1) The following comments are addressed to the rail haulage of coal in NSW and Queensland and in particular, *"Access regimes and regulation"* in the Issues Paper. However a number of the principles which Shell Coal Pty Ltd ("Shell Coal") support can be applied to rail transport in general. Shell Coal mines rail upwards of 17 million tonnes of coal per annum.

2) The distinguishing features of a railway system are:
(a) the ownership and control of track and track infrastructure,
(b) the ownership, maintenance and operation of rolling-stock,
(c) track maintenance, and
(d) train scheduling.

3) Shell Coal believes that except for the ownership and control of track and associated infrastructure, each of these activities are contestable and should be exposed to the discipline of the marketplace.

4) It is not economically feasible to replicate the rail infrastructure used to transport coal in NSW or Queensland; environmental and legal constraints also prohibit any serious consideration of coal transportation by road. Consequently, the track is a natural monopoly with important similarities to the transmission and distribution lines for electricity. Shell Coal believes that in these circumstances a strong and independent regulator is necessary to ensure that the charge to access rail infrastructure is transparent, non-discriminative, and cost efficient.

5) The possibility of achieving a transparent, non-discriminative, and cost efficient access charge is significantly diminished to the extent that the NSW rail access regime and that proposed by Queensland Rail are built around a "negotiate and arbitrate" philosophy.

6) The very concept of a "negotiated" access charge between railway operators in the same market (eg coal) or in different markets (eg coal versus passenger services) prohibits transparency and anticipates discriminatory pricing.

7) Where there is no transparency and the owner of railway infrastructure has a natural monopoly, the customer (eg coal producer) cannot know whether the monopolist is using market power to recover inefficient operating costs and excessive overheads, or hide poor investment decisions. There is no way to calibrate cost efficiency against world best practice without transparency.

8) Access charges in NSW are based on "combinatorial" pricing whereby in simplified terms, a customer may be charged between a "ceiling price" and a "floor price". Queensland Rail is considering similar methodology. The ceiling price is allied to the price at which a new entrant to the market could provide access, tempered by the use of clusters of customers rather than a single customer valuation. The floor price is allied to "avoidable costs". The access charge for a coal producer will to some extent rely upon the access provider's assessment of "ability to pay" compared with other coal producers. It will also reflect ability to pay between end markets whether passenger, freight of bulk commodities.

9) The concept of "negotiating" access with a natural monopoly is difficult to accept under any circumstances if lack of transparency results in asymmetrical access to crucial information between the parties to negotiation.

10) The NSW Mineral Council has submitted an alternate pricing methodology to the National Competition Council. This methodology rests upon the philosophy of "user pays" and "like fee for like service", using cost-reflective pricing or some form of fully distributed costing. The process is well proven and empirical compared with the Baumal-Willig approach incorporated in the combinatorial approach. Most importantly it can be demonstrated that cost-reflective pricing will deliver at least the same outcomes for the service provider and its State Government Shareholder in a non-discriminatory, cost-reflective and transparent manner.

11) Shell Coal is appreciative of the NSW Government for recognising the benefits to be gained by introducing competition and contestability into its railway system. NSW introduced an access regime in 1996 for railway infrastructure to allow competition in rail haulage and infrastructure maintenance. Ownership of the track and associated infrastructure ("the monopoly") was assigned to a government owned enterprise, Rail Access Corporation ("RAC").

12) In practice the NSW regime has not met the criteria of transparency, efficient costs and non-discrimination, although there are indications from the National Competition Council that some of these concerns will be addressed. On the positive side, access charges have been reduced with the increase in volume of coal hauled to Newcastle and with the scheduled reduction in "monopoly rent".

13) Shell Coal supports the introduction of a rail access regime into Queensland but is concerned it has the same potential for secrecy and market discrimination as NSW.

14) Rail access regimes, in common with other government owned corporations, use written down replacement value to determine asset values. Shell Coal believes that this is **inappropriate** for railway infrastructure and if historical value cannot be used as is the case in USA, there are a number of other more appropriate approaches available. Written down replacement value methodology will tend to inflate the value of rail infrastructure more than should be the case.

15) The problem is compounded when a non-commercial rate of return is applied to an inflated asset base and a revenue ceilings. The NSW rail access regime currently contemplates a return on investment of 14 percent which is patently out of step with profits earned by the NSW coal industry over the last decade. The coal industry of course contributes the lion’s share of revenue under the rail access regime.

16) It is encouraging that these issues are recognised and we support the investigation by the Independent Pricing and Regulatory Tribunal of NSW (IPART) to report on the appropriate asset valuation and depreciation methodology, and the appropriate rate of return for assets held under the Rail Access Regime by the 28th February, 1999. Developments in Victoria with respect to return on gas infrastructure have been interesting in this regard.

17) Shell Coal strongly disagrees with the decision by the Queensland Government to keep Queensland Rail a vertically and horizontally integrated corporate entity and to

17) Shell Coal strongly disagrees with the decision by the Queensland Government to keep Queensland Rail a vertically and horizontally integrated corporate entity and to construct "Chinese walls" between "above track" operations and the newly formed Access Unit. The break-up of the NSW State Rail Authority was not easy but the benefits of putting above track and below track responsibilities into separate corporate entities has delivered benefits we believe will be much harder to achieve under the Queensland Rail structure.

18) Shell Coal is cognisant of the way in which the electricity industry in Queensland was re-structured to promote competition and economic efficiencies and is puzzled as to why the same principles would not apply to Queensland Rail.. After a lengthy period of review by the specially constituted Queensland Electricity Reform Unit, the industry was broken into generators, distributors and retailers with every effort being made to introduce competition and market pressure as soon as practicable. The decision to keep Queensland Rail a single vertically integrated operation is inconsistent with such an approach, yet it can be argued that the value of the export coal industry rivals that of the power industry, and should be given no less attention and consideration.