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EXECUTIVE SUMMARY

The minerals industry operates predominantly in regional and remote Australia and is often the major economic activity in these communities. The key social and economic infrastructure in these regions is suffering from decades of inadequate investment, while duplicate and costly regulatory burdens have also hampered the development of economic infrastructure and the minerals sector more generally.

The corollary of these failures by successive Federal, State and Territory governments is the increasing expectation that the minerals industry should provide services that are properly the responsibility of government, namely: health, education, housing, communications and transport infrastructure.

The minerals industry is prepared to play its part. If current policy settings continue, however, social and economic infrastructure will remain a significant capacity constraint on the Australian minerals sector at considerable cost to Australia's long term economic welfare.

This submission sets out the minerals industry's:

- concerns about how inadequate social and economic infrastructure in regional and remote Australia affects the industry; and
- recommendations on how regulatory objectives of social and economic infrastructure can be met in a more cost effective and less distortionary manner.

In short, we urge an approach which has at its goal that **regulation should be employed to enhance rather than impede the minerals industry's contribution to achieving an enduring balance between the financial viability of the industry, its environmental performance and its positive social contribution.**

The nation's 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.

This effects not only the administration and operational costs of business, but also effects the way things are produced and ultimately what can be produced. The goal of government should reduce the way in which its legitimate activities burden, complicate or waste the time or resources of sectors of the economy which are seeking to add value to societal assets.

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 ones. Recent international events in the financial markets have highlighted the need to continually review and focus regulations on the task at hand rather than presume an accretion of rules is effective regulation.

The Minerals Council of Australia (MCA) made points such as these in its original submission to the Productivity Commission Annual Review of Regulatory Burdens on Business in 2007. That inquiry was charged with focussing on the Primary Sector – the first in a series of inquiries across five years examining all aspects of the Australian economy. Yet, as the MCA argued at the time, the scope of the inquiry was too narrow because it overlooked the full range of minerals sector activity. 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".

The MCA therefore welcomes the opportunity to contribute to this third inquiry in the five-year series of reviews – the examination of social and economic infrastructure services. The MCA is mindful of the Productivity Commission's invitation to make submissions that might cross sectoral boundaries and of the Commission's intention to examine what it describes as generic regulatory issues in that cross industry sectoral boundaries in the fifth year of its review cycle.

All Australians 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 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 and associated infrastructure industries' value chain. Given the importance of minerals in the economy it is in the national interest that such regulation is efficient and least cost.

Minerals production is a much broader activity than, exploration and pure extraction. In particular, 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 MCA submits that Government and industry in partnership must address key capacity constraints to growth:

- reforms to ensure the national education and training system has the institutional and intellectual capacity to deliver quality educational outcomes at all levels;
- nationally consistent Occupational Health and Safety (OHS) regulation based on a preventative systems approach;
- the renovation of social and physical infrastructure in regional and remote Australia (this includes a 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 strategic policy framework to guide the reform and development of multi-user, multi-owner export infrastructure;
- a commitment to streamline the complex and inefficient native title system which is impeding companies and Indigenous Australians reaching mutually beneficial outcomes on land use;
- nationally consistent project approval processes for exploration and mining;
- agreement to promote responsive markets in key domestic infrastructure including water, electricity and gas; and
- policy settings, including trade practices legislation, that respect and reward investment in integrated export infrastructure.

A third wave of regulatory reform

The MCA has long argued that 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; and
- extent to which the processes are well designed to achieving the regulatory goal without adversely affecting industry's wealth creation process.

Capacity constraints remain the challenge for the economy, notwithstanding the immediate effects from the fallout of the international financial crisis and the cyclical downturn in some countries, such as China. Many solutions to these capacity constraints do not require large additional public spending, rather they require better Federal/State co-operation, the elimination of duplicative and contradictory regulatory processes, institutional and intellectual capacity building, and more appropriate competition policy settings. With the right policy and regulatory settings most infrastructure issues can be resolved commercially.

Regulatory reform must provide for effective nationally consistent infrastructure markets; market-based prices that send the appropriate signals to consumers and suppliers; public investment processes that are integrated across governments, forward looking, based on consideration of all options and favour efficient, integrated mining, processing and transport projects with the highest (and published) benefit/cost ratio; private ownership as the preferred model in all contestable market segments; and regulation of infrastructure that does not discourage investment seeking to meet expected demand. Improving and streamlining regulation will free infrastructure development from the constraints that have developed over the decades. The following policy imperatives should underpin Australia's efforts on infrastructure:

- **Export infrastructure**
 - A strategic policy framework to guide the reform and development of multi-user, multi-owner infrastructure. This includes whole of system master planning in supply chains and commercial arrangements including commercial drivers in regulation, particularly for regulating access to the extent required.
 - Policy settings that respect and reward investment, and particularly high risk investment, in integrated export infrastructure. In practical terms, this means changing trade practices and other laws to better reflect modern vertically integrated production chains operating against increasing international competition.
- **Effective markets in key domestic infrastructure**
 - Water policy reform that creates a true price for water and ensures water allocations to users and the environment are based on sound science. These arrangements should also ensure that water entitlements for cultural heritage values are recognised as distinct and separate to environmental flows, and where appropriate, can be traded in the market. The National Water Initiative should be implemented in full.
 - The efficient and timely development of an integrated National Energy Market (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.
- **Rebuilding social and physical infrastructure in regional and remote Australia**
 - Governments meeting their responsibilities in providing sustained investment in education, health, housing and communications services in regional and remote regions of Australia.
 - A strategic framework for regional development, underpinned by a formal partnership between the Federal and State and Territory Governments to ensure that key policies and programs are effectively delivered in a coordinated sense at the community level.

The following submission contains a series of recommendations in different policy areas. Among these is that Productivity Commission recommend to Australian governments that they:

- overcome Federal/State duplication and complexity in regulation;
- establish nationally consistent Occupational Health and Safety regulation based on a preventative systems approach;
- endorse the MCA's strategic principles for multi-user, multi-owner export infrastructure and promote it as a template under the Council of Australian Governments regulatory reform process;
- Amend the Trade Practices Act, in particular the Part IIIA (access regimes) to ensure:
 - competition be promoted in a market that is substantial and of national significance, other than the market in which the service is being provided, before the service is declared;

- the declared service be truly essential to competition in the market in which competition will be promoted, where 'essential' means indispensable as a practical matter for participation in that market;
- the production process exemption prohibit or strictly limit access where doing so would disrupt a vertically integrated production process; and
- the decision-maker be satisfied that granting access is in the public interest and in so doing, that the decision-maker takes account of the costs and risk of regulatory error;
- fund the 2007 COAG commitment to develop a proposal for a more harmonised and efficient system of environmental assessment and approval;
- reform competition policy, particularly in water, electricity and gas (National Energy Market Reform) and the economic regulatory framework for export infrastructure access;
- pay particular attention to water policy issues such as:
 - additional regulatory measures being developed by the Commonwealth through the application of the Water Act are equitably applied to all water users, such that they do not represent an unfair barrier for minerals industry access to water markets;
 - the ACCC recognises in its advice to the Minister for Water Resources that the minerals industry water users should not be required to pay additionally for government's water planning and management activities to which it is already contributing;
 - 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; and
 - 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);
- improve the complex and inefficient native title system which is impeding companies and Indigenous Australians reaching mutually beneficial outcomes on land use;
- strengthen their commitment to the provision of adequate and appropriate community infrastructure and social services to remote and regional Indigenous communities. Agree to consider amendments to taxation and financial legislation and arrangements aimed at reducing barriers to economic development in Indigenous communities;
- address regulatory rigidity and incapacity of existing vocational training and education arrangements; and
- ensure the new workplace relations legislation builds on, and does not undermine, twenty five years of industrial relations reform that has delivered labour market flexibility, direct employer/employee relationships for mutual benefit, improved productivity and industrial harmony.

PREAMBLE

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.

OVERVIEW

Australia's minerals sector has been a major contributor to the strong performance of the Australian economy over the past half decade. The global financial crisis, and the attendant downturn in world economic activity and slowing world trade, has had a significant adverse impact on the industry. Commodity prices have more than halved, investment projects have been delayed, production reduced and substantial employment cuts announced. It is not an exaggeration to say Australia is facing the most difficult short term economic environment in a generation and the minerals industry is not immune.

The global financial crisis exacerbated a business cycle slowdown that was already underway in the world economy. Industrial production and commodity demand was falling, particularly in developed economies but also in emerging economies. The United States has endured trade and budget "twin deficits" for some time, gradually and significantly undermining growth. The US had, in fact, been headed for a structural recession for some time. The global financial crisis made clear the policy shortcomings and subsequent structural imbalances in the US and resulted in the world being caught in a vicious vortex involving:

- a crisis in confidence in capital markets;
- a matching crisis in confidence amongst the consumers and businesses of the globe;
- increasing unemployment; and
- reduced commodity demand, moderating supply and a sharp drop in commodity prices.

These developments mean the policy makers are framing their responses in a vastly different economic environment to that faced a year ago or indeed to that envisaged just a few months ago. The critical test as the Government seeks to boost aggregate demand in the short term is to ensure the overall policy responses are directed to lifting productivity growth and encouraging investment over both the short *and* long term. The nature and scale of the Government policy response will be a key determinant of how well the minerals industry weathers the current downturn and how the industry is positioned to fully capitalise as the global economy recovers.

Three imperatives should drive policy settings

The MCA argues there are three broad policy imperatives that should guide macro-economic and micro-economic policy settings:

- the importance of responsive and responsible macroeconomic policy settings, this should include a 'root and branch' review of Government expenditure to ensure spending is meeting the challenges facing the economy effectively and efficiently;
- that new policy reforms enhance rather than diminish productivity, investment and the competitiveness of Australian industry; and
- a continuing commitment to address capacity constraints in the economy, both through appropriate fiscal measures and regulatory reform.

This submission is centred upon the last of these issues.

Improving the capacity of the Australian economy

Capacity constraints represent a substantial threat to the minerals industry's current (and future) performance, impairing the industry's competitiveness and limiting its global market share. The current softening of global demand is no justification for any slackening of the effort to eliminate the supply constraints that have seen the minerals sector lose market share despite buoyant demand over the last 5 years. The cost of this missed opportunity was substantial. Access Economics has

estimated that if Australia had maintained its market share between 2002 and 2007 then - at today's prices - Australia would have earned another \$17 billion in export income, the equivalent of 1.6 per cent of nominal national income in 2007. Addressing capacity constraints now will both improve the industry's performance in the current crisis and position the sector to take advantage of the inevitable correction to global markets when demand recovers.

Many capacity constraints have been the consequence of policy shortcomings at both national and state levels. They included congested and poorly functioning export corridors, shortages of energy and water, inadequate social and physical infrastructure in remote and regional communities, shortcomings in the education system and duplicative and excessive regulatory requirements for occupational health and safety and land access and use. Few of these problems can be solved in one year. Many solutions will not require large additional public spending but rather substantial and sustained Federal/State co-operation to overcome complex and contradictory regulatory processes and other inconsistent policy settings.

To overcome the constraints governments and industry have different but indispensable roles to play. Governments must identify the key infrastructure requirements needed in key growth corridors and meet its responsibility to citizens wherever people live; Industry can then seize its opportunities confident in the certainty of the regulatory environment - and ultimately deliver shareholder returns and sustainable development. These two responsibilities are part of an integrated, holistic approach to the infrastructure challenge. Fixing bottlenecks at the ports won't be enough if there are too few skilled mine managers, truck drivers, welders or community relations staff to operate mines. Fixing these challenges won't be enough if industry does not have enough water and energy. Addressing these challenges won't be enough if there is not a viable, sustainable community in which to house and service the mine operations.

Accordingly a holistic approach to addressing capacity constraints must include:

- reforms to ensure the national education and training system has the institutional and intellectual capacity to deliver quality educational outcomes at all levels;
- nationally consistent Occupational Health and Safety (OHS) regulation based on a preventative systems approach;
- the renovation of social and physical infrastructure in regional and remote Australia;
- a commitment to replenish the national minerals inventory by removing tax distortions that disadvantage exploration by junior explorers;
- a strategic policy framework to guide the reform and development of multi-user, multi-owner export infrastructure;
- a commitment to streamline the complex and inefficient native title system which is impeding companies and Indigenous Australians reaching mutually beneficial outcomes on land use;
- nationally consistent project approval processes for exploration and mining;
- agreement to promote responsive markets in key domestic infrastructure including water, electricity and gas; and
- policy settings, including trade practices legislation, that respect and reward investment in integrated export infrastructure.

Occupational Health and Safety

The MCA seeks Occupational Health and Safety regulatory reform to deliver improved safety and health outcomes, and greater efficiency for companies operating in multiple jurisdictions. The current approach based on eight separate State/Territory legislative regimes, plus additional industry-specific legislation, is inefficient, adds cost, complexity and uncertainty for industry, and undermines the industry capacity to share information and learn from experience.

The MCA supports a single OHS Act covering all industries and all jurisdictions, and where necessary, national mining specific regulations, codes of practice and guidelines. It continues to oppose any approach which embodied the draconian workplace deaths/industrial manslaughter legislation of NSW. The MCA also supports the Government's proposal to establish Safe Work Australia as a new national independent body to drive policy development and deliver OHS harmonisation and workers compensation schemes. It will be important to ensure the new body has the resources and capacity for policy development, research, data collection and analysis.

Export infrastructure

Australia's multi-user, multi-owner export supply chains are characterised by lack of timely investment in rail and port system capacity; poorly coordinated and disparate interests in the utilisation of existing and planning for future capacity;

sub-optimal alignment of track, train and port system capacity and economic interests; and delays to new investment, technologies and work practices.

These shortcomings, particularly evident in both the Queensland and New South Wales coal sectors, are a function of poor policies and the diverse ownership arrangements those policies have fostered over successive decades. Instead of an integrated, streamlined export chain, the mining operations, the rail track, freight services, terminal operations, port management and shipping services have been developed, owned and operated independently of each other.

Market based solutions are best served by an alignment of those with a direct economic interest in the operation of the logistics chain, such that those with direct interest have direct equity - that is, the minerals producers, and the owners and operators of the rail system and the ports. Accordingly, the MCA advocates a strategic policy framework to guide the reform and development of multi-user, multi-owner infrastructure. This includes whole of system master planning in supply chains and commercial arrangement including commercial drivers in regulation, particularly for regulating access to the extent required.

Social and physical infrastructure in regional and remote Australia

The poor state of physical and social infrastructure in regional and remote Australia can be attributed to a chronic lack of public investment by Federal and State Governments over many decades. It is widely recognised that the social and physical infrastructure provided as a core citizenship entitlement in urban and coastal Australia is largely absent in remote and regional

Australia. Accordingly, strategic investment by governments in core social infrastructure is critical to the development of economic capacity.

Where social infrastructure needs are met, the role of the minerals industry as an economic catalyst can be fully realised through the direct benefits to communities through employment, training, supply chain relationships and the multiplier effect of these wages and salaries in communities. This in turn attracts other economic opportunities to the regions and leads to better communities and regional economies. To achieve this, Australia needs a strategic framework for regional development, underpinned by a formal partnership between the Federal and State and Territory Governments to ensure that key policies and programs are effectively delivered in a co-ordinated sense at the community level.

Building Sustainable Indigenous Communities

The minerals industry is committed to respecting the rights, interests and special connections of Indigenous people to Australia's lands and waters. This reflects a fundamental shift over the last decade from an adversarial, litigious approach to native title to a new approach based on mutually beneficial agreements for land access and sustainable Indigenous communities. An effective functioning native title system represents a critical element in building sustainable Indigenous communities, characterised by higher living standards, and better health and education outcomes.

The effectiveness of Indigenous Representative organisations (including Native Title Representative Bodies and Prescribed Bodies Corporate) is hampered by inadequate resourcing and overly restrictive operating parameters. In particular, the underfunding of NTRBs is delaying the negotiation of agreements and therefore the benefits received by Indigenous communities. Better funding of Prescribed Bodies Corporate is also necessary. Other reforms, without funding implications, can be taken to improve the effectiveness of these organisations. More specifically, NTRBs should be provided with greater degrees of flexibility for expenditure of government monies, while their broader role as a potential contributor to regional economic development should also be recognised.

An effective national education and training system

Over the last 5 years, the Australian minerals sector has one of the fastest growing employers in the Australian economy. While the industry is adjusting its skilled labour needs to the current global financial crisis but there remains even in the current more difficult times, continued demand for skilled mining industry professionals, mechanical and electrical tradespeople and experienced miners.

Considerable effort is required to develop an education system that will meet the continuing needs of the minerals sector and the Australian economy as a whole. Substantial ongoing reform will be required together with better resourcing of Australia's education and training system, ranging across the schools system, vocational education and training (VET) and the higher education sector. In particular, recent reviews of the VET sector and higher education have highlighted a number of areas for reform, and a fundamental issue that underpins all of these reforms is improved outcomes from the teaching of

English, mathematics and sciences in the school sector.

It is critical that Governments and industry work together to develop an effective national education and training system that should:

- possess the requisite institutional and intellectual capacity to deliver quality educational outcomes at all levels - schools, vocational education and training and higher education;
- be market driven - a system that can identify and respond to the needs of the community and of industry, rather than one driven by providers;
- be flexible enough to cater for divergent demands of the Australian economy ranging from school-based learning through trades and vocational training to postgraduate research; and
- be resourced to provide women and Indigenous Australians in remote and regional Australia with the skills for participation in the minerals industry.

Environmental and project approvals

The MCA remains concerned at the slow progress made in reducing the duplication of Federal and State environmental approvals processes. The delays that result from such duplication represent a disincentive to investment, increasing project costs and exacerbating the lag phase between discovery and the commissioning of production projects. The MCA recommends that the Federal and State Governments accelerate work to complete bilateral agreements that will eliminate the overlapping approvals processes.

Responsive water and energy markets

Well-structured water markets are critical if the future requirements of the expanding minerals sector are to be met. It is therefore essential that adequate resourcing is provided to fully implement the National Water Initiative, including the specific provisions for the minerals industry. The National Water Commission should continue to drive water reform to ensure allocation of water to users and the environment based on sound science allowing for security of supply and trading to be established in an equitable market whilst pricing for the true cost of water and differential quality. These arrangements should also ensure that water entitlements for cultural heritage values are recognised as distinct and separate to environmental flows, and where appropriate, can be traded in the market.

Government support for investment in water supply infrastructure should be equitably considered for the minerals industry, as it has been for other industries. Private-public partnerships for water infrastructure for the minerals industry are becoming more common. Specific infrastructure requirements will be determined by pending changes in climate and likely ongoing expansion in response to commodity demands. Strategic investment in water supply infrastructure for the minerals industry should be determined following water resource planning assessments such as the National Water Commission's 'Impact of Mining on Groundwater Resources', and the 'Northern Australia Sustainable Yields' initiatives, which will identify areas at greatest need of government investment in infrastructure.

Given that Australian primary energy demand is expected to grow by 44 per cent by 2030, the ongoing development of a competitive and efficient energy market will be required to underpin our capacity to meet forecast energy needs in a secure, cost effective and sustainable manner. Creating a truly national market will be important in developing energy security, particularly encouraging new investment. The MCA recommends the Federal and State Governments finalise the development of an integrated National Energy Market that improves reliability of supply, promotes greater interstate competition and trade, delivers effective customer choice and strengthens investor and community confidence in the market.

ADDRESS CAPACITY CONSTRAINTS IN THE ECONOMY

Education and Training:

A strong focus on work readiness skills, including literacy and numeracy and "fitness for work" ; a tertiary education sector with the institutional capacity to supply graduates with the skills needed in the minerals industry; support for priority higher education areas, particularly engineering and sciences, and the maintenance of a flexible skilled migration program.

Regional Development

Develop, renovate and rebuild infrastructure in remote and regional Australia. Urgently address the quality of infrastructure and social services in remote and regional Indigenous communities.

Indigenous Relations

Ensure adequate, performance-based resourcing to Native Title Representative Bodies. Provide core funding to Prescribed Bodies Corporate to ensure they are functioning and effective organisations. Align and streamline the existing policies and programs in relations to Indigenous, health, housing, education and livelihoods. Reform Indigenous education and employment programs, with emphasis on improving literacy and numeracy outcomes and "fitness for work", as well as the transition to sustainable employment.

Environment and Project Approvals

Continue to progress regulatory reform through the Council of Australian Governments (COAG) including where appropriate the continued use of National Partnership payments to promote national consistency and reduce duplication in Commonwealth/State/Territory regulation.

Competitive, Efficient and Sustainable Export Infrastructure

A strategic policy framework to guide the reform and development of multi-user, multi-owner export infrastructure, this includes whole of system master planning and policy settings that respect and reward investment.

Amend Part IIIA to ensure that the shared use of infrastructure facilities is only mandated in circumstances where the economic benefits of doing so unambiguously outweigh the costs.

Water and Energy policy

- Fully implement the National Water Initiative, including specific provisions for the minerals industry.
- Promote the efficient and timely development of the Integrated National Energy Market.
- Provide core funding to Prescribed Bodies Corporate to ensure they are functioning and effective organisations

POLICY CHALLENGES AND IMPERATIVES

Supply Constraints

In spite of the current economic slowdown and other risks, the medium to long run prospects for commodity demand remain positive.

Future prosperity requires policies to start adjusting now to help ensure that the supply chains and regulatory frameworks will be in place for Australia to pursue its comparative advantage in minerals production. After the last slowdown in global commodity demand, Australia found itself ill-prepared to meet the challenges of a renewed surge in 2003. Australia lost global market share and billions in potential revenue and profits in the five years to 2007 as we failed to optimise the gains from the structural shift up in commodity demand growth emanating from emerging market economies.

The same mistakes should not be made again. Appropriate policies must be in place and reforms must continue in the midst of the current downturn to allow the minerals sector to take advantage of opportunities that may arise and to assist in managing our way through the crisis -and as the recovery unfolds.

Australia is the world's largest exporter of black coal, iron ore and gold. It is the leading producer of bauxite and alumina; the second largest producer of uranium, lead and zinc; the third largest producer of iron ore, nickel, manganese and gold; the fourth largest producer of black coal, silver and copper; and the fifth largest producer of aluminium.

- Simply put, Australia has a good track record at mining. Mining is a rich field of comparative advantage for the Australian economy relative to the rest of world in part due to the quality and quantity of the natural resources on the continent, but also reflecting the high levels of productivity in the industry.

Indeed, mining is one of the few industries where Australia is a global productivity leader. This is one of the factors that led to Australia's becoming a key part of the supply chain delivering resources into the emerging economies of Asia .

National productivity drives national living standards. Ensuring resources can smoothly flow into the industry to meet global demand for more Australian exports is critical to maximise incomes in Australia.

The opportunity cost of not fully exploiting Australia's comparative advantage in resources is becoming ever clearer. It means lower living standards if the minerals expansion is inhibited by avoidable capacity constraints in any part of the supply chain or by other policies which impact on the productivity or competitiveness of the industry.

A third wave of Reforms

In the 1980s the *Economist* magazine offered the opinion that: *"if you look at history, Australia is one of the best managers of adversity the world has seen -and the worst manager of prosperity."*

One unfortunate side-effect of Australia's prosperity in recent years is that it blunted one of the world's most highly successful reform programs. Australia's reform program began in the adversity of the sharp recession of the early 1980s, and continued beyond the recession of the early 1990s. Tax reform, some further trade liberalisation and labour market reforms (the latter now partly being rolled back) have taken place but overall the pace of economic reforms -Federal or State -has slowed in recent years.

Despite the striking fiscal dividend of recent times -much of it directly or indirectly generated by Australia's minerals industry (Access Economics has estimated that, other things equal, about \$15 billion of federal revenues in 2008-09 will be directly due to the commodity boom) -little revenue was spent on achieving further reform and building capacity. The prosperity dividend was not reinvested in future prosperity via measures aimed at lifting future productivity and participation.

Australia needs a third wave of reforms:

- the *first wave* of reforms of the 1980s opened the economy through reduced protection and industry assistance, as well as financial market reform, including the floating of the \$A and deregulation of the financial sector;
- the *second wave* of reforms in the 1990s continued deregulation of financial markets and introduced reforms in labour markets, established national fiscal discipline, introduced national competition policy significantly in the provision of infrastructure and delivered major tax and labour market reforms; and

- these reforms have been critical in enabling the Australian minerals industry to respond to drivers of change and developments in the global economy and markets.

Further reform, and perhaps particularly reforms aimed at the workings of Australia's federation, has the potential to deliver substantial benefits to the Australian economy. The Federal and State Governments must intensify efforts through COAG and elsewhere to make progress in substantial and sustained reform of Commonwealth/State relations to address the many remaining overlapping, complex and contradictory regulatory processes and other inconsistent policy settings.

For a number of years the MCA has strongly advocated the imperative for micro and macroeconomic policy settings to ensure that Australia adequately invests the wealth generated by the minerals expansion to enhance the productive capacity of the economy.

The MCA has seen capacity constraints as the greatest threat to the industry's performance. These constraints remain the core problem today, impairing the industry's competitiveness and limiting its global market share. The current slowdown does not diminish the urgency of addressing these constraints but rather reinforces the necessity - so that industry can perform and compete through the downturn and be in a position to take full advantage of the inevitable correction to global markets when demand kicks back to, and far exceeds, supply.

Most of these constraints have been the consequence of government policy shortcomings at both national and state levels. They included congested and poorly functioning export corridors, shortages of energy and water, inadequate social and physical infrastructure in remote and regional communities, shortcomings in the education system and duplicative and excessive regulatory requirements for occupational health and safety and land access and use.

Few of these problems can be solved in a single Budget. Moreover, many solutions will not require additional spending but rather substantial and sustained Federal/State co-operation to overcome complex and contradictory regulatory processes and other inconsistent policy settings. Thus, while the MCA supports an emphasis of increased Government expenditure on infrastructure and other capacity building, such spending will only be effective if it is accompanied by regulatory approval and other processes that permit investments to flow.

Where government expenditure is involved the MCA continues to support a redirection of Budget funding towards the productive capacity of the nation -investing today to ensure a better tomorrow.

The IMF backs this call in its most recent comprehensive assessment of the Australian economy:

"The staff agreed with the need for broad-based reform and noted that governments should follow through on their commitments. Recent work by the staff shows that the Australia's productivity performance has been boosted by earlier structural reforms. Successful implementation of further reforms would enhance the economy's flexibility, lift productivity, and foster labour force participation." (IMF, 2008 Article IV Report on Australia).

Australian governments of all levels should not back away from the required reforms simply because they now do not have the strong revenue flows of recent years with which to finance reforms. Rather, spending should be redirected towards good policy in favour of securing our future prosperity and fairness.

Regulatory Reform

While new Budget measures will be a necessary they will not be a sufficient response to the economic challenges caused by the global financial crisis. Nor will they be enough to address the capacity constraints which will re-emerge to hamper the Australian minerals sector as the recovery unfolds.

Policy measures must be complemented by a concerted commitment to address the lack of consistency and duplication of approaches amongst various Federal and State jurisdictions to key regulatory issues, the chronic blame-shifting between jurisdictions over responsibility for shortcomings in infrastructure provision, and overlapping, complex and contradictory competition policy settings.

The Government is making progress in reform of Commonwealth/State relations to overcome these artificial barriers and create a "seamless national economy". The MCA welcomed the November agreement by the Council of Australian Governments to a package worth \$550 million aimed at reducing red-tape and duplication in some priority areas for reform. The Government has also responded to the Productivity Commission's *Annual Review of Regulatory Burdens on Business: Primary Sector* with commitments to consider further reforms in early 2009. In this area the MCA recommends that the Government to agree to the Productivity Commission's suggested review of the Part IIIA of the *Trade Practices*

Act.

The real test of success will be in the achievement of nationally consistent regulation, streamlined approvals processes and competition policy settings that promote rather than deter infrastructure investment.

Approach to regulation

Specific regulation of the mining and minerals processing industry has in general been embraced and adopted by the industry as an essential element underpinning the industry's ongoing 'social licence to operate'.

However, regulations should be employed to enhance rather than impede the minerals industry's contribution to achieving an enduring balance between the financial viability of the industry, its environmental performance and its positive social contribution.

Government legislation, regulations and codes set the minimum standards for mining. A focus of government regulation should be the provision of appropriate support for voluntary and co-regulatory industry initiatives. It is in the industry's interests to promote a level of performance above the minimum standard expected by the community and for poor performers in the industry to have their shortcomings brought to their attention and encouraged to adopt good practice. For this reason, the Australian minerals industry has for many years been a leader -both here and internationally -in developing self and co-regulatory processes.

The MCA strongly advocates the principle of minimum effective regulation -specifically, that the development of good regulatory process should reflect the following principles:

- regulation should only be adopted in cases of demonstrated market failure, and there should generally be an assumption that the open and transparent operation of markets will lead to efficient outcomes;
- regulatory approaches should not be used unless a clear case for action exists, including an evaluation of why existing measures are not sufficient to deal with the issue;
- regulation should only be adopted after a range of policy options (including self-regulatory and co-regulatory approaches) have been assessed and found wanting ;
- the regulation represents the greatest net benefit to the community;
- the regulation developed is the most efficient means of achieving the desired outcome at least cost to industry;
- effective guidance is provided for both regulators and stakeholders to ensure that the regulations are correctly implemented and monitored;
- mechanisms such as sunset clauses or periodic reviews are built into the legislation to ensure that the regulations remain relevant over time; and
- there is effective consultation with stakeholders at key stages of the development and implementation of the regulation.

The MCA recognises the Government's commitment to progressing regulatory reforms through the Council on Australian Governments (COAG) as a matter of priority, and its plan to adopt a 'one in, one out' principle for all new business regulations.

The MCA endorses the call by the Minister assisting the Minister for Finance and Deregulation, the Hon Dr Craig Emerson MP, that the aim is to move Australia from "being nine markets to one and putting an end to the rail gauge economics that have plagued the business community for more than a century". ¹

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. Governments should also include an assessment of whether self-regulation, co-regulation or no regulation is the most efficient response.

¹ Minister for Small Business and Minister assisting the Minister for Finance and Deregulation, the Hon. Dr Craig Emerson MP, Hansard, December 1, 2008, p56.

Enduring Value

The philosophy of *Enduring Value - the Australian Minerals Industry Framework for Sustainable Development* is consistent with the COAG regulatory principles and is a widely acclaimed example of the industry taking the initiative in establishing a guideline of leading operational principles and practices. Signature to *Enduring Value* is a condition of membership for the MCA. However all exploration, mining and minerals processing companies and contractors are eligible to become signatories to *Enduring Value*, provided that they commit to meeting the *Enduring Value* obligations.

Enduring Value provides a program of continuous improvement and encourages companies to achieve sustainable development performance outcomes beyond the minimum standard set by regulation. The overall strategic objective is for continuous improvement in financial, social and environmental performance in exploration and mining projects that is attuned to community expectations and, where possible, recognised and rewarded in statutory approval processes that are nationally consistent and efficient.

However, attempts to achieve performance above minimum standards can be frustrated when juxtaposed with prescriptive rather than performance-based regulation, especially when it does not make allowance for risk.

Council of Australian Governments

In March 2008, COAG identified 27 priority areas of reform to reduce the cost of regulation and hence improve productivity and workforce mobility. Eight of these were competition reforms which were singled out for early action in July.

Among the issues important to the minerals sector are:

- harmonisation of occupation health and safety laws (to be completed by September 2009);
- the national mine safety framework (by March 2009);
- bilateral agreements environmental assessments and approvals (with proposals for further reforms due at the end of 2008 but as yet unsighted);
- payroll tax administration harmonisation (by July 2009);
- recognition of trade licences for 31 occupations;
- national trade measurement (to be completed early 2009);
- streamlining national maritime safety regulations (March 2009); and
- chemicals and plastic regulatory reform.

The program is being undertaken against the backdrop of an overhaul of Federal/State financial arrangements. The Commonwealth is reducing prescriptions on service delivery by the States, providing them with increased flexibility in the way they deliver services to the Australian people. Along with clearer specifications of the roles and responsibilities of each layer of government, Specific Purposes Payments (SPPs), have been reduced from ninety to five.

The MCA welcomes the development of a new form of payment to help drive reforms, National Partnership (NP) payments. In its Pre-Budget submission for 2007-08, the MCA recommend the use of incentive payment to encourage States and Territories to accelerate the harmonisation of content, administration and enforcement of regulation and approvals processes. The MCA welcomes the inclusion of the Seamless National Economy program a one of 15 areas in the first wave of NPs.

Occupational health and safety (OHS)

The MCA seeks occupational health and safety regulatory reform to deliver improved safety and health outcomes, and greater efficiency for companies operating in multiple jurisdictions. The MCA considers that the current approach based on eight separate State/Territory legislative regimes plus numerous industry-specific regimes is inefficient, adds complexity and uncertainty for industry, and undermines the industry capacity to share information and learn from experience.

The MCA objective is to secure a single national OHS Act covering all industries and jurisdictions, complemented, where needed, by national mining specific regulations, codes of practice and guidelines, with the latter being developed through the National Mine Safety Framework.

Specifically, the MCA preferred regulatory model centres on:

- continuous improvement in safety outcomes;
- risk auditable safety and health management systems that address all hazards;
- shared responsibility between the regulator, employer and employee;
- an involved and competent workforce;
- independent and competent regulators and regulatory bodies;
- graduated enforcement facilitated by the integration of regulation and enforcement functions; and
- the prosecution of individuals in circumstances of demonstrable gross negligence or wilful misconduct, but is vehemently opposed to a separate statutory offence of industrial manslaughter.

The MCA also supports the Government's proposal to establish Safe Work Australia as a new national independent body to drive policy development and deliver OHS harmonisation and workers compensation schemes. It will be important to ensure the new body has the resources and capacity for policy development, research, data collection and analysis.

OHS Recommendations:

- Priority be given to achieving OHS harmonisation through the establishment of a single OHS Act covering all jurisdictions and industries.
- Integration of the work of National Mine Safety Framework (NMSF) into the National Review into model OHS laws, with any mining specific requirements given effect through national regulations, codes of practice or guidelines.
- Early implementation of all seven National Mine Safety Framework (NMSF) strategies to deliver:
 - a consistent legislative framework in the form of regulations, codes and guidelines under a single generic OHS Act;
 - competency in both the mining industry and regulatory bodies;
 - compliance support by regulators for duty holders;
 - aligned application of enforcement policies; consistent collection, analysis and reporting of OHS performance data; effective approaches to consultation with stakeholders; and
 - effective research into safety and health in the mining industry.
- Establish Safe Work Australia as the new national body focused on OHS and workers' compensation policy with its structure, role and functions consistent with the provisions of the Inter-Governmental Agreement for Regulatory and Operational Reform in OHS.

Competitive, efficient and sustainable infrastructure

Regulatory reform of the planning, development and operation of infrastructure is needed to maximise the fiscal and competitive gains from increased spending.

The economic turmoil of late 2008 has reinforced the need for sound policy settings on infrastructure: to provide the economy with the means to perform in the short term and the capacity to expand to make the best of the opportunities that will return. In the run up to 2008, Australia was hampered by capacity constraints that were allowed to develop over many years and created a limit on growth during a massive structural expansion of world-wide demand.

The economic opportunity...

Despite the current global financial difficulties, the medium-term outlook for minerals commodities is strong, driven by strong demand from developing nations, including China and India. The scale of this opportunity is immense.

For Australia simply to maintain its market share of this expanding commodity trade, substantial new investment in minerals operations and supporting infrastructure will be necessary. For example, to meet expected global demand in 2020, Australia will need to lift annual coal and iron ore volumes by 211 million tonnes and 328 million tonnes respectively over and above their 2007 levels. That is more than three times the matching lift in tonnages achieved across the period 2002 to 2007. For aluminium, the matching jump is almost five times that achieved from 2002 to 2007.

If Australia is unable to rebuild market share over the next decade, the costs will be substantial. Modelling by Access Economics has shown that if Australia's market share dips between 2013 and 2020 like it dipped between 2002 and 2007, then the costs will be significant. Under this "decline" scenario, Australia would be more than \$91 billion worse off in 2020 alone compared to a "holding the line" scenario.

If Australia can lift its performance, the rewards will be great. If Australia can recover and retain market share over the next decade, Australia's national income will be almost \$129 billion higher in 2020 than under the "holding the line" scenario. That is equivalent to around 12 per cent of today's national income.

Yet the proliferation of regulatory and ownership complexity within Australia's coal supply chains is creating inefficiencies and threatens to repeat episodes of the severe bottlenecks seen in recent years. The alternative, the Pilbara iron ore model, with highly integrated mining, transport and ship loading assets that are owned by assets, is superior, but also under threat from creeping regulation.

To fully capitalise on these opportunities, Australia has to get the supply chain management right. This means:

- allowing the minerals industry to expand and increase the volume and variety of commodities it sells by resolving issues around infrastructure development, regulation and investing in social and physical infrastructure in remote and regional Australia;
- making investments that underpin competitive markets with a preference for private ownership and include:
 - commercial drivers governing access and pricing,
 - planning and development processes that are integrated across governments, and
 - a forward looking framework, based on consideration of all options and favour efficient, integrated mining, processing and transport projects with the highest (and published) benefit/cost ratio.

The major constraint to expansion is restrictive, inefficient and ineffective regulation more so than capital, notwithstanding that capital liquidity has become more acute in the current economic circumstances.

Therefore, the following policy imperatives should underpin Australia's efforts on infrastructure:

- Export infrastructure:
 - A strategic policy framework to guide the reform and development of multi-user, multi-owner infrastructure.
 - Policy settings that respect and reward investment, and particularly high risk investment, in integrated privately owned export infrastructure.
- Effective markets in key domestic infrastructure, water and energy
- Rebuilding social and physical infrastructure in regional and remote Australia.

The contribution of Infrastructure Australia...

The report by the Infrastructure Australia (IA) to the Council of Australian Governments (COAG) in December is an encouraging step for the Australian economy and the minerals industry.

The MCA concurs with IA's advice to Australian governments of the need to create competitive markets, efficient pricing and strategic planning to expand the nation's infrastructure. IA highlighted four critical areas: energy, communication, (primarily urban) water and transport. In doing so, IA notes that "while the regulatory environment has been improving for private sector participation, Australian governments are not yet providing a commercial and independent regulatory environment for infrastructure".

The MCA also endorses IA's observation about the impacts of a lack of uniformity of regulations and the drag caused by public ownership and a lack of competition.

While regulation is a focus, the minerals projects identified by IA fit the criteria of expanding Australia's productive capacity and increasing productivity, diversifying capabilities while building on Australia's global competitive advantages and developing Australia's cities and regions. These include:

- Pilbara housing and indigenous infrastructure, \$2.1 billion.
- Hunter Valley Coal chain, \$1.68 billion. (Noting that a \$580 million down payment was announced on December 12).
- Mount Isa Rail corridor upgrade, \$1 billion.
- Oakajee Port and common user infrastructure, \$3.5 billion.
- Abbot Point Multi-purpose harbour, \$1.75 billion.
- Darwin Port, up to \$363 million.
- Gippsland Coal industries Transport Infrastructure no cost identified but related to the Port of Hastings development, \$58 million.
- Bell Bay Port, \$150 million.

Some projects, such as Pilbara infrastructure are primarily a matter for governments. Others are fundamentally private projects where governments' focus will be on regulatory and planning rules as well as supporting social and physical infrastructure to sustain the wider community.

A strategic framework for multi-user, multi-owner export infrastructure

The MCA proposes a Strategic Framework of reforms centred on market-based solutions. (See Box below) The key elements of which are:

- the primacy of the market in the provision and operation of export infrastructure;
- where government intervention is only justified in cases of market failure and the demonstrable capacity to remedy;
- minimum effective nationally consistent regulation implemented in a timely fashion ;
- whole of system coordinated planning; and
- commercial arrangements that deliver capacity and efficiency, and provide certainty of access to export infrastructure.

STRATEGIC FRAMEWORK FOR SUSTAINABLE OPERATION OF MINERALS INDUSTRY MULTI-USER, MULTI-OWNER EXPORT INFRASTRUCTURE

1. Primacy of the Market and minimum effective regulation

- Industry ownership and commercial arrangements in preference to public sector ownership and government regulation of operations.
- Industry sector provision and operation of export infrastructure - with explicit industry involvement allowed where there is the opportunity for privatisation or private investment.
- Operational issues relating to export infrastructure access and pricing are best left to the market through commercial negotiation between infrastructure providers and users and given effect through commercial contractual arrangements.
- Regulation in the context of export infrastructure provision be confined to investment facilitation and other non supply chain functions such as project and environmental approvals.
- Market intervention should be based on proper cost/benefit analysis with all the costs of regulation fully accounted for.
- If regulation is required, access protocols provide certainty of access rights for existing users and provide the environment that gives appropriate incentives for infrastructure expansions necessary to create access for new products in a timely fashion.

2. Whole of System Master Planning (in supply chains where appropriate)

- Coordinated system planning for the facilitation of alignment of capacity and performance with economic interests, identifying responsibilities and interests of all parties in multi-user multi-access public-private infrastructure. This planning to be given effect through contractual arrangements between infrastructure providers and users.
- Evaluation and identification of the most efficient investment options (from loadpoints to port to system rules, contingent upon anti competitive considerations) for increasing chain capacity from a cost and risk perspective and guide/inform capital investments in new infrastructure.

3. Commercial Arrangements (including commercial drivers in Regulation)

Commercial arrangements are a matter best dealt with by individual companies in order to reflect their own commercial requirements. A framework for commercial contracts may include:

- clear and binding obligations on both parties;
- performance based;
- flexibility to respond to market and operational conditions; and
- resolution of disputes to be resolved in the marketplace and/or through common law (ultimately to the determination of the courts) in preference to a regulator.

4. Public Sector Involvement in Infrastructure

- Government business enterprises (GSE's) as owners/operators of public infrastructure be parties to master planning and adopt Commercial Arrangements above in the planning and operation of infrastructure.
- Government owned entities provide adequate and timely investment in expanding and improving efficiency of system capacity (including technological innovation), in coordination with the rest of the export chain .
- Government to provide alternative rail corridors and port sites to promote facilities-based competition .
- Ensure competitive neutrality between transport modes -transparent and equitable arrangements for access.

Policy reforms will be most effective by ensuring that those with a direct interest in the success of an export chain have direct equity in that chain - that is, the minerals producers, and the owners and operators of the rail system and the ports. It will be only where there is an alignment of capacity and pricing with performance that the fundamental economic drivers for improved cooperation and coordination in the use and expansion of infrastructure will be optimised.

Private infrastructure - reform of Part III A

Part III A of the Trade Practices Act 1994 (TPA) provides a legal right for third parties to seek access to nationally significant infrastructure services. The key competition regulation issue has been differentiating a transport "service" from a purpose built and operated, integrated production "process".

On 24 September 2008 the High Court of Australia unanimously dismissed the appeals of BHP Billiton companies to the High Court challenging the declarations of the Full Court of the Federal Court that the Mt Newman and Goldsworthy railway lines in North West and Western Australia are a service under Part IIIA of the Trade Practices Act.

On 7 October 2008 the Federal Treasurer declared the Hamersley, Goldsworthy and Robe railway lines in the Pilbara region of Western Australia under the National Access Regime in Part IIIA of the Trade Practices Act 1974.

The MCA opposes the declaration on public policy grounds in the national interest arguing that there is no sound economic or legal policy basis for such a declaration, because it will be:

- inconsistent with the original intent of the "production process exemption" of Part IIIA, and the economic orthodoxy of what constitutes "production", adding to the confusion and uncertainty manifest in the judicial ambiguity of the interpretation of this clause and the intent of Part IIIA;
- inconsistent with the "objects clause" of Part IIIA (inserted by the Trade Practices Act Amendment National Access Regime 2005) which contains both an economic efficiency objective and a competition objective - mandated third party access is not beneficial where the gains from competition as a result of third party access are small if not inconsequential relative to the efficiency losses third party access entails;
- disruptive to the economic operation of and investment in these vertically integrated production and supply chains with the potential of reducing the operational efficiency and system capacity of the railways by around 10-20 per cent;
- detrimental to the incentive to invest in such infrastructure and have a chilling effect both from the perspective of the investor required to share a facility with their rivals and by reducing or eliminating the incentive to invest on the part of the access seeker who can 'free ride' on the access provider's investment; and
- detrimental to productivity by decreasing the operational efficiency on account of lower throughput, higher unit costs, and reduced capacity and flexibility in "accumulating and blending" various grades of product to meet product specifications.

The MCA advocates amendments to Part IIIA provisions with the objective of ensuring that the shared use of infrastructure facilities is only mandated in circumstances where the economic benefits of doing so unambiguously outweigh the costs.

Infrastructure Recommendations

The MCA recommends that:

- Governments endorse the MCA's strategic principles for multi-user, multi-owner export infrastructure and promote it as a template under the Council of Australian Governments regulatory reform process;
- the Trade Practices Act, in particular the Part IIIA (access regimes) be amended to ensure:
 - competition be promoted in a market that is substantial and of national significance, other than the market in which the service is being provided, before the service is declared;
 - the declared service be truly essential to competition in the market in which competition will be promoted, where 'essential' means indispensable as a practical matter for participation in that market;
 - the production process exemption prohibit or strictly limit access where doing so would disrupt a vertically integrated production process; and
 - the decision-maker be satisfied that granting access is in the public interest and in so doing, that the decision-maker takes account of the costs and risk of regulatory error.

Maritime Transport

Review of Shipping Policy and Regulation

The MCA's principal focus is the promotion of efficient and quality maritime services that are available to Australian shippers and/or consignees of dry bulk commodities at internationally competitive prices.

The MCA supports:

- the continued use of foreign flagged vessels as the principle means of providing the economic certainty and flexibility in meeting the shipping needs of consignees of dry bulk commodities (at present almost all (>99%) of Australia's dry bulk exports and imports are shipped in foreign flagged vessels)
 - Australian ship owners would be unable to commercially justify keeping stand-by tonnage available to meet spikes in the demand cycle;
- streamlining the permit system (Continuous Voyage Permits (CVPs) and Single Voyage Permits (SVPs) to improve the efficiency of the process
 - the permit system enables Australian shippers and/or consignees of dry bulk cargoes to meet interruptions to their supply chain and/or spikes in their demand cycle by using foreign flagged and crewed vessels;
- adoption of a national approach when introducing International Maritime Organisation (IMO) Conventions, rather than leaving it to each State government to interpret individually;
- innovative solutions to attracting and retaining seafarers, including through the adoption of more family friendly practices;
- pursuit of mechanisms to deliver competitive port services such as towage and pilotage.

Greenhouse Gas Emissions from Marine Propulsion

Recognising that international shipping has a role to play in reducing Greenhouse Gas emissions, the International Maritime Organisation (IMO) has proposed the level of sulphur in shipping fuel be reduced to 3.5 per cent by 2012 and then to 0.5 per cent in 2020.

This would involve burning marine gas oil (MGO) in Emission Control Areas (ECAs) and Marine Diesel Oil (MDO) in all other areas, and banning the burning of residual fuel oil from 2020 unless new refining techniques are developed prior to 2020 that will reduce sulphur emissions from burning residual fuels to no more than the proposed 0.5 per cent.

In addition, from March 2010, ECAs will have a sulphur cap of 1 per cent. This will almost certainly mean the use of MDO as it is difficult and costly to get residual fuel oils of less than 1 per cent sulphur. In 2015, in ECAs the cap will reduce to 0.1 per cent forcing a move to MGO as MDO cannot reasonably be reduced below 0.5 per cent sulphur.

The MCA's key concerns with this initiative are:

- insufficient refining capacity by 2015 or 2020 to meet demand;
- significant price increases to shippers of dry bulk commodities as a result of fuel price increases; and
- the likelihood that the regulations to reduce emissions will outpace the technology needed to ensure fuel alternative are available to meet the new emission targets.

Convention on contracts for the international carriage of goods wholly or partly by sea

The United Nations Commission on International Trade Law (UNCITRAL) has concluded work on a draft Convention that aims to end the multiplicity of regimes (1924 Hague Rules, 1968 Hague-Visby Rules, 1978 Hamburg Rules and various regional arrangements) and introduce a new legal liability regime for the international carriage of goods where there is an international sea leg.

The draft Convention is lengthy, complex and in some areas ambiguous (e.g. obligations and liability of the carrier and shipper, transfer of rights, period of responsibility).

The MCA shares the Government's concerns with the practical implications of implementing some of the controversial provisions in the draft Convention, specifically:

- the potential for e-commerce to undermine the Bill of Lading system;
- the merits of a scheme that includes broad freedoms to contract out of the current mandatory regime;
- broadening the scope of previous regimes to include land-based service providers; and
- strict liability (and uncapped liability) for the shipper in relation to the accuracy of information in transport documents.

National Ballast Water Management and Biofouling Framework for International and Domestic Shipping

Australia 'imports' around 150 million tonnes of ballast water per year, and the minerals sector is responsible for over 100 million tonnes. Thus Australia and the minerals industry are highly vulnerable to the risks of introducing harmful aquatic organisms and pathogens from the discharge of ships' ballast water and via fouling on ship hulls.

Responsibility for managing this risk in Australian waters is shared between federal, state and territory jurisdictions, with the:

- Australian Government responsible for managing foreign ballast water consistent with the relevant International Maritime Organisation (IMO) Treaty (Australia has signed with a view to ratifying the International Convention for the Control and Management of Ships' Ballast Water and Sediments); and
- state and territory governments responsible for managing domestic ballast water.

The MCA advocates:

- the implementation of a nationally consistent, regulatory framework for ballast water management aimed at managing the risk of marine pest incursions and translocations around Australia's coast and into its waterways. This framework should also be consistent with the IMO Ballast Water Convention and other existing international maritime regulation frameworks;
- establishing such regulatory requirements through an appropriate balance between environmental, financial and social outcomes while optimising overall performance;
- the principle of minimum effective regulation to achieve this desirable outcome; and
- application of the set of high level principles endorsed by Government and industry.

The MCA supports State and Northern Territory governments applying the Australian Government's legislative approach in mutually consistent ballast water management legislation.

The MCA also supports in-principle new biofouling management procedures being underpinned by the following principles:

- all actions will be performed in cooperation with relevant agencies and be nationally consistent;
- a vessel shall experience no undue delay whilst inspection and/or identification is being made;
- dry dock and cleaning in Australia should be conducted in accordance with the Guidelines for the Prevention of Biofouling on Commercial Vessels;
- the vessel owner/operator may provide AQIS with an alternative treatment option for consideration and approval; and
- AQIS informs vessel owners/operators that the vessel will not be granted permission to berth, upon returning to Australia, until evidence or information is provided that appropriate action has been conducted prior to arrival.

International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (the HNS Convention)

In order to ensure that shipowners engaged in the transport of hazardous and noxious substance (HNS) cargoes are able to meet their liabilities, the International Maritime Organization (IMO) has developed the HNS Convention.

While the most significant benefit of the Convention is that it will make strict liability insurance compulsory for shipowners, for various reasons nation states have been unwilling to ratify the Convention as it stands.

The MCA's reservations in relation to the Convention are:

- the operation of the HNS Fund, specifically how calls on the Fund will be put into effect in the event of a significant maritime incident (MCA expects Australia to be a net contributor to the Fund);
- the lack of a risk management approach in the development of the HNS Fund rules of operation
 - Member States such as Australia with an effective port State control system (requiring ships to satisfy safety and navigational standards to reduce the risk of adverse maritime incidents) contribute to the Fund at the same rate per tonne as all other Member States.
 - Such an approach is inequitable and does not provide adequate incentive to improve performance

In order to assess if it is appropriate for Australia to accede to the Convention the MCA has long advocated an assessment process that involves:

- limiting the number of solid bulk commodities included in the Convention as hazardous and noxious cargoes based on scientific knowledge;
- ensuring sound and transparent governance of the Fund established by the HNS Convention;
- ensuring a fair and equitable shared liability for a maritime incident arising from the contracted service of carriage of HNS cargo by cargo interests in Australia;
- establishment of a clear, equitable and comprehensive strict liability arrangement for the shipowner and the conditions on which the shipowner can rely to partly or totally be exonerated from the obligation to pay compensation ;
- ensuring contributions to the Fund's management are based on trade in HNS cargoes with the importing State being responsible for collecting and remitting the contributions to the Fund; and
- mandating shipowners obtain a minimum level of insurance through P & I Clubs for their limited liability and the requirement that they carry evidence of such insurance on the vessel to be made available to inspectors as part of port State control.

Project Approvals and Environmental Protection

Given the differing responsibilities of government in Australia, regulations impacting on exploration, mining and mineral processing and related social and economic infrastructure services and involve a multitude of controls at all three tiers of government and, where approved by the Australian Parliament, international regulations. These regulations vary from jurisdiction to jurisdiction. The variability in content, administration and enforcement of these regulatory processes represents a significant constraint on the effective operation of the minerals sector. The Productivity Commission recently highlighted the critical importance of simplicity and consistency in regulation:

Establishing the clarity, simplicity and even-handedness of the regulatory regimes for water, labour, land use and greenhouse gas emissions will be crucial to ensuring that, as industries compete for scarce resources, those resources go to their highest value uses and enhance the wellbeing of Australians as a whole.

COAG has identified development approvals as one of the 'hot spots' for regulatory reform. The MCA recommends an urgent and sustained commitment (and resources where necessary) to a comprehensive regulatory reform process under the COAG umbrella, particularly focused on improving red tape reduction and duplication associated with project approval processes and related monitoring and reporting requirements.

A glaring example of the potential duplication is the approvals processes relevant to the Environment Protection and Biodiversity Conservation Act 1999. While bilateral agreements between Federal and State governments can avoid this duplication, only a handful of these agreements have been developed and even less implemented as fully as they could be. The MCA's concerns have been reinforced by the Productivity Commission, which said recently that:

Governments should give high priority to completing all assessment and approvals bilateral agreements.

Project Approvals and Environmental Recommendations:

The MCA recommends that Productivity Commission urge Australian governments:

- move promptly to expand bilateral agreements [assessments and especially approvals] with the States and Territories to reduce compliance costs and delays in approval processes; and
- resource its COAG commitment for the Commonwealth Environment Minister to develop a proposal, in consultation with States and Territories, for a more harmonised and efficient system of environmental assessment and approvals.

Appropriate Resourcing for Commonwealth Environmental Protection Legislation

In late 2006, significant amendments to the Environment Protection and Biodiversity Conservation Act (EPBC Act) were approved by the Parliament, covering several areas 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 require significant additional resources. The Commonwealth provided additional resources in the 2007-08 Budget, but the influence of the additional funding is yet to be reflected in improved efficiencies in the project approval process. Accordingly, the MCA advocates the continued review of this new resourcing to ensure the effective implementation of the amendments, to enhance their ongoing administration and to further the development of bilateral agreements. Additionally the MCA has been advocating a refinement in the way the Commonwealth administers the EPBC Act, away from project approvals, towards a more strategic approach, which will likely lead to cost savings in the long-term.

The MCA has been actively involved in the development of the National Pollutant Inventory (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 for the majority of users. These shortcomings, and the fact that DEWHA 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.

Additional resources should be devoted to the NPI to ensure that it is capable of meeting its stated objectives. In the absence of appropriate resourcing, there should be consideration of whether the NPI is still the most efficient vehicle for

delivering 'community right to know' commitments.

EPBC Recommendations:

The MCA recommends that the Productivity Commission urge Australian governments:

- ensure resources are available to facilitate the efficient implementation of the Environment Protection and Biodiversity Conservation Act, including a refinement in the administration of the Act, away from project approvals towards strategic assessments.
- allocate resources to fully implement reforms in the Environment Protection and Biodiversity Conservation Act's administration which will be recommended in the next financial year by Independent Review of the Act.
- should appropriately resource the National Pollutant Inventory to ensure it meets the goals for which it was originally established.

A National Energy Market

Reliable, sustainable and efficient energy supply and services have long been of critical importance to Australia.

Given that Australian primary energy demand is expected to grow by 44 per cent by 2030, the ongoing development of a competitive and efficient energy market will be required to underpin our capacity to meet forecast energy needs in a secure, cost effective and sustainable manner.

In order to achieve such an outcome the MCA continues to be a strong advocate for an open, competitive and integrated national energy market that is:

- governed by nationally consistent regulation of generation, transmission and distribution to promote efficiency and to eliminate unnecessary costs and risks;
- transparent, with no artificial barriers to entry;
- non-discriminatory and therefore non-distortionary between energy sources;
- devoid of price controls, unless and only in circumstances of demonstrable 'market failure' ;
- capable of sustaining long-term supply contracts; and
- attractive to further investment in world's best practice generation and transmission capability and in new technologies to meet the burgeoning energy demands of the future and the need to reduce greenhouse gas emissions.

The National Electricity Market (NEM) -the world's longest interconnected power system -comprises the wholesale market for electricity supply in the Australian Capital Territory and the states of Queensland, New South Wales, Victoria, Tasmania and South Australia. It commenced operating on 13 December 1998,

An Expert Report completed for the 2007 Owen Inquiry into Electricity Supply in NSW concluded that the NEM has worked well since its inception in meeting the market objective to *"promote efficient investment in, and efficient use of, electricity services for the long term interests of consumers of electricity with respect to price, quality, reliability and security of supply of electricity and the reliability, safety and security of the national electricity system"*². The Owen Inquiry also concluded that *"in general there has been a high reliability of generation in the NEM and sufficient capacity from the energy market to meet consumer demand"*,

Despite that success, governments have identified the need for ongoing reform to build more capacity. This challenge involves building infrastructure -generators and transmission and retail distribution networks -in a carbon constrained operating environment and amid a global push by nations for greater energy security.

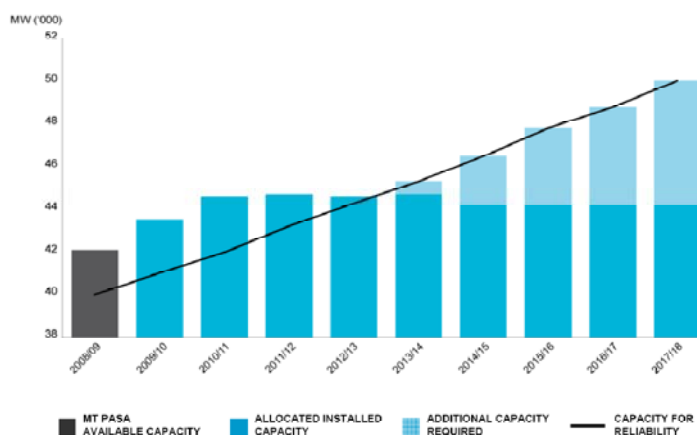
In December 2007 the Ministerial Council on Energy (MCE) signed off on a plan to create a single, industry-funded national energy market operator for both electricity and gas to strengthen the national character of energy market and governance. Under the plan, by July 2009 the existing electricity body, the National Electricity Market Management Company (NEMMCO), the proposed gas market operator (a proposed national body which would also subsume several state bodies) and a newly created national transmission planning function would come together under one authority to be called the

² Morgan Stanley, Expert Report 3 to the NSW Government's 2007 (Owen) Inquiry into Electricity Supply in NSW, p.49

Australian Energy Market Operator (AEMO).

Creating a truly national market will be important in developing energy security, particularly encouraging new investment. As John Tamberlyn, the Inaugural Chair of the Australian Energy Market Commission -the independent body that set the rules for national electricity market - said in November 2008, there would be a tightening of demand and supply conditions as the prolonged period of excess generation capacity diminishes. He described this as "a legacy of the pre-market arrangements where there was less focus on cost efficiency and so excess capacity was built to guarantee supply in almost all circumstances".³ The following graph shows the capacity needed to meet the system's exacting targets for reliability of supply that is, meeting 99.998 per cent of consumer demand.

Tightening demand and supply conditions -national electricity market



Source: Australian Energy Market Commission

For South Australia and Victoria, the threshold between capacity and meeting the reliability target has already been passed.

The creation of a national transmission planning is particularly important and the MCA endorses the view of the Minister for Resources Energy and Tourism, the Hon Martin Ferguson AM MP, that such move is "*long overdue*" as well as vital for the new challenges of reduced carbon emissions energy generation.

Encouraging private sector investment will be essential to achieving energy security. Access regimes under Part IIA of the Trade Practice Act need to be reviewed to ensure they support rather than "chill" investment. Access regimes were developed under National Competition Policy in the 1995 chiefly to ensure that privatised or corporatised government utilities did not operate as monopolies. After a decade of operation, access regimes are increasingly being sought for existing, privately-owned infrastructure. This represents a substantial change in the investment environment and, if mishandled, raises issues of sovereign risk. Where access regimes are required they should be market-based, transparent and consistent. The MCA has argued that there should be consideration of an "efficiency override" by regulators when assessing such applications to ensure an access declaration does not impair the efficiency of the services provider's operations. The Productivity Commission has recommended a review to be completed by 2011. The Assistant Treasurer and Minister for Competition Policy and Consumer Affairs, the Hon. Chris Bowen MP, announced in December that the Federal Government would consider this proposal for a review in early 2009.

Contributing to the Federal Government's aim of energy security is the National Energy Security Assessment and its proposal to draw up an energy White Paper by the end of the 2009. The NESA will identify key strategic energy security issues in the liquid fuels, natural gas and electricity sectors currently, and those likely to influence the level of energy security in 5 years (2013), 10 years (2018) and 15 years (2023). This will provide an important foundation for the energy White Paper which will examine the twin objectives of energy security and reducing greenhouse gas emissions as the nation prepares to meet an expected 44 per cent increase in Australia's energy consumption needs by 2030.

Meeting the July 2009 commencement date will require diligence by governments to ensure the legislative requirements to create the national network are enacted. At the Ministerial Council on Energy meeting in December 2008 Ministers noted that significant progress has been made in the development of a National Energy Customer Framework to transfer regulation of distribution (non-economic) and retail (non-price) functions to the Australian Energy Regulator (AER) and the

³ J Tamberlyn, Inaugural Chairman, Australian Energy Market Commission, Speech to the National Association of Regulatory Utility Commissioners, Louisiana, 1619 November, 2008

Australian Energy Market Commission (AEMC). While Western Australia had enacted gas market access rules ahead of the national system it had yet to transfer the retail (non-price) functions to the AER. Governments should respond quickly to review and enact the remaining complementary legislation after the first exposure draft of the National Energy Customer Framework is released early in 2009.

The MCA urges governments maintain progress on the creation of a national energy market. The MCA is concerned, however that the timetable for implementation has slipped well behind schedule. It is vital to reinvigorate the 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.

Energy Recommendations:

The MCA recommends that the Productivity Commission urges Australian governments:

- agree to and implement reforms in economic regulation, energy access, transmission planning, consumer advocacy, emergency response and demand-side participation;
- complete the transfer regulation of distribution (non-economic) and retail (non-price) functions to the Australian Energy Regulator and the Australian Energy Market Commission;
- review the first Exposure Draft of the National Energy Customer Framework and seek early implementation;
- begin operations of the national single energy market operator for electricity and gas, the Australian Energy Market Operator, by 1 July 2009; and
- create the investment and regulatory environment to secure the nation's access to energy and ensure the drought does not adversely impact reliability of supply.

National Water Access Reform

It is essential that adequate resources are provided to fully implement the National Water Initiative (NWI), including the specific provisions for the minerals industry. To date, there has been scant attention to minerals industry water use requirements in the development of access arrangements under the NWI. Water availability and security is a key issue for the minerals industry, and climate change brings further elements of risk that can be partly mitigated through the implementation of the NWI.

Although using less than 3 per cent of water resources nationally, the minerals industry is attracting increasing attention for this use, often from stakeholders that are not subject to similar regulatory arrangements governing water access. The minerals industry is a strong supporter of water market reform, including the removal of barriers to entry to that market faced by the minerals industry. This will promote the highest value uses of Australia's scarce water resources.

The National Water Commission (NWC) should continue to drive water reform to ensure allocation of water to users and the environment based on sound science, allowing for security of supply and trading to be established in an equitable market whilst pricing reflects source, quality and water infrastructure investments. The Australian minerals industry has a strong reputation as both an efficient and innovative manager of water, and is a strong supporter of national water reform processes to maintain Australia's economic prosperity and environmental quality. Specifically, the NWC should require the current and future high-value industrial user water requirements to be considered in the development of jurisdictional water sharing plans, by incorporating industrial water user representation in the development of access arrangements beyond 'community consultation' provisions.

The minerals sector is responsible for only 2.4 per cent of Australia's net water consumption with the value added per mega litre (ML) of water amongst the highest of all industry sectors. According to official data, coal mining generates \$86000 for every ML used, compared with \$162 per ML for rice production and \$3870 per ML for vegetable production. While water remains an essential input for minerals processing, water also represents a community resource that should not be completely 'owned' by anyone user, but rather a resource that can fulfil a variety of roles as it moves through its value cycle.

Lack of water resource security can threaten the viability of existing mining operations and potential new developments (expansions or Greenfield sites). In 2007, for example, the continued operation of Cadia, in the Murray Darling Basin, was threatened due to a scarcity of water, with the livelihoods of 400 local employees in a regional town at risk (Orange City Council 2007). More rapid implementation of the NWI will help improve this situation, by enabling trading of entitlements across multiple sources of supply, providing enhanced resource security for mining operations.

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 and cultural entitlements) 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. However, 2008 saw calls from various stakeholders for the establishment or expansion of barriers to trade in, and entry into, water markets for minerals operations. These included calls for expansion to project approvals requirements under the amendments to the Water Act (2007), and the establishment of an NWC project that is likely to develop additional regulatory requirements which will hamper minerals industry access to water markets by expanding regulatory encumbrances that are not equitably applied to other water market participants.

Water Recommendations:

The Australian Government's investment in the NWI should be enhanced to expedite the process and ensure:

- all water management decisions are based on sound science and stakeholder engagement, be transparent and have agreed timeframes for review;
- the breadth and depth of water sharing plans and associated market arrangements be expanded to include those areas where the minerals operations require water, beyond the current narrow focus of agricultural interests;
- industrial water users are provided equivalent and equitable input to the water sharing planning processes as environmental and agricultural water users;
- additional regulatory measures being developed by the Commonwealth through the application of the Water Act are equitably applied to all water users, such that they do not represent an unfair barrier for minerals industry access to water markets;
- the ACCC recognises in its advice to the Minister for Water Resources, that the minerals industry water users should not be required to pay additionally for government's water planning and management activities to which it is already contributing;
- 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 pricing should be based on an open market 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 or planning requirements, which meet both the needs of industry and community. Alternatively, industry should be able to sell any allocations generated through its investment in infrastructure;
- the price of water should reflect demand, water source and quality, rather than being artificially pre-determined based on its end-use; and
- the Australian Government should resource an analysis by the ACCC into existing barriers to water market entry for minerals operations, emerging barriers to entry and trade, and policy options to remedy them.

Sustainable Regional Development

Australia's minerals sector operates predominately in rural and remote Australia, and is often the major economic activity in these communities. The industry is also often the key employer, providing skilled, semi-skilled and professional employment opportunities for Indigenous and non-Indigenous people.

The industry is committed to continuing to further strengthen its 'social licence to operate' as a complement to the regulatory licence issued by government. To the minerals industry, 'social licence to operate' is about operating in a manner that is attuned to community expectations and which acknowledges that businesses have a shared responsibility with governments, and more broadly, society, to help facilitate the development of strong and sustainable communities.

The minerals industry, however, cannot achieve sustainable outcomes in this area alone. Meaningful, ongoing support and engagement, through partnerships with governments and the community are critical to ensuring that regional development outcomes are sustainable in the longer term.

It has been known for some time now that the key physical and social infrastructure in regional and remote Australia is suffering from years of inadequate investment. Under-funded education and health services, chronic housing shortages, and inadequate transport and communication links severely adversely affect local community members in many rural and remote locations, and further act as a significant deterrent to the attraction of employees and their families to these communities. This systemic underfunding of communities not only represents a further and unwelcome constraint on the sectors development and expansion, but has also led to an expectation within both governments and the community that these costs can be appropriately borne by the minerals industry. This, despite the significant economic contribution made by minerals operations in these communities through employment, procurement and to governments through taxes and royalties, and that this social and physical infrastructure is provided by governments as a citizenship entitlement to those in Capital Cities and on the eastern seaboard.

The minerals industry draws a clear distinction between its own responsibilities and those of various levels of government viz:

- government's core role and responsibility is to address community needs across all areas of social development and further foster capacity building through the delivery of integrated social services and essential basic social infrastructure (social fabric), in addition to adequate physical infrastructure (eg, public roads, ports, rail); and
- industry's responsibility is to provide opportunities for sustainable economic development through employment, training and business opportunities and partnerships (commercial fabric).

The 2009-10 Budget must include decisive steps to develop, renovate and rebuild infrastructure in remote and regional areas of Australia. The Budget should also address the quality of infrastructure and social services in remote and regional Indigenous communities, with emphasis on housing, improved education outcomes, work readiness and skills development initiatives, and better access to human and financial capital to facilitate Indigenous enterprise development.

Regional Development Recommendations:

The MCA recommends that the Australian Government support the further development of strong and sustainable regional communities through:

- the establishment of a Council of Australian Government initiative on regional development which includes a focus on enhancing the provision of physical and social infrastructure;
- an audit to be undertaken of current infrastructure already provided by mining companies in locations in which the Federal Government/Minerals Industry MoU on Indigenous Employment and Enterprise Development is currently in place; and
- participation and resourcing of a regional development demonstration project that engages industry, governments and the community in seeking to build capacity, community and economic development at the regional level.

Building Sustainable Indigenous Communities

The minerals sector is committed to playing its part in building sustainable Indigenous communities in regional and remote locations in Australia. With more than 60 per cent of mineral operations in Australia neighbouring Indigenous communities, minerals industry engagement with Indigenous people is founded in mutual respect and in the recognition of Indigenous

Australians' rights in law, interests and special connections to land and waters in Australia.

An effective native title system

The MCA vision is to have a thriving minerals industry working in partnership with Indigenous communities for the present and future development of mineral resources and establishment of vibrant, diversified and sustainable regional economies and Indigenous communities. We further recognise that the present and future operations of minerals companies are inextricably linked to building and enhancing our strong relationships with Indigenous communities, and to meeting the needs of this generation without compromising the ability of future generations to meet their own needs.

This approach reflects a fundamental shift over the last decade from an adversarial, litigious approach to native title to a new approach based on mutually beneficial agreements for land access and sustainable Indigenous communities. An effective functioning native title system represents a critical element in building sustainable Indigenous communities, characterised by higher living standards, and better health and education outcomes, and in enabling Indigenous Australians to realise economic opportunities from their rights to lands and waters.

However the effectiveness of Indigenous Representative organisations (including Native Title Representative Bodies and Prescribed Bodies Corporate) is being hampered by inadequate resourcing and overly restrictive operating parameters. In particular, the underfunding of NTRBs is delaying the negotiation of agreements and therefore the benefits received by Indigenous communities. Better funding of Prescribed Bodies Corporate is also necessary. There are also reforms, with no funding implications, that can be taken to improve the effectiveness of these organisations. More specifically, NTRBs should be provided with a greater degree of flexibility for expenditure of government monies, while their broader role as a potential contributor to regional economic development should also be recognised.

The MCA has welcomed the Government's commitment to establishing a national Indigenous representative body to give Aboriginal and Torres Strait Islander people a voice in national affairs and policy development. There is a need for regional Indigenous representative structures to facilitate and support Indigenous interaction with Government and the private sector in pursuing a development framework at the regional level. The MCA looks forward to the implementation of this Indigenous representative body.

Building economic development in indigenous communities

The industry's capacity to contribute to stronger economic development in regional and remote Indigenous communities is hampered by inadequate social and physical infrastructure. Constraints on the industry's ability to contribute to more sustainable Indigenous communities include:

- inadequate education outcomes, particularly literacy and numeracy, thus limiting the number of Indigenous employees available for employment in the sector;
- poorly resourced Indigenous representative bodies, causing delays in the negotiation of mutually beneficial land use agreements; and
- inadequate physical infrastructure, including all weather transport links and housing; and anomalies in existing taxation rules that present obstacles to the transition from welfare reliance to economic development.

Taxation and other arrangements...

Australia currently has an opportunity to enhance institutional and economic capacity by which Indigenous people may become long-term contributors to, and drivers of, regional and community development. There are however a number of impediments in Australia's social, economic and tax policy frameworks impeding progress and attainment of these objectives.

The tax-transfer system has a direct affect on participation in employment and investment from Indigenous people and their communities. This occurs in two ways. First, the high effective marginal tax rates that can be applied to individuals as they move from welfare to work, or change their work arrangements from supported employment programs to the private sector - including the increasing number of Indigenous-owned corporations. This is vitally important with the renewed effort by mining companies to boost Indigenous employment both as a sensible business proposition -the need for more labour -and part of the industry's commitment to sustainable development which flows from its social licence to operate.

The second issue is the taxation treatment of payments under native title agreements paid into community-administered trusts. This system is under review by the Federal Government, through its considerations regarding the maximisation of

Indigenous community development benefits from Agreement making.

The tax treatment of Native Title payments (for both the payer and payee) is very complicated and needs to be streamlined and simplified. Under current arrangements, an array of different GST and Income Tax consequences are possible and dependent upon such things as whether Native Title is extinguished or not; whether the payments are of a capital or revenue nature (thereby determining whether payments are deductible or not); and/or whether payments are 'compensation' or some other type of payment. Depending on the specific circumstances of particular cases, the tax consequences can be radically different and can greatly affect the material value of the agreement.

For instance, in attempting to maximise the value of compensation and other related payments under the Native Title Act, parties to Indigenous Land Use Agreements (ILUA) often utilise the provisions of the Charity Tax Law.

These provisions are confusing and inadequate as they do not provide enough flexibility to tailor agreements that are both tax effective and consistent with the terms of the ILUA (i.e. mainly to provide for, and accommodate, intergenerational benefits). Charitable trusts if structured to conduit compensation payments from mining companies to Traditional Owners for example, cannot usually accumulate for more than 10-12 years. This is a major impediment as compensation payments should provide compensation for current and future Traditional Owners in recognition that they are holders of a perpetual life estate.

In relation to these, the MCA advocates for:

- an extension on the current ten-year limit; and
- broadening the definition of a Deductible gift recipient -because at present the rules are narrow and an organisation must be a recognised conservation, health or early childhood care provider. The MCA would seek a new category for Indigenous Economic Development.

Another proposal for dealing with the broad issue of maximising indigenous opportunities from Native Title is to allow the development of a superannuation fund-style stream of funds management. Recipients of native title payments (either directly or indirectly) would have the right to make non-concessional contributions to a recognised superannuation provider up to the CGT Cap amount (or even a lower CGT Cap Amount, if necessary, say \$300,000).

The approach is in similar terms, from a taxation perspective, to the rules that apply to any individuals receiving compensation for personal injury claims or the recipients of Capital proceeds on the sale of small businesses. The MCA suggest this initiative would provide an incentive for native title holders to direct payment to their respective superannuation funds without the complications that arise for employers and employees in making superannuation contributions.

Other matters which have been proposed to the Federal Government include:

- economic development. The MCA will propose a new initiative called Aboriginal Community Development Corporations - a new form of trust structure available on an opt-in basis with special tax treatment, such as full exemption on expenditure that is classed as capacity building in Indigenous communities; and
- venture capital - establish a system for Indigenous start up businesses with full flow through to shareholders. Minimum Indigenous equity arrangements. This could be revenue neutral with a change to the rules of Indigenous Business Australia.

Indigenous Development Recommendations:

The MCA recommends that Productivity Commission urges Australian governments:

- strengthen its commitment to the provision of adequate and appropriate community infrastructure and social services to remote and regional Indigenous communities. In particular additional funding should be made available to ensure:
 - improved access to literacy and numeracy education; work readiness initiatives such as Fitness for Work programs; and the acquisition of standard vehicle licences;
 - improved access to drug and alcohol services, financial planning services; family support services including child care and counselling services; and improved access to human and financial capital to facilitate Indigenous enterprise development; and

- improved access to adequate housing.
- agree to consider amendments to taxation and financial legislation and arrangements aimed at reducing barriers to economic development in Indigenous communities.

Indigenous Employment

The minerals sector is the largest private sector employer of Indigenous Australians and more than 60 per cent of mineral operations in Australia neighbour Indigenous communities. At present, over 6 per cent of current minerals sector employees identify as Indigenous Australians. In some remote areas, and at specific sites, Indigenous workers account for over 20 per cent of those directly employed or employed through contractors. For example, 28 per cent of employees at the Argyle mine in the East Kimberley are Indigenous, with a target to reach 40 per cent of the site workforce by 2010. The industry's capacity to contribute to stronger economic development in Indigenous communities is considerable. The industry is operating in remote regions of Australia and demographic projections suggest strong growth in Indigenous populations in many of the same and neighbouring regions.

There are however, substantial constraints that threaten to limit the potential contribution of the minerals sector to expanded Indigenous employment and enterprise development. These include failing transport and housing infrastructure, inadequate health and medical services, and inadequate education outcomes, particularly literacy and numeracy.

The Australian Employment Covenant (AEC), along with the commitment of the Government to prioritising the challenges faced by Indigenous Australians in relation to employment and enterprise development, provides an excellent opportunity to realign and further streamline the many existing policies and programs in relation to Indigenous livelihoods to ensure robustness, delivery on agreed outcomes, and to ensure that sustainable and effective models can be applied across rural and remote regions. Further, such an approach would enable the Government to leverage off, rather than duplicate, the numerous initiatives currently being undertaken by Indigenous organisations and the minerals industry and other private enterprise.

Indigenous Employment Recommendations:

The MCA recommends that the Productivity Commission urges Australian governments:

- should consider the alignment of the many policies and programs in this area including; the Closing the Gap targets on addressing Indigenous health, housing, education and livelihoods; the seven COAG endorsed building blocks to address disadvantage; the Australian Employment Covenant, proposed changes to the treatment of Native Title payments, and the upcoming Indigenous Economic Development Strategy.

The MCA understands that the Government intends to do this through the development of an Indigenous Economic Development Strategy; however the Federal Government is yet to undertake any consultation on this initiative.

Human Capital - Education and Training

The Challenge

The Australian minerals industry recently experienced a surge in demand and is now adjusting to the global credit crisis. During the market peak the industry reached the upper limits of labour market capacity, where both acute and chronic skills shortages emerged. Projections to 2020 indicate that this capacity constraint will only increase once the industry emerges from the current downturn. A continued commitment to education and training is vital to the long-term success of the industry and the well being of the Australian economy.

Whilst there have been a number of recent reforms across the education sector, reviews of the vocational education and training (VET) sector and higher education have highlighted a number of areas for reform. There is still work to be done to develop an integrated education system that fully meets the needs of the minerals sector and the Australian economy.

A fundamental issue that underpins all of these reforms is improved outcomes from the teaching of English, mathematics and sciences in the school sector.

An effective national education and training system

It is critical that Governments and industry work together to develop an effective national education and training system that should:

- possess the requisite institutional and intellectual capacity to deliver quality educational outcomes at all levels - schools, vocational education and training and higher education;
- be market driven - a system that can identify and respond to the needs of the community and of industry, rather than one driven by providers;
- be flexible enough to cater for divergent demands of the Australian economy ranging from school-based learning
- through trades and vocational training to postgraduate research:
 - provide quality higher education in disciplines of national economic priority that are directly relevant to Australia's comparative advantage in minerals resources, particularly earth sciences, mining engineering and metallurgy;
 - contain a strong focus on improving work readiness skills, most particularly the literacy and numeracy of all school leavers, while also addressing the 'fitness for work' issues (e.g. drug and alcohol free, physically able, punctuality etc) that currently prevent many disengaged young people from being eligible for work in the minerals industry;
 - be capable of fast tracking those with pre-qualifications and/or quick learners, there being a strong business case for bringing them on quickly and competently; and
 - provide of a range of delivery modes (e.g. online, short course, on the job, skills sets) and locations - this is especially vital for the minerals industry characterised by small numbers of employees, working in remote locations, in small regional communities, and often in specialist disciplines.
- be resourced to provide women and Indigenous Australians in remote and regional Australia with the skills for participation in the minerals industry.

The minerals sector is playing its part in building and sustaining a skilled labour force. Consistent with the industry's commitment to a collaborative partnership with Government in policy and implementation, the MCA, its member companies and related State representative organisations have committed in the order of \$10 million annually over the past decade to capacity building in schools and higher education. The Minerals Tertiary Education Council (MTEC) was established by the industry in 2000 specifically to address capacity constraints in Australian universities, and is funded by a voluntary levy from MCA member companies. The minerals sector continues to be concerned at the decline in funding for minerals related higher education. This was reported in the 'Back from the Brink' report of 1998, and recently confirmed in the Bradley Review. Total expenditure by industry through MTEC exceeded \$18 million, averaged more than \$2 million pa since 2000 and has been as high as \$3.4 million pa.

MCA Higher Education Initiatives

Key MCAIMTEC initiatives include:

- establishment of *Mining Education Australia (MEA)* – a joint venture between the universities of NSW, Curtin/WASM, and Queensland, to share teaching resources to deliver nationally consistent third and fourth years of a mining engineering degree. The University of Adelaide will join MEA in 2009, further extending the geographic reach of the program;
- development of a formal partnership for collaborative teaching of extractive metallurgy through the *Metallurgical Education Partnership (MEP)* for final year undergraduate students between the only three universities in Australia that teach this discipline - UQ, Curtin/WASM and Murdoch;
- the development of a collaborative, national Honours program in earth sciences -the *Minerals Geoscience Honours (MGH)* delivers industry-relevant courses to final-year students at eight participating universities - UTas, UWA, James Cook University, Melbourne University, Monash University, ANU, Curtin/WASM and Adelaide;
- the development of a national geoscience Masters by coursework program - *Minerals Geoscience Masters (MGM)* for practising professionals to up skill or change skills to vary their career path using the collective resources of UWA, UTas, Curtin/WASM and James Cook University; and
- underwriting the development and delivery of a social competencies postgraduate course through the University of Queensland and ANU to provide formalised training for community relations practitioners working in the minerals industry.

The minerals industry further supports higher education by:

- providing paid vacation work and structured practical experience to more than 600 undergraduates from a wide range of disciplines each year, an investment exceeding \$6 million pa;
- funding Professorial Chairs and other academic positions and programs at universities. The University of Queensland alone has eleven research and academic Professorial Chairs that are part funded by the minerals industry to the tune of more than \$1.5 million;
- providing a large number of undergraduate scholarships and bursaries; and
- providing sponsorships for student excursions, field trips and other educational pursuits.

The MCA has recently proposed a national network of 'Minerals Industry Academies' (MIAs) to address the minerals industry's training needs and reinstate confidence in VET sector qualifications. The MIAs will focus on training for the minerals and resources sector and other trades and 'tickets' required in mines and mineral processing plants.

The MCA is actively engaged with State, Territory and local Governments and in collaboration with other industries on a range of initiatives, including the National Farmers Federation to grow the pool of available skilled labour in remote and regional Australia.

To ensure that people wishing to secure a career in the minerals industry have accurate information, MCA has developed and continues to maintain a national, high quality careers portal, www.miningcareers.com.

Higher Education Reform

The Bradley review of higher education was presented to the Government in December 2008.

The review recommends reform of the higher education sector and further recommends these reforms be extended to the VET sector in the future.

The MCA supports recommendations to:

- set national population targets for attainment of degree qualifications; and national benchmarking;
- centralise regulation of the tertiary education sector, including both universities and the VET sector via a simplified framework, viz:
 - the establishment of a single independent national regulatory body with responsibility for institutional accreditation and quality assurance;
 - the establishment of a single Ministerial Council with responsibility for all tertiary education and training, and

- where higher education and VET continue to have distinctive and different missions with effective articulation processes between them .
- build a demand-driven tertiary education system that provides institutions with flexibility, on the proviso that national priority areas (including minerals education) are supported so that labour market needs are met;
- increase funding for learning and teaching, and research with performance incentives for providers;
- extend student entitlements and income contingent loans to students wishing to study in the VET sector;
- improve higher education access and outcomes for Indigenous Australians and under-represented groups;
- assist remote and regional areas become adequately resourced for higher education ; and
- match funding for philanthropic donations, and calls on the Government to also extend matching funding to industryprovided funds in universities and the VET sector.

The issues of concern to the MCA are:

- minerals education remains a lesser discipline area to those identified as priority;
- insufficient funding increase - estimates only 1-2% overall;
- inadequate strategies to attract academics; and
- potential threats to the sustainability of quality regional higher education.

The recommendations of the Bradley Review broadly fit within the MCA's policy position with regard to reform of the tertiary education sector. The extent to which these recommendations are taken-up by the Government, and the manner in which they are implemented, will determine the specific impact upon the ability of the minerals industry to meet its future skilled labour needs.

The minerals industry has demonstrated its commitment to secure education capacity in key, core discipline areas and the Australian government must at least match this level of funding in these same disciplines.

The failure of past governments to index higher education funding to inflation has resulted in a growing inability of university departments to be viable under the student numbers-based funding system, especially in mineral-related departments that traditionally have small student numbers. This is aggravated further by current shortages of skilled academic staff at our universities and compounded by the ageing profile of academics, especially in the minerals disciplines.

The extent to which these recommendations are taken-up by the Government, and the manner in which they are implemented, will determine the specific impact of proposed changes to higher education upon the ability of the minerals industry to meet its future skilled labour needs.

Vocational Education and Training Reform

The minerals industry requires a flexible and responsive VET sector that provides high quality skill sets and qualifications via a regime of training and assessment that engenders industry confidence in training outcomes. The VET sector should be flexible and responsive to meet the divergent demands of the Australian economy and the skills needs of the minerals industry.

An effective VET sector requires an active partnership between industry, government, providers and students.

A more highly skilled and qualified population will result in greater productivity and economic benefit for the nation. Continued reform of the education and training sector across the board is needed to achieve this goal.

Whilst the current global economic situation is impacting on current employment and skills needs, continued government investment in the sector and skills development are essential if capacity constraints are to be avoided as economic recovery progresses within the minerals sector. The quality of VET delivery and assessment outcomes varies widely across the large number of training providers. Aside from the traditional trades, this lack of quality and consistency has resulted in a loss of confidence in VET qualifications within the minerals industry.

The minerals sector has characteristics that differentiate it from many industries in that it is principally regionally based where there are few training providers; and it requires both traditional trades people and operators with mining specific skills.

There is an opportunity for the Australian Government to take a more active role in reform of the VET sector so as to ensure the result achieves a more efficient, effective and transparent governance structure that oversees improved quality of training outcomes and better use of scarce public monies.

Schools Sector Reform

To safeguard its economic and social future, Australia requires a school education system that caters for the needs and aspirations of all young people and is characterised by standards of teaching and learning that are among the best in the world. The system needs to ensure that all Australian children receive a sound grounding in English, mathematics, science and technology and acquire the fundamental job readiness skills that will facilitate their transition into the workplace.

Without a marked improvement in the quality and appeal of English, mathematics, science and technology education in our school system, the reforms of the VET sector and the higher education sector will struggle for sustainability.

Workforce Diversity

Declining numbers of work age Australians will result in a need to engage a broader section of the workforce, including women and the Indigenous population. This is particularly critical for the minerals industry, which operates principally in remote and regional locations. Minerals industry productivity can be increased by recruiting and retaining local skilled people including Indigenous Australians, youth and women.

To achieve this goal the MCA supports a partnership model for Government and industry working together to improve teaching of fundamentals in schools to prepare women for non traditional roles and Indigenous students for minerals sector jobs as well improved science, mathematics and English literacy.

Indigenous Education and Employment

The MCA and five minerals industry companies partnered with the Australian Government to prepare a report and recommendations to progress apprenticeships for Indigenous Australians living in remote areas of the Northern Territory. The report, presented in July 2008, provided a series of recommendations involving collaboration between the minerals industry and the Australian government. These recommendations await implementation.

Women and Mining

Women comprise 18 per cent of the mining industry workforce compared with a national participation rate of 45 per cent. MeA and the Australian Government's Office for Women have funded research into the structural and cultural impediments to female participation in the minerals industry workforce.

Skilled Migration Reform

The minerals sector's general requirement of the skilled migration system can be summarised as requiring an efficient, effective and timely system that has integrity. We support the accreditation of low risk employers recruiting from low risk markets.

Through effective approval, monitoring and compliance programs by government it should be possible to maintain the integrity of the Subclass 457 visa system. In such an environment it is reasonable to expect low risk (accredited) employers to be eligible for fast-tracking of approvals for new requests.

A pre-requisite for accreditation should be proof of competence and the resources in the company to effectively manage the skilled migrants; a history of compliance with immigration laws and regulations; sound industrial, OHS and taxation practices; and a commitment to a company training regime.

A risk-based approach to regulatory compliance is a system used by many government regulators. It is a system that can work in the Subclass 457 Visa system to identify the employers and skilled migrants most likely to fail to comply with the immigration laws and regulations. The DIAC inspector resources can then be most effectively applied to the areas of highest risk to ensure compliance.

The 457 skilled migration scheme is often used as a first step in the permanent General Skilled Migration program. This has advantages to both the employer and migrant. This pathway to permanent migration should be maintained.

The MCA strongly supports the need for system integrity, so that all parties have confidence that Australia remains internationally competitive in facilitating labour movement whilst at the same time safeguarding employment and training opportunities for Australian workers and protecting overseas workers from exploitation.

The MCA is generally satisfied that the implementation of the reforms identified will result in a system that is more efficient and effective and that has integrity.

Education Recommendations:

The MCA recommends that Productivity Commission urge Australian Governments:

- adopt the recommendations in the Bradley Review;
- continues urgent reforms that will achieve a VET sector that:
 - has the institutional and intellectual capacity to deliver high quality, consistent VET qualifications and skills sets;
 - is demand driven; is flexible and responsive to meet the divergent demands of the Australian economy; and
 - meets the skills needs of the minerals industry;
- urgently considers reforms to establish an effective national quality control system for the VET sector to ensure the quality and consistency of training outcomes;
- provide additional resources to ensure all Indigenous students have the opportunity to achieve the literacy and numeracy standards of their non-Indigenous peers;
- provide additional resources to ensure that all students have the option to access VET opportunities at the secondary school level;
- provide additional funding for the teaching of earth science at the primary and secondary levels;
- in collaboration with State and Territory Governments resource and reward high quality science and mathematics teaching and teachers in primary and secondary schools to ensure good students are given the best opportunities to fulfil their learning potential when embarking on higher education; and
- increase the capability of the primary and secondary school sectors to deliver quality science and mathematical education so that high school leavers are able to enrol in science and engineering degree courses at university.
- continues to support the Subclass 457 visa scheme as the preferred scheme to temporary long stay skilled migrants to employers confronted with critical and chronic skilled labour shortages that cannot be sourced in Australia; and
- implements the reforms commenced in 2008. These reforms should not only ensure the integrity of the scheme but also improve the efficiency and effectiveness for sponsoring employers, agents and immigrants.

Workplace Relations

Two and a half decades of industrial relations reform, spanning the Hawke, Keating and Howard administrations, have transformed Australia's workplace relations system to emphasise the individual worker, the individual enterprise and productivity. These reforms provided the framework for the Australian minerals industry to remove outdated, restrictive work practices, providing flexibility and choice in workplace arrangements and transforming pay and conditions and workplace culture, delivering significant tangible dividends.

The Australian minerals industry has transformed its workplaces from a culture of confrontation and divisiveness, where workplaces were battlegrounds of a "them and us" conflict, to a workplace culture of collaboration and direct relationships. These relationships are founded in individual enterprise and personal accountability, recognition of contribution and performance, a shared commitment to skills and personal development, and a culture of mutual dependency and prosperity. This transformation started long before the resources expansion from 2004 to 2008, and, indeed, the change was founded in the initial stages of workplace reforms and at a time when the Australian minerals industry was struggling, barely recovering the cost of its investment capital.

The proposed Fair Work Bill represents an opportunity to further build on these reforms, and not to undermine or compromise them either by design or as unintended consequences. The stated goal of the legislation is a workplace relations system that promotes productivity while retaining the twin pillars of flexibility and fairness. The MCA supports these broad objectives and considers that the essential ingredient of a flexible and fair workplace is a collaborative partnership between employers and employees founded in direct relationships, shared objectives and mutual respect. The MCA considers that while the overall *intent* of the legislation is to improve workplace arrangements for improved productivity, flexibility and fairness, in line with the trend of earlier reforms, the legislative package contains substantial flaws in critical areas.

As a consequence, the proposed Fair Work Bill is not consistent with the reforms undertaken by former Labor and Coalition administrations. If implemented without amendment, it would unravel many of the advances secured by previous workplace relations reforms. It would reverse a steady trend toward increased labour market flexibility, and particularly in promoting direct relationships in the workplace, just as the Australian economy faces its most critical economic challenge for at least a generation.

Critical provisions of the Fair Work Bill exceed the policy outlined before the 2007 election -specifically the *Forward with Fairness Implementation Policy* -with direct and indirect impacts that threaten to undermine the legislation's principal goals of flexibility, fairness and improving productivity, specifically in proposing:

- an expansion of the scope of right of entry;
- increased access to the private records of employees, particularly non-union employees;
- broader than necessary Good Faith Bargaining rules that will increase complexity, breach commercial confidentiality, tie companies and employees in additional legal proceedings and may distort bargaining in good faith because of the presumption of arbitration; and
- appointing unions as default bargaining agent for any of their members.

Right of entry

The most serious breach of mandate is the expanded rights of a union to apply for a permit to enter a workplace. This contradicts the ALP's promise that the current right of entry provisions would stay "without exception"⁴.

Union access rights should be based on direct and unambiguous connection with the workplace -such as employee interest or historical union coverage (which recognises existing demarcation decisions) and the application of a modern award or agreement that covers the employees at the workplace. Existing right of entry laws should be retained, including protocols on applying for permits and behaviour at the workplace.

Access to records

Similarly, the appointment of the union as the default bargaining agent and inspection of non-union employees records without just cause, were not declared before the Federal Election, and, even more significantly, represent an impost on

⁴ Julia Gillard, (then) Shadow Minister for Employment and Industrial Relations, Balance and Flexibility -Opinion Piece, Australian Financial Review, 31 August 2007.

freedom of association principles, the right to privacy and the goals of flexibility and fairness. In addition, the removal of the existing definition of "relevant record" broadens the type records that can be accessed.

Prescriptive Good Faith Bargaining rules

The proposed Good Faith Bargaining rules breach the pre-election mandate by creating interventionist processes that ultimately contradict the goals of fairness, flexibility and productivity. The Bill makes provision for the minutiae of how bargaining, negotiating and agreements are made. In being so prescriptive, and thus restrictive, the Bill compromises the flexibility needed for modern businesses operating in a dynamic highly competitive global market for human resources, capital and products. Instead of establishing an appropriate framework of rules with an independent umpire, the Bill seeks to direct participants.

While "Good Faith Bargaining" appears a benign concept, it disguises a myriad of opportunities for third party interference. Under this arrangement:

- a union can demand a seat at the table with only one employee as a member;
- the union is the default bargaining representative for a member. The employee must deliberately opt out of the union representing them -so-called "conscientious objection"-at the beginning of the process. There is no way for an employee to revoke that representation during the negotiation or appoint alternative representation;
- while there is a specific provision that says an employer does not have to make a concession in a negotiation, an employer may have to prove it has considered the union offer. Without such proof -or even With it -a union may still seek further good faith bargaining orders from Fair Work Australia ;
- the prospect of the default arbitration undermines the integrity and the commitment to bargain in good faith. The prospect of arbitration creates an environment of "position" bargaining -where parties resist concessions in anticipation of the consensus that will be forced upon them by the arbitrator -rather than bargaining with an attitude of mutual interests;
- gain access to confidential commercial arrangement on the grounds it may be pertinent to employees terms and conditions; and
- decide whether a company has divided its workforce in a "fair" way for the purposes of bargaining groups.

The potential impact in workplaces will be significant...

The transformation of workplace culture -characterised by collaborative, direct relationships -over the past two decades is fundamental to the economic success of the minerals sector, improvements in occupational health and safety and the industry's commitment to corporate social responsibility. An important contributor to this success has included unions who have built their legitimacy on a platform of service and adding value to the workplace culture.

Over the last decade the level of industrial disputation in Australian workplaces has fallen steadily. Elements of the proposed legislative package pose a significant risk of inciting a new wave of industrial unrest, with profound direct and indirect impacts on the Australian minerals industry and the Australian economy. This disruption stands to have the following impacts:

- undermine the culture of:
 - collaboration, of individual enterprise and personal accountability,
 - commitment to the inviolability of safety and health, and
 - increasing productivity and mutual prosperity;
- the renaissance of union demarcation dispute as competing unions apply for the right to enter and hold discussions because their rules overlap;
- a return of unions seeking to make test cases out of selected companies;
- confusion and compliance costs for managers having to deal with increased bureaucratic procedures, shifting the focus to administration and away from improving production and boosting returns to shareholders and employees;
- undermine the confidence and independence of employees to make their own decisions about representation.

The creation of barriers to the flexible engagement and deployment of workers will weaken the capacity of the economy to adjust to economic challenges posed by the global financial crisis.

This is specifically unfortunate given that the Australian economy in general and the minerals industry in particular are confronting the most difficult economic environment for at least a decade. The MCA is concerned that a more restrictive workplace relations system could contribute to a deeper and more sustained economic downturn than might otherwise be the case. With forecasts that Australia's jobless rate could reach 7.5 per cent in early 2010, Government and industry must work closely to ensure that domestic policy reforms do not exacerbate the adverse impact of the global downturn.

In practical terms, this means higher unemployment and lower productivity. The scale of such impacts could be considerable. For example, a 10 per cent fall in productivity could cost the economy up to \$8 billion by 2020.⁵

Research by the Reserve Bank of Australia, looking at 18 OECD countries over the past 30 years, found not only a link between higher productivity and lower levels of regulation but that *"labour and product market deregulation have more of an effect in combination"*.⁶

Moreover, both the Organisation for Economic Co-operation and Development and the International Monetary Fund have noted the contribution to labour market flexibility in Australia's economic performance and urged caution over the direction of changes prior to the tabling of the Fair Work Bill in December last year.

Workplace Relations Recommendations

The MCA recommends that the Productivity Commission urges the Australian Government:

- retain existing union right of entry laws in their entirety.
- that all investigations of suspected breaches of industrial instruments, including inspection of records, to be undertaken by an independent Government authority. Reinstate the existing definition of a relevant record;
- remove the union default bargaining representation rule and make union representation of a member subject to specific written approval;
- enable an employee to revoke or change the appointment of a bargaining agent;
- ensure that Good Faith Bargaining orders cannot be imposed on employers who exercise their right to not make concessions or agree to a term to be contained in an agreement;
- Good Faith Bargaining rules be amended so that they respect commercial arrangements and the confidentiality of companies' commercial operations, relevant information should be defined; and
- strict restrictions on the access to default arbitration to prevent it undermining the integrity and the commitment to bargain in good faith. Proposed laws must not allow the prospect of arbitration to create an environment of "position" bargaining, where parties resist concessions in anticipation of the consensus that will be forced upon them by the arbitrator rather than bargaining with an attitude of mutual interests.

⁵ The Allen Consulting Group, The Economic Importance of the Australian Construction Industry in Australia, August 2007. Report on behalf of the Australian Constructors Association.

⁶ C Kent and J Simon, Productivity Growth, The Effect of Market Regulations, Research Discussion Paper, Reserve Bank of Australia, 2007.