NATIONAL COMPETITION COUNCIL

10 November 1998

Ms Helen Owens
Presiding Commissioner
Progress in Rail Reform Inquiry
Productivity Commission
Locked Bag 2
Collins Street East PO
Melbourne Vic. 8003

Dear Ms Owens

Thank you for your invitation to contribute to the Commission's inquiry into the Progress in Rail Reform. Rail matters have constituted a high proportion of those considered by the Council to date and it considers that it can make an important contribution to your inquiry.

The Council has confined its submission to areas of relevance listed in the Commission's Issues Paper. These are:

1. Industry structure and competition
2. Access regimes and regulation
3. Intergovernmental issues
4. Competitive neutrality

Should there be any further information you should require, please do not hesitate to contact me on 9285 7491.

Yours sincerely

Deborah Cope
Deputy Executive Director

**SUBMISSION TO THE PRODUCTIVITY COMMISSION'S INQUIRY INTO THE PROGRESS IN RAIL REFORM**

## 1. INDUSTRY STRUCTURE AND COMPETITION

The Council's analysis to date of rail matters indicates that below rail infrastructure often possesses natural monopoly characteristics. Other areas of the rail industry, such as freight haulage, are usually economic to duplicate. Traditionally, a vertically integrated government entity offered all rail services, often within an environment that limited competition from alternative suppliers.

Some governments have now vertically disaggregated rail services and separately corporatised each entity. Others, such as Queensland, have merely established separate operating units, retaining linkages through common overall management. Submissions to the Council's assessment of the Queensland's Rail Access Regime commonly noted their concern at the lack of transparency provided by vertical integration. For instance Toll Rail noted that:

> *Because the access provider is a substantial participant in "other markets" and receives substantial CSO funding for its businesses in those markets, there should be access to financial information in respect of all relevant businesses to ensure that access is not being hindered by indirect means – for example CSO funding in freight (road and rail) or passenger rail activities being used to create disincentives for new entrants to invest in rail services in Queensland.*

ACIL argued that:

> *Given the integrated nature of QR's operation it will be extremely difficult not only to determine the asset split but more importantly to determine the asset valuation and the apportioning of operating costs to infrastructure and haulage components. This will be the case particularly where there are shared facilities, such as corporate headquarters, workshops, and shared personnel in the field such as emergency crews and their associated equipment needs.*

This lack of confidence in the outcomes negotiated with a vertically integrated supplier could result in an increased number of arbitrations under Part IIIA mechanisms, making it more costly to achieve the benefits of competition in rail freight services.

The additional costs of operating separate entities largely relate to increases in transaction and administrative costs. While these costs are not trivial, the Council is of the view that full structural separation allows greater confidence for upstream and downstream consumers and that its long term benefits are likely to outweigh these costs.

## 2. ACCESS REGIMES AND REGULATION

### 2.1 Overview

Part IIIA was designed to replicate the pressures that could be expected in a competitive market. These pressures were to be applied to services with natural monopoly characteristics and essential to the activities of upstream and downstream firms.

These suppliers are likely to act as monopolists, charging prices that include monopoly components such as rates of return that are too high and inefficient operating costs.

More complex problems arise if the supplier also has a commercial arm in upstream or downstream markets. This supplier may profit from providing its commercial arm access on more favourable terms and conditions than its competitors. Part IIIA arbitration processes could address this issue. Additionally, under the competitive neutrality provisions of the Competition Principles Agreement (CPA), governments agreed to address this aspect, when it related to businesses advantaged by their government ownership.

### 2.2 Access Mechanisms

Part IIIA provides three ways to assist customers to gain access to natural monopoly services on competitive terms and conditions – each way gives a customer the right to independent arbitration.

- Certified access regime - a State or Territory Government can set out the terms and conditions of access. If the State or Territory Government chooses to lodge its regime with the Council it considers if these terms and conditions meet the CPA criteria. If so, it will recommend certification to the Commonwealth Treasurer;
- Undertaking - the facility owner can set out its terms and conditions of access. Undertakings are assessed by the ACCC; and
- Declaration application – instigated by an access seeker. The NCC makes a recommendation to the relevant Minister (the Premier of Chief Minister for State owned infrastructure and the Commonwealth Treasurer in other cases). If the Minister declares the service, disputes are arbitrated by the ACCC. A service cannot be declared if it is already covered by an undertaking an effective access regime.

## 2.3 The Council's role

The Council has two specific roles under Part IIIA

- It assesses applications for declarations against criteria set out by Part IIIA; and
- It assesses State and Territory access regimes against criteria set out in the Competition Principles Agreement (CPA).

## 2.4 Declarations

The criteria in Sections 44G(2) and 44F(4) of Part IIIA give the Council guidance when assessing declaration applications. These criteria are listed below:

| | |
|---|---|
| Section 44F(4) | In deciding what recommendation to make, the Council must consider whether it would be economical for anyone to develop another facility to provide part of the service. |
| Criterion 44G(2)(a) | access (or increased access) to the service would promote competition in at least one market (whether or not in Australia), other than the market for the service |
| Criterion 44G(2)(b) | it would be uneconomical for anyone to develop another facility to provide the service, or |
| Criterion 44G(2)(c) | the facility is of national significance having regard to:<br>(i) the size of the facility; or<br>(ii) the importance of the facility to constitutional trade or commerce; or<br>(iii) the importance of the facility to the national economy. |
| Criterion 44G(2)(d) | access to the service can be provided without undue risk to human health or safety |
| Criterion 44G(2)(e) | access to the service is not already the subject of an effective access regime |
| Criterion 44G(2)(f) | access (or increased access) to the service would not be contrary to the public interest. |

Criterion 44G(2)(a)

The purpose of this criterion is to ensure that the Council only recommends declaration when tangible benefits, achieved through improved access in the market for the service, are carried through to consumers of products in other markets.

To determine if access in the market for the service would improve the terms and conditions of products in other markets, the Council adopted the following three step approach:

1. *Assess the current level of competitiveness in the market for the service.* If the market for the service is already a competitive market, introducing Part IIIA processes to it will not increase competition and hence provide an improvement in its terms and conditions sufficient to affect the competitiveness of other markets.

2. *Verify that nominated markets are additional.* Ensure that the products affected by access are in additional markets, not in the market subject to the application. Access to a service would also increase the competitive pressure on any of its substitute services. However, a close substitute would be in the same market and nomination of this product would not meet this criterion.

3. *Determine if access benefits are likely to be retained in the terms and conditions of products in other markets:*
   (i) The structure of the other market needs to be examined to see if the benefits flowing from access in the market for the service are likely to be retained in the terms and conditions applying to products in the other markets. The benefits are likely to be maintained if the other market is competitive. If the additional market is uncontested, the benefits from access are likely to be absorbed by monopoly pricing.
   (ii) If the subject service is an insignificant input into the other products, the benefits from access are unlikely to significantly alter the competitiveness of the other market.

Criterion 44G(2)(b) and Section 44F(4)

Criterion (b) is intended to identify infrastructure services provided by natural monopolies – that is, to services provided by infrastructure facilities that are not viable to duplicate.

In assessing these criteria, the Council observed that natural monopolies characteristically require large fixed cost commitments (in the form of assets that are difficult to sell for another purpose), providing large quantities of capacity and involving relatively small operating costs.

If another supplier can provide a part of the service, then Section 44F(4) allows the Council the option of not recommending declaration. Each application for declaration can only cover those services that meet all the Part IIIA criteria. The Council considers that this aims to prevent applicants bundling facilities with no natural monopoly characteristics into an application with others that do. Some applicants, apparently aware of the implications of this section, have unbundled the service they want declared and covered each of its unbundled parts with separate applications.

Criterion 44G(2)(c)

The Council takes the view that 44G(2)(c) aims to ensure declaration only covers those facilities that are considered important in a national context.

Criterion 44G(2)(d)

Some infrastructure may require a degree of spare capacity to provide appropriate safety margins. Access must be possible without compromising system integrity, and safe scheduling or timetabling must be feasible.

Criterion 44G(2)(e)

Infrastructure services covered by "effective" access regimes cannot be declared under the National Regime.

Criterion 44G(2)(f)

This provision addresses matters not already dealt with by criteria (a) to (e), which are relevant to deciding whether granting access is desirable in all the circumstances.

The term public interest is not defined in the Act, and it would seem difficult to define it. Under this criterion, interested parties can mount a range of arguments about the merits or problems of an access declaration. These arguments are assessed on a case-by-case basis.

## 2.5 The Council's recommendations on rail applications for declaration

Carpentaria Transport Pty. Ltd

In 1996, the Council received one application from Carpentaria Transport for declaration of the bundled service related to transporting goods by rail between Brisbane and Cairns. This service was provided by both the above and below rail infrastructure owned by Queensland Rail.

The Council concluded that while the below rail infrastructure met all the criteria, including the uneconomic to duplicate criterion, the above rail infrastructure did not. Evidence indicated that it could be economic to duplicate infrastructure to provide some of these above rail services.

The Queensland Premier decided not to declare the services for reasons that differed from those of the Council.

Carpentaria subsequently lodged an appeal with the Australian Competition Tribunal (ACT) against the Premier's decision. This appeal is suspended as Carpentaria and Queensland Rail continue negotiations.

Specialized Container Transport (SCT) - NSW

In 1997, SCT applied for declaration of only the below rail services from Sydney to Broken Hill owned by the Rail Access Corporation (RAC). SCT wished to operate a freight service between Sydney and Perth.

The Council found that the service defined in the application met all criteria and recommended declaration. Particularly, given the significant entry costs and low demand

for the infrastructure already in place, the infrastructure would be uneconomic to duplicate.

The Premier did not to make a formal decision in relation to the Council's recommendation given the Council's concurrent review of the NSW Rail Access Regime. As a result, the service was deemed not to be declared.

SCT subsequently lodged an appeal but later withdrew it after reaching an agreement with the RAC.

NSW Minerals Council

In 1997, the NSW Minerals Council applied for declaration of the below track service provided by the Hunter Line on behalf of the mines that use this line to get coal to Newcastle Harbour. The Council concluded that the service under application met all criteria and recommended declaration. It found that the line was unlikely to be economic to duplicate as significant capacity could be added by incremental investment at a cost much lower than the cost of a new line. It also concluded that declaration should promote competition in the freight haulage and coal markets. As consumers of freight services, Hunter coal miners will face reduced costs which will improve their competitive position relative to Queensland coal miners.

The Premier did not to make a formal decision in relation to the Council's recommendation given the Council's concurrent review of the NSW Rail Access Regime. As a result, the service was deemed not to be declared.

The NSW Minerals Council subsequently appealed and this matter is still to be heard by the ACT.

Specialized Container Transport (SCT) - WA

In 1997, the Council received five applications from SCT for declaration of rail and freight support services provided by Westrail. The first application covered the use of the rail line between Kalgoorlie and Perth. The other applications covered rail freight support services such as arriving/departing services, marshalling/shunting services and access and fueling services.

The Council recommended that the rail line be declared but not the freight support services. The Council found that these latter services were economic to duplicate.

The WA Premier decided not to declare any of the services. He determined that there was an effective access regime in place. The Premier indicated his intention to ask the Council early in 1998 to recommend to the Commonwealth Treasurer that the access regime be certified as effective. The WA Government is yet to lodge this regime for assessment.

SCT lodged an appeal against the WA Premier's decision but later withdrew it after reaching an agreement with Westrail.

Robe River Iron Associates (RRIA)

In September 1998, the Council received an application from Robe River Mining Co Pty Ltd, acting on behalf of Robe River Iron Associates (RRIA), in relation to rail line services provided by Hamersley Iron Pty Limited in the Pilbara region of Western Australia.

In November, Hamersley applied to the Federal Court in Melbourne for Orders:

1. that the rail line service that is the subject of the application "is not a service within the meaning of section 44B of the Act"; and

2. that Hamersley has "the right to sole and exclusive possession and control of the Hamersley Rail Infrastructure Facility giving rise to the Hamersley rail track service …" pursuant to the agreement between it and Western Australia, and this "is a protected contractual right within the meaning of section 44W(5) of the Act".

On the basis of these claims, Hamersley is seeking a further declaration that the Council does not have the jurisdiction or power to either accept or review the application or make a recommendation to the Commonwealth Treasurer.

Hamersley is requesting that the Council be restrained permanently from both considering the application and making a recommendation to the Commonwealth Treasurer.

The Federal Court will hear this matter on 27 November 1998.

## 2.6 Access Regimes

The other area of the Council's responsibility under Part IIIA is the recommendation of access regimes to the Federal Treasurer for certification.

Certification of a State or Territory Access Regime provides the State or Territory Government with certainty on the access terms and conditions and precludes the infrastructure services covered by the regime from declaration. Facility owners could also gain certainty by lodging an access undertaking with the ACCC.

In considering the effectiveness of a State or Territory access regime, the Council must apply criteria set out in clause 6(2) to 6(4) of the Competition Principles Agreement (CPA). These are listed below:

6(2) The regime to be established by Commonwealth legislation is not intended to cover a service provided by means of a facility where the State or Territory Party in whose jurisdiction the facility is situated has in place an access regime which covers the facility and conforms to the principles set out in this clause unless:

(a) the Council determines that the regime is ineffective having regard to the influence of the facility beyond the jurisdictional boundary of the State or Territory; or

(b) substantial difficulties arise from the facility being situated in more than one jurisdiction.

6(3) For a State or Territory access regime to conform to the principles set out in this clause, it should:

(a) apply to services provided by means of significant infrastructure facilities where:

(i) it would not be economically feasible to duplicate the facility;

(ii) access to the service is necessary in order to permit effective competition in a downstream or upstream market; and

(iii) the safe use of the facility by the person seeking access can be ensured at an economically feasible cost and, if there is a safety requirement, appropriate regulatory arrangements exist; and

(b) incorporate the principles referred to in subclause (4).

6(4) A State or Territory access regime should incorporate the following principles:

(a) Wherever possible third party access to a service provided by means of a facility should be on the basis of terms and conditions agreed between the owner of the facility and the person seeking access.

(b) Where such agreement cannot be reached, governments should establish a right for persons to negotiate access to a service provided by means of a facility.

(c) Any right to negotiate access should provide for an enforcement process.

(d) Any right to negotiate access should include a date after which the right would lapse unless reviewed and subsequently extended; however, existing contractual rights and obligations should not be automatically revoked.

(e) The owner of a facility that is used to provide a service should use all reasonable endeavours to accommodate the requirements of persons seeking access.

(f) Access to a service for persons seeking access need not be on exactly the same terms and conditions.

(g) Where the owner and a person seeking access cannot agree on terms and conditions for access to the service, they should be required to appoint and fund an independent body to resolve the dispute, if they have not already done so.

(h) The decisions of the dispute resolution body should bind the parties; however, rights of appeal under existing legislative provisions should be preserved.

(i) In deciding on the terms and conditions for access, the dispute resolution body should take into account:

(i) the owner's legitimate business interests and investment in the facility;

(ii) the costs to the owner of providing access, including any costs of extending the facility but not costs associated with losses arising from increased competition in upstream or downstream markets;

(iii) the economic value to the owner of any additional investment that the person seeking access or the owner has agreed to undertake;

(iv) the interests of all persons holding contracts for use of the facility;

(v) firm and binding contractual obligations of the owner or other persons (or both) already using the facility;

(vi) the operational and technical requirements necessary for the safe and reliable operation of the facility;

(vii) the economically efficient operation of the facility; and

(viii) the benefit to the public from having competitive markets.

(j) The owner may be required to extend, or to permit extension of, the facility that is used to provide a service if necessary but this would be subject to:

(i) such extension being technically and economically feasible and consistent with the safe and reliable operation of the facility;

(ii) the owner's legitimate business interests in the facility being protected; and

(iii) the terms of access for the third party taking into account the costs borne by the parties for the extension and the economic benefits to the parties resulting from the extension.

(k) If there has been a material change in circumstances, the parties should be able to apply for a revocation or modification of the access arrangement that was made at the conclusion of the dispute resolution process.

(l) The dispute resolution body should only impede the existing right of a person to use a facility where the dispute resolution body has considered whether there is a case for compensation of that person and, if appropriate, determined such compensation.

(m) The owner or user of a service shall not engage in conduct for the purpose of hindering access to that service by another person.

(n) Separate accounting arrangements should be required for the elements of a business which are covered by the access regime.

(o) The dispute resolution body, or relevant authority where provided for under specific legislation, should have access to financial statements and other accounting information pertaining to a service.

(p) Where more than one State or Territory regime applies to a service, those regimes should be consistent and, by means of vested jurisdiction or other cooperative legislative scheme, provide for a single process for persons to seek access to the service, a single body to resolve disputes about any aspect of access and a single forum for enforcement of access arrangements.

The principles set out in these criteria cover access conditions, the arbitration process and the inter-relationship between access regimes in different States.

Criteria 6(4)(a)-(c), for example, establish a framework for access negotiations and the Council considers these criteria together. Any factors that could inhibit access, and should be addressed in the Regime, are assessed under these criteria.

While Clause 6(4)(i) guides those matters the regime's arbitrator should consider. The arbitrator can take other matters into consideration as long as they do not conflict with those listed above.

## 2.7 The Council's recommendations on certification of Rail Access Regimes

NSW Rail Access Regime

The Council issued a draft recommendation covering the NSW Rail Access Regime in April 1998. This set out the changes the NSW Government needed to make to allow the Council to recommend the Regime's certification. The changes mainly relate to the scope of the regime and the independence of the arbitrator to achieve the intent of NCP while constrained to use only those approaches specified in the regime.

The NSW Government has undertaken to expand the scope of the Regime and has referred a number of cost components to the regulatory division of IPART for independent assessment.

The NSW Government is required by Section 19B(6) of its Transport Administration Act to subject its amended Rail Access Regime to public comment and to have regard to such public comment. Following this process, the NSW Government will gazette the resulting Regime and then provide it to the Council for its final assessment. The Council will then send its final recommendation to the Commonwealth Treasurer for his decision. At this time it expects to send the Treasurer its final decision at the end of February 1999.

Queensland Government's Rail Access Regime

The Council is currently considering the Queensland Government's Rail Access Regime.

## 2.8 Responses to questions raised in the Commission's Issues Paper

*How are access prices determined?*

If access is covered by national arrangements, prices could be expected to reflect probable arbitrated outcomes. The ACCC would be the arbitrator for declarations and a State based arbitrator, such as IPART of QCA, the likely arbitrator for State or Territory Regimes. State regime arbitrators would be guided by matters in 6(4)(i) of the Competition Principles Agreement (CPA) and the ACCC by Section 44X of the Trade Practices Act. The matters they should take into account are similar and include:

- the owners legitimate business interests and investment in the facility;
- the costs to the owner of providing access, including any costs of extending the facility but not costs associated with losses arising from increased competition in upstream or downstream markets;
- the economic value to the owner of any additional investment that the person seeking access or the owner has agreed to undertake;
- the economically efficient operation of the facility; and
- the benefit to the public from having competitive markets.

Approaches taken in access regimes may vary but should generally preclude monopoly pricing, cross subsidisation and underrecovery of costs directly related to any service.

Access regimes that take a minimalist approach to guiding price outcomes, place a greater emphasis on information disclosure and transfer the responsibility for Regime effectiveness to the arbitrator. Such access regimes would need to include an arbitrator with sufficient expertise and resources to handle the number and complexity of the likely arbitrations.

Regimes that include posted prices reflective of efficient costs, set by an independent regulator, would need to provide less information and could expect fewer arbitrations to verify the prices offered to customers. They do, however, tend to be less flexible in the way different service requirements and pricing options can be adopted.

*How are the often competing interests of infrastructure owners and potential entrants reconciled?*

Part IIIA and the CPA provide for the interests of both parties in access matters. However, natural monopoly prices could include monopoly components - too high a rate of return or asset values, the costs of inefficient investment or operating practices. The supplier could expect the arbitrator to reduce these so that the prices charged were more reflective of those expected in a competitive market.

As noted above, the legitimate business interests of the supplier are to be preserved. Current contractual arrangements should not be undermined. The supplier should not be required to pay for extensions to its facility or provide services below their cost. Outcomes in general should balance the rights of the supplier to a reasonable rate of return and the customer to a competitive price.

*How transparent is the determination process and the outcome?*
The national access regime encourages the negotiation of prices between the supplier and customer. This implies some confidentiality considerations. To function effectively, access processes require sufficient information to give customers confidence that negotiated terms and conditions could not be improved by arbitration. The Council considers that the need for confidentiality should not be misused to limit the release of information, particularly from the arbitration process. The NSW Rail Access Regime allows the arbitrator the power to decide when confidentiality precludes the publication of information that will assist other negotiations and encourages the release of as much information as possible.

*What has been the effect on overall rail prices? Have the access regimes facilitated entry into the provision of rail services?*
While no rail access regime has been certified nor a service declared, the national regime has still had a significant impact on the rail industry. Unlike other industries, rail had no specific reform package put in place until relatively recently. Therefore reforms were left to general mechanisms such as those in Part IIIA.

The threat of imminent declaration appears to have encouraged progress in access negotiations or the preparation of access regimes. For example:

- in one case, a private agreement was reached between the parties before the Council had finalised its consideration of the application;
- in two cases, appeals against Ministers' decisions were withdrawn after the applicant and the relevant service providers reached private access arrangements;
- the possibility that some of its rail network might be declared under the National Regime may have influenced the development of the NSW Rail Access Regime and may have encouraged Queensland to develop its rail access regime.

SCT has advised that the declaration process assisted them in their commercial negotiations. According to SCT, it:

> *has benefited from the two NCC recommendations in respect of declarations concerning rail services provided by RAC* [Rail Access Corporation] *in NSW and Westrail (in WA). Although in each case the relevant Premiers have refused to declare the services in question. SCT was able to secure long term agreements from both Westrail and RAC following the commencement of appeals against the Premiers' decisions.*

*What difficulties are encountered if access is sought to facilities which cross State boundaries?*
(see Intergovernmental Issues)

## 3. INTERGOVERNMENTAL ISSUES

The following issues have arisen concerning co-ordination of State processes:

- application can cover only one supplier - as rail facilities are mainly State owned, services that cross State boundaries are likely to involve multiple owners. Under the declaration provisions, an application can cover only one supplier. Therefore, services that cross State boundaries require as many applications as there are States. For instance SCT's application for declaration of rail line service from Sydney to Broken Hill was only part of the services it required to run trains from Sydney to Perth. Were it to require access under declaration for all the services, it would need to apply separately for those services provided in South Australia and Western Australia. While not an insurmountable problem, this does increase the costs of declaration.

- safety standards - a common theme in submissions to declaration applications and inquiries conducted by other agencies has been the costs associated with meeting and maintaining rail operator safety standards across States. Although a national agreement covering mutual recognition of State and Commonwealth standards has been in place for some years, its effectiveness has been eroded by additional State requirements outside the agreement.

- investment - the costs of using a national network can also be increased when States give differing priorities and take differing technical approaches to investment. This results in variations across State tracks in systems technology and the quality of track. In response, rail operators need to train staff and adapt rollingstock to safely cover these variations.

- access regimes - the CPA envisaged a relatively uniform approach to access regimes across States and, in fact, specifically provided for consistency in approaches in Clause 6(2) and 6(4)(p). These criteria must be met for a regime to be certified as effective. Such consistency should include approaches to prices, timepath allocations, operational and safety standards.

  No State has, as yet, an effective rail regime in place. Therefore, the inconsistencies reported in submissions to declaration applications may be reduced when all States have effective regimes in place.

Recent Australian Transport Council agreements undertook to address these issues through a national approach. The Council would encourage progression of this approach.

## 4. COMPETITIVE NEUTRALITY

As part of the National Competition Policy (NCP) agreements in April 1995, governments committed to apply competitive neutrality principles to all their significant business activities. In essence, competitive neutrality involves the application to public enterprises of the taxes, incentives and regulations that private businesses face. This allows the two sectors to compete for resources on an equal footing and encourages efficient operation of public enterprises. The underlying aim is to ensure that the community's resources are used as efficiently as possible.

Under Clause 3 of the CPA, governments committed to do three things. First, they agreed to introduce competitive neutrality principles to their significant business activities.

Second, jurisdictions agreed to provide a mechanism whereby individual businesses can lodge complaints that competitive neutrality is not being implemented appropriately in relation to certain government business activities.

Third, each jurisdiction agreed to provide the Council with:

- a competitive neutrality policy statement by 30 June 1996; and
- annual progress reports which identify areas of achievement or concern.

The CPA says that the competitive neutrality principles should apply to the "significant business activities" of government entities.

There are two types of "significant business activities" identified by the CPA:

- *government business enterprises (GBEs)* which include Public Trading Enterprises and Public Financial Enterprises and are defined as government undertakings which aim at recovering most of their expenses by deriving revenue from sales of goods and services; and

- *other significant business activities* which include activities that are commonly undertaken by government agencies as part of a wider range of functions. Examples of such activities include refuse collection, maintenance operations, and hospital services such as laundering, cleaning and catering.

The above definitions are very broad and provide jurisdictions with the flexibility necessary to adapt the principles outlined in the CPA to their individual institutional arrangements and policy priorities. In its first annual report, the Council suggested that businesses should be covered by the reforms if their activities would have a significant

impact on the market in which they operated. The Council also notes that a significant business activity should be included in the coverage of the CPA whether or not it is currently returning a profit.

Rail businesses would be classified as significant in most jurisdictions.

Reforming the activities

The CPA sets out two broad approaches for reforming significant government business activities.

First, it recommends that GBEs be corporatised where appropriate. The suggested model involves the introduction of clear business objectives, management independence and accountability, independent performance monitoring, and an effective system of rewards and sanctions. As part of this, all significant GBEs need to introduce:

- full Commonwealth, State and Territory taxes or tax equivalent systems;
- debt guarantee fees directed towards offsetting the competitive advantages provided by government guarantees; and
- those regulations to which private sector businesses are normally subject, such as those relating to the protection of the environment, and planning and approval processes, on an equivalent basis to private sector competitors.

Second, in situations where corporatisation is not appropriate, the CPA states that competitive neutrality should be achieved through the introduction of the above three reforms, and action to ensure that prices fully reflect production costs, including taxes and financing costs.

Many competitive neutrality issues can be addressed by the above NCP obligations. However, it would be simplistic to believe that these obligations will address all issues. For example, they will not cover areas where there is no competition. Such areas can be more appropriately addressed by access mechanisms.