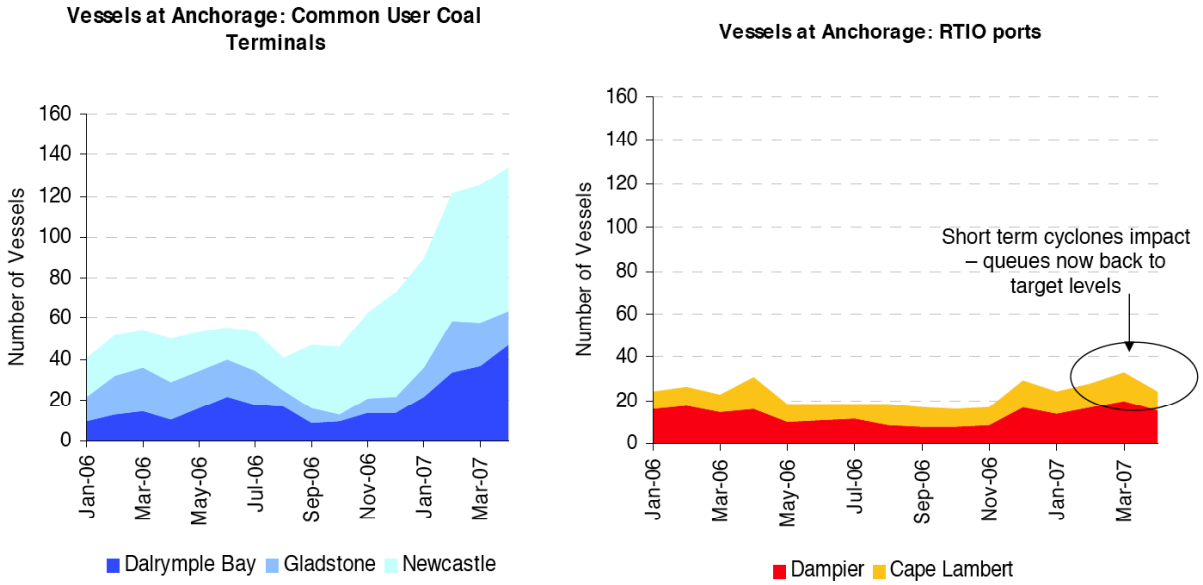
(b) **the more responsive vertically integrated transport chains** (particularly the Pilbara iron ore chains).

The different outcomes in cases (a) and (b) are illustrated in **Figure 5.1** respectively**[19]**. Such considerations led the Taskforce to the conclusion that:

[17] This includes, for example, rail and port organisations owned by minerals companies including bulk commodity terminals, rail infrastructure companies and stevedoring companies.
[18] Australia's Export Infrastructure, May 2005.

- the current economic regulatory framework is adversarial, cumbersome, complicated, time consuming, inefficient and subject to gaming by participants; and
- there are too many regulators and regulatory issues are slowing down investment in infrastructure used by export industries.

Figure 5.1



Source: Bao Dang Scheduling, Rio Tinto Iron Ore (RTIO), June 2007

The MCA has consistently argued that the fundamental point in addressing the systemic failure in Australia's minerals export corridors is the efficiency and effectiveness of the whole transport and logics chain – not merely an element of it. The MCA's submission to the Prime Minister's 2005 Exports and Infrastructure Taskforce goes into further detail and the Commission is asked to have regard to that submission. [20]

The coal industry has been considering strategies to improve coordination in coal export systems to address the fragmentation of ownership and better coordinate investment decisions in port and rail infrastructure:

- the Hunter Valley Coal Chain Logistics Team has increased daily coal chain throughput capability by 15 per cent with minimal capital expenditure. It has also developed an integrated capital plan to increase coal chain capacity by a further 45 per cent; [21] and
- other coal producers have been watching the achievements in the Hunter Valley with interest and have moved to implement many of the learnings in the operation of their coal chain. For example, the Goonyella Coal Chain Improvement Program has increased throughput at Dalrymple Bay by coordinating some planning functions. [22] In the case of the Goonyella corridor, the users and Government have recently jointly commissioned Mr Stephen O'Donnell to review the performance of the whole coal chain. This approach has been strongly influenced by the extra capacity achieved through greater coordination in the Hunter Valley.

According to a recent study for the Australian Logistics Council,[23] Australian competition regulation is not particularly hospitable to these arrangements. Although there are mechanisms for approving them, and these

[19] The Australian Bureau of Agricultural and Resource Economics' June 2006 update of the Taskforce report reiterated the earlier finding by the Taskforce that the Pilbarra mining and transport systems have proved far more efficient than the east coast coal transport systems.

[20] available at www.minerals.org.au.

[21] Australian Logistics Council (2006), Supply Chain Case Studies, Appendix to *Infrastructure Action Agenda* (study undertaken by Meyrick and Associates).

[22] Australian Bureau of Agricultural and Resource Economics, "Australian Coal Exports – Outlook to 2025 and the Role of Infrastructure", Research Report 06.15, October 2006, p. 59.

[23] Australian Logistics Council, op.cit.

mechanisms have been successfully used, the approval process is uncertain, time-consuming and can be expensive, and this does not encourage or promote experimentation and innovation.

The presumption in competition regulation is that any process that entails agreement between competitors on the coordination of supply or the sharing of critical infrastructure capacity is suspect. The Exports and Infrastructure Taskforce questioned whether such concern is appropriate in export industries, where Australian exporters compete in a global marketplace.

In the long run, it is hard not to accept a case for examining "the scope for establishing a single national regulator or in other ways reducing the number of regulators affecting Australia's export oriented infrastructure." [24] The challenge is how best to transition from the current to this longer-term solution.

The MCA is concerned to ensure a balance is achieved between the needs of today and the demands of tomorrow. The best approach to addressing these needs involves:

- **relying on the market**: i.e. providing a presumption that issues to do with export infrastructure access and pricing are best left to the market via commercial negotiation between the infrastructure providers and users;
- where regulation is warranted, light handed regulation applied in the first instance;
- more intrusive regulatory approaches to situations **where regulation has demonstrably failed**;
- where there is direct public sector involvement in infrastructure, ensuring the circumstances do not develop where government, either advertently or inadvertently, abrogates its responsibility to ensure scoping and planning of essential multi-user export infrastructure and, where applicable, contribute to its funding and/or ensure recovery of costs from other users;
- public/private sector investment in infrastructure based on an **equitable sharing of the costs and benefits** of the infrastructure;
- a **consistent national regulatory framework** that promotes localised/regionalised and national decision making on the development and expansion of export infrastructure; and
- **providing opportunities for contestability** at regular intervals where private sector bodies are leasing public infrastructure or providing services (eg. tug, pilot, moorage and other services). Success in renegotiation should only follow consideration by the government owner of the:
  - adequacy of the lessee's response to exporters' infrastructure needs;
  - provision of timely resolution to any conflicts that arise; and
  - the "reasonableness" of access arrangements and charges.

Recommendations:

For the export infrastructure regulatory system to function efficiently and effectively there is a need to:

- **better define regulatory objectives so that access proposals are evaluated on the basis of their "reasonableness" rather than requiring them to be optimal or "first best";**
- **reduce the fragmentation and inconsistency in regulatory arrangements across the country; and**
- **improve the administration of competition policy and ensure regulatory delays do not hinder the delivery of needed infrastructure by:**
  - **streamlining its application across Australia "to ensure that universal and uniformly applied rules of market conduct apply to all market participants";** [25]
  - **narrowing the scope of regulation to areas where it is clearly needed;**
  - **clarifying regulatory objectives, with a primary objective being to foster efficient investment in infrastructure capacity; and**
  - **reducing the inconsistency in arrangements including considering an exemption of export supply chain collaborative processes where the interests of Australian consumers are not at risk.**

With respect to third party access:

[24] Export and Infrastructure Taskforce Report, page 52.
[25] Second Reading Speech, Competition Policy Reform Bill, 1995, 20 June 1995.

- **Part IIIA of the *Trade Practices Act 1974* be amended to provide for an "efficiency override", whereby key infrastructure facilities could be declared exempt from third-party access by the Treasurer.**

5.5.2 Efficient transport infrastructure

(a) Freight transport

All sectors of the economy rely on transport to move their products and facilitate the provision of services. Thus long term planning and improvements in the efficiency of transport infrastructure is crucial to Australia's continued economic prosperity. Continued economic reform of our transport system is even more important to the dry bulk commodity sector.

Road and rail access issues in Australia are distinctly different. Economic regulation of access under competition policy is a significant issue for rail and "there is considerable variation between jurisdictions on the form that access regulation takes". For road the focus is on physical, prescriptive regulatory limits rather than economic regulation of access and pricing.[26]

In rail we now have a multiplicity of access regimes and overlapping regulatory bodies, including:

- too many rail safety authorities (more in fact than the number of above rail operators);
- differing accreditation requirements within the same jurisdiction;
- interstate rail operators having to comply with several differently based competition regulation access regimes across the national rail network;
- transport chains within the same state jurisdiction having to deal with a variety of (uncoordinated) access regime regulators (at the state and Commonwealth levels) along different stages of the transport chain;
- limitations on rail access arising from physical limitations, pricing structures, or public policy decisions. For example:
  - due to physical impediments such as limited track length, it is not possible for longer trains to operate at certain intermodal and coal terminals;
  - there is also a lack of pricing incentives to use off-peak rail paths; and
  - there are rail freight curfews during certain time periods in jurisdictions such as New South Wales resulting in congestion during peak periods.

In road, access issues include prescriptive regulatory limits on truck dimensions and limitations on the routes that can be used by large trucks.

Reform of heavy vehicle access regulation is moving from prescriptive to more outcomes based regulation such that it is the performance of the vehicle rather than its physical dimensions that determine access to a road network. The National Transport Commission's Performance Based Standards regulation program aims to achieve this outcome but is not yet finalized and jurisdictions are not unified in their support for the approach.

The pricing system for road access by heavy vehicles has also been subject to number of criticisms, including:

- cost recovery targets do not reflect the true cost of heavy vehicle road use;
- charges paid by individual vehicles do not reflect their actual road use;
- other vehicles are not charged for access as the system only applies to vehicles over 4.5 tonnes; and
- the relationship between pricing and cost recovery is fairly indirect – especially for local government.

There is a separate regulator in each jurisdiction for rail safety, occupational health and safety (OH&S) and environmental protection. This unnecessarily adds costs and an additional compliance burden (due to differing reporting requirements). There are also differing operational rules across jurisdictions, for example:

- a single driver is permitted to operate a freight train in some jurisdictions but not in others (eg. the Hunter Valley rail system);
- train speed limits vary limiting available time paths available for bulk commodities transport; and

[26] Australian Logistics Council, op. cit., p. 2 & 3.

- truck operator fatigue management plan requirements differ across jurisdictions (eg. for journeys over 500 kilometres).

Recommendation:

The Productivity Commission should undertake further consultation regarding institutional reforms with a view to improving the national consistency and efficiency of Australia's transport infrastructure regulations. In particular there is a need:

- **to improve national consistency in hours of allowable infrastructure operation, introduce performance based regulations for the use of the different modes of transport and improve national consistency and shorten approval time lines in the planning processes to which a transport infrastructure investment proponent must adhere;**
- **for more consistent and coordinated strategic approaches to infrastructure planning and investment; and**
- **to ensure government regulations seek a fair and equitable recovery of road user charges from heavy vehicles and other road users to ensure there is no element of taxation of a business input.**

(b) Shipping cabotage

When inter-state domestic dry bulk demand cannot be met by Australian licensed bulk carriers, it is met by overseas flagged vessels trading domestically under Australia's Continuous Voyage Permit (CVP) or a Single Voyage Permit (SVP) regime. Under the *Navigation Act 1912* a vessel may only be granted such a permit where no licensed vessel was available or adequate to perform the voyage and it was considered to be in the public interest to issue a permit to an unlicensed ship.

Intra-state licensing arrangements for foreign vessels differ between Australian States and need to be harmonized.

The MCA strongly supports maintaining the current SVP/CVP regime while ensuring it is administered consistent with its objectives and in a transparent manner:

- the bulk commodity industry has no alternative but to use foreign flagged and crewed bulk carriers (eg. to meet seasonal fluctuations and demand spikes) given the small number (17) of Australian flagged dry bulk carriers, the majority of which have fixed contract commitments; and
- the use of the CVP/SVP system is now integral to the efficient transport of domestic dry bulk commodities with the Australian economy being the obvious beneficiary.

In the absence of any change to cabotage arrangements aimed at improving efficiency and reducing transport costs, the MCA supports the Australian Government's current position on CVPs and SVPs. This is particularly important given structural changes over the past 3-4 years in the industry: fewer bulk shippers own their own ships and must rely on chartered unlicensed tonnage. To remove CVPs/SVPs or substantially change the arrangements under which Permits can be issued would be of significant concern.

Recommendation:

- **A review of Australia's cabotage arrangements should be undertaken through completion of the Australian Government's Legislation Review Program, as recommended by the Productivity Commission in its report on National Competition Policy.**
- **If cabotage is preserved, it is very important that Continuous Voyage Permit (CVP) and Single Voyage Permit (SVP) arrangements remain in place.**
- **Noting that CVPs and SVPs are only required when unlicensed vessels are engaged on inter-state voyages and that the requirements for unlicensed intra-state voyages vary between individual States, these requirements need also to be reviewed and standardised.**

6. CONCLUSIONS

6.1 A Third Wave of Regulatory Reform

There is no doubt the past three years have been very positive for the minerals industry and forecasters see the supercycle of minerals commodity demand continuing. However, it is crucial that Australia does not become complacent but rather commits to an industry/government effort to remove constraints and invest in wealth creation so that the Australian minerals industry can contribute to the sustained growth and prosperity of current and future generations through the integration of financial progress, responsible social development and effective environmental management.

The minerals industry accepts it has a role to play in continually improving those areas of its operating environment over which it has an influence so as to maintain its licence to operate in host communities across the country.

Australia also needs a "third wave" of reforms founded in a partnership between government and industry that redresses the artificial constraints to growth and optimises the financial, environmental and social dividends of the minerals industry to the benefit of all Australians now and into the future.

The two waves of economic reforms over the past two and a half decades vastly improved Australia's competitiveness and productivity, and laid strong foundation for the minerals industry's continued investment and growth. But they also exposed inherent weaknesses in the capacity of markets and the constraints of the regulatory system to accommodate critical environmental and social considerations.

This should not be misconstrued as complacency for continuing sound macro-economic management and broader micro-economic reform. Rather, that this continuing imperative be complemented by a third wave of reforms founded in a more sophisticated, collaborative approach between governments and industry that delivers enabling (rather than prescriptive) regulatory frameworks, complemented by capacity building where both government and industry contribute. The primary considerations for the minerals industry are in the regulations governing land access (including project approval processes), occupational health and safety, exploration investment, climate change management, education and training, social and physical infrastructure for regional development, and gender and cultural diversity in the workforce.

The inquiry's terms of reference unfortunately restrict it from contributing to this third wave of reform outcome:

(a) they limit the ability of the Commission to usefully address the impact of regulation on the full range of the economic activity undertaken by the minerals sector and probably other sectors of the economy. Specifically, in 2007 they focus only on the burdens on primary industry businesses. However, the minerals sector's wealth creation chain goes well beyond exploration and extraction and includes mineral processing and commodity transport, both vital to overall efficiency. Regulation impacts all aspects of this value chain and it is in the national interest that such regulation is efficient and least cost; and

(b) they limit the Commission from looking at State/Territory/Local Government regulations unless these intersect with the Commonwealth and can be looked at through the window of Commonwealth legislation.

Expanding the terms of reference will allow the five year *Review of Regulatory Burdens on Business* to better identify reforms to enhance regulatory efficiency and national consistency, reduce duplication and overlap in Commonwealth/State/Territory regulation and improve the performance of regulatory bodies. The process would also pave the way for greater microeconomic reform more generally.

6.2 Reducing the Regulatory Burden

Economic prosperity and growth depend on stable, well performing government institutions and markets. The regulatory system – the laws or other government rules that influence or control the way people and businesses behave – represents a vital part of the institutional framework to enable society to achieve its objectives. The efficiency of regulations is impacted by the:

- extent to which the processes are well designed to achieving the regulatory goal without adversely affecting industry's wealth creation process;
- adequacy of resources including personnel provided to regulatory agencies; and

- efficiency with which regulations are implemented having regard to the principle of minimum effective regulation.

Minimising the 'regulatory burden' on business represents an important goal of government but this is not about minimising regulation itself – regulation is necessary to achieve the objectives of a modern state.

Unfortunately there is generally no overarching national framework to consider harmonisation of regulations among jurisdictions. Even within jurisdictions, regulations are usually considered piecemeal, rather than in a more holistic framework. The recent Council of Australian Governments' decision to review ten areas of regulation 'hot-spots' – including OH&S and environmental assessment and approvals processes – is a welcome development. The MCA submits that national assessments of regulations should be accompanied by arrangements for jurisdictions to work together and with industry in order to harmonise and improve the efficiency of regulation across Australia.

In addition, a common administrative problem arises from poorly defined responsibilities between agencies both within and between jurisdictions. Administrative silos tend to engender narrow perspectives and inability to see the bigger picture. Generally, there are few examples of governments outlining clearly their administrative and compliance requirements in a whole-of-government way. This also hampers the development of national legislative approaches, even where there is general agreement on the way forward.

This submission also highlights the need to address any regulatory hurdles to reducing the capacity constraints to increased minerals production. Capacity constraints are a global problem and the speed with which the minerals industry in Australia addresses these constraints will determine its success compared with other commodity producers around the world.

The submission's recommendations focus on how to improve three aspects of regulation in the context of the identified capacity constraints:

(a) improving the regulatory laws or other government rules that impact on the capacity constraints;

(b) the extent to which the processes are well designed without impacting on the industry's wealth creation chain; and

(c) the adequacy of resources provided to regulatory agencies and the efficiency with which they are employed.

(a) Improving the regulatory impact on capacity constraints

It is vital for the minerals industry's wealth creation process that government's ensure that in addressing capacity constraints to growth:

- regulation of the overall economy achieves desired outcomes efficiently with minimum necessary direct control of economic agents by government authorities;
- necessary economic regulation of the minerals industry is applied in the most economically efficient manner to achieve identifiable outcomes but not further inhibit what otherwise would be voluntary actions; and
- regulation imposed to deal with specific issues does not unwittingly create capacity constraints in the value chain of mineral products.

(b) Improving the extent to which the regulatory processes are well designed

The recommended approach of the minerals industry is that:

- the first policy choice should be the market: there should generally be a presumption that the free and unhindered operation of the market will lead to efficient outcomes;
- in instances where regulation is warranted due to clearly established market failure, light-handed regulation (eg reporting and monitoring) should be applied by the regulator;
- more intrusive approaches should only be used where light-handed approaches and non-regulatory options have demonstrably failed;
- government regulation should only be used where it is demonstrably the most economically efficient way of addressing the problem or issue in question;

- there is inter-jurisdictional harmonisation of regulation and consistency with international approaches to avoid the wasteful costs to companies of developing different monitoring and compliance systems for different jurisdictions to meet what are usually similar objectives;
- appropriate use is made of co-regulation, quasi-regulation and self-regulation (including voluntary industry codes) to encourage the development of best practice approaches;
- regulation is risk- and performance-based wherever possible with prescriptive regulation employed only where it is demonstrably more efficient and effective;
- COAG Ministerial Councils should be responsible for prioritising, streamlining and simplifying Australian regulations;
- regulations should be targeted at the identified problem or issue and not impose unnecessary burdens on those affected.

(c) Improving the adequacy of resources provided to regulatory agencies

The submission has highlighted the need for better resourcing of regulatory authorities, including that:

- jurisdictions provide adequate resourcing of regulatory agencies to ensure that skilled inspectors can equitably, effectively and efficiently administer regulations so that compliance costs for business are minimised;
- more efficient use of resources devoted to environmental approvals:
  - to reduce unnecessary duplication of Commonwealth and State processes where bilateral agreements under the *Environment Protection and Biodiversity Conservation Act* are not in place; and
  - even when accreditation processes are in place, delays occur as the Department of the Environment and Water Resources is struggling to meet the deadlines for project assessments;
- the Department of Environment and Water Resources has not had the resources to properly update the Emissions Estimation Technique manuals for the collection of data and this is undermining the effectiveness of the National Pollutant Inventory; and
- they establish effective one-stop-shops for major project approvals across all jurisdictions.