COAG Reform Council

National Partnership Agreement to Deliver a Seamless National Economy: Report on Performance 2008–09

Report to the Council of Australian Governments

23 December 2009

COAG Reform Council

National Partnership Agreement to Deliver a Seamless National Economy: Report on Performance 2008–09

Copyright

ISBN 978-1-921706-02-8

This work is copyright. In addition to any use permitted under the Copyright Act 1968, this work may be downloaded, displayed, printed, or reproduced in whole or in part for non-commercial purposes subject to an acknowledgement of the source. Inquiries concerning copyright should be directed to the COAG Reform Council secretariat.

Contact details

COAG Reform Council
Level 24, 6 O'Connell Street
Sydney NSW 2001

GPO Box 7015
Sydney NSW 2001

T 02 9329 7356
F 02 9329 7399

www.coag.gov.au/crc

The appropriate citation for this Report is:

COAG Reform Council 2009, *National Partnership Agreement to Deliver a Seamless National Economy: Report on Performance 2008–09*, COAG Reform Council, Sydney.

About the COAG Reform Council

The COAG Reform Council has been established by the Council of Australian Governments (COAG) as part of the new arrangements for federal financial relations to assist COAG to drive its national reform agenda. The council is independent of individual governments and reports directly to COAG.

The goals of the COAG reform agenda are to boost productivity, workforce participation and geographic mobility, and support wider objectives of better services for the community, social inclusion, closing the gap on Indigenous disadvantage and environmental sustainability.

The council aims to strengthen accountability for the achievement of results through independent and evidenced-based monitoring, assessment and reporting of the performance of all governments.

COAG Reform Council members

Mr Paul McClintock AO (Chairman)

Professor Geoff Gallop AC (Deputy Chairman)

Mr Peter Corish AM

Ms Patricia Faulkner AO

Mr John Langoulant

Dr Doug McTaggart

Ms Mary Ann O'Loughlin (Executive Councillor and Head of Secretariat)

Acknowledgements

The council would like to acknowledge the assistance of many people and organisations in preparing this report. Valuable input and feedback was received from officers of the Commonwealth, State and Territory governments on the draft report.

In particular, officials in all jurisdictions supporting the Business Regulation and Competition Working Group, and its secretariat, have provided useful guidance and information on the reforms and the council's approach throughout the preparation of this report.

The Productivity Commission has been a helpful source of advice and this is greatly appreciated.

COAG Reform Council

GPO Box 7015
Sydney NSW 2001
T 02 9329 7356
F 02 9329 7399
www.coag.gov.au/crc

23 December 2009

The Hon Kevin Rudd MP
Prime Minister
Parliament House
CANBERRA ACT 2600

Dear Prime Minister

On behalf of the COAG Reform Council, I am pleased to present the *National Partnership Agreement to Deliver a Seamless National Economy: Report on Performance 2008–09*. This is our first report to COAG on the implementation of this National Partnership.

As required by the *Intergovernmental Agreement on Federal Financial Relations* and clause 24 of the National Partnership, the council has assessed the achievement of the milestones set out in the implementation plan for the Commonwealth and for each of the States and Territories.

The report presents the council's assessment of progress against 2008–09 milestones as at 30 September 2009. Further information about progress against 2008–09 milestones since then will be made available on the council's website at the time that this report is released.

The *National Partnership Agreement to Deliver a Seamless National Economy* sets out an ambitious and complex array of microeconomic reforms. Positively, the COAG Reform Council has found that there has been good or generally satisfactory progress against 18 of the 27 deregulation priorities and four of the eight competition reforms. Much has been achieved by governments over the course of 2008–09. However, constant effort will be required over the next two years to ensure that key implementation milestones are achieved, particularly in those reform areas identified by the council as most at risk.

The report makes four recommendations to COAG, including that COAG should aim to clarify its energy reform agenda, and reinvigorate its competition reform agenda in the key areas of transport and infrastructure. The council also recommends ways in which the implementation plan could be refined to provide a more robust and transparent basis for the ongoing performance reporting process.

Consistent with the council's performance reporting responsibilities, this report will be publicly released on or about 1 March 2010.

If there are any queries on this matter, your department's officials may contact the Deputy Head of Secretariat, Mr Paul Elton, or Mr Michael Frost on (02) 9329 7356.

Yours sincerely

Paul McClintock AO
Chairman

Table of contents

List of tables

List of boxes

Executive Summary

Introduction

Under the *National Partnership Agreement to Deliver a Seamless National Economy*, the Commonwealth and the States and Territories have agreed to implement 36 streams of business regulation and competition reform.

Under the National Partnership, the States and Territories together received a facilitation payment of $100 million in 2008–09. The National Partnership provides for reward payments of up to $450 million over 2011–12 and 2012–13 if the 27 deregulation priorities are achieved.

The COAG Reform Council's role is to report to COAG annually to provide an independent assessment of whether the milestones in the National Partnership are being achieved. This report presents the council's first annual assessment of the performance of governments against the National Partnership.[1]

The findings of this report reflect the council's assessment of progress against 2008–09 milestones as at 30 September 2009. Governments may have taken further steps to implement reforms since that time.

Potential benefits of further reform

The current business regulation and competition reform agenda builds on a history of micro-economic reform in Australia. The 1970s and 1980s saw a number of important trade and capital market reforms. This was followed by a decade of nationally coordinated reforms under the broad ambit of the National Competition Policy, as well as reforms in key areas such as taxation, industrial relations, superannuation and corporate law (for a potted history of micro-economic reform in Australia, see Chapter 2).

Much has been achieved. However, the ongoing competition and regulatory reform agenda remains an imperative. In 2007, the Productivity Commission estimated that the competition and regulatory reform agenda could increase Gross Domestic Product by two per cent, raise household income by more than $400 per person and raise the funds available to governments by around $5 billion (see Chapter 2).

Assessment schema

The progress assessment and reporting methodology used by the council is set out in detail in Chapter 1. Tables are used throughout this report to provide a visual representation of the council's assessment of progress.

The tables in the chapters use a green-amber-red representation of progress against individual milestones (white cells indicate there is no milestone for the relevant jurisdiction).

If the council's progress assessment is that a milestone has been fully or largely completed on time it is rated **green**.

If the council's progress assessment is that a milestone has not been completed it is rated **red**.

However, the council has not used a simple binary assessment of whether a jurisdiction has exactly met a milestone on time (or not) because this would not provide a sufficiently nuanced

[1] This report builds on the council's 2008 and 2009 reports to COAG on the previous National Reform Agenda.

representation of progress. The council has had regard to three factors in assessing and rating progress: completeness, timeliness and impact on the ability of governments to meet future milestones. Having regard to these factors, the council has exercised discretion regarding milestones that would otherwise be rated red as follows:

- a **green** rating is applied where a milestone has been fully or largely completed, late but within the reporting period, and where the council considers that it is unlikely that this will impact on the ability of governments to meet subsequent milestones
- an **amber** rating is applied where a milestone:
  - has been fully or largely completed, late but within the reporting period, and the council's assessment is that there is only a small risk that this will impact on the ability of governments to meet subsequent milestones
  - has been fully completed, late and after the end of the reporting period, and the council's assessment is that it is unlikely this will impact on the ability of governments to meet subsequent milestones (this scenario would only apply to milestones completed in the first quarter after the reporting period up to the council's cut-off date for progress reporting)
  - has been only partially completed, and the council's assessment is that it is unlikely that this will impact on the ability of governments to meet subsequent milestones.

Each chapter also includes a table presenting the council's overall assessment across the relevant jurisdictions for the reform stream as a whole. There are some instances where a reform stream has more than one milestone and the council's findings result in different colour ratings being applied to the individual milestones. In these cases, an overall rating has been determined by giving greater weight to milestones requiring more substantive reform action.

For a full understanding of progress, readers should refer to the commentary set out in the progress and risk assessment sections in each chapter.

Deregulation priorities

The COAG Reform Council's assessment of the progress of governments in implementing the 27 deregulation priorities, to which reward payments pertain, is presented in Part B of this report.

An aggregated summary of the council's overall assessment of the performance of the nine Australian governments against the 27 deregulation priorities is presented in Table 1.

To avoid any misinterpretation in relation to reward payments, Table 1 does not capture the council's assessment against previously unmet milestones from the antecedent National Reform Agenda. The council's assessment of these matters in relation to deregulation priorities 6 (trade measurement), 7 (rail safety) and 15 (construction code) can be found in chapters 8, 9 and 15 of this report.

Table 1: Overall progress assessment—deregulation priorities

Stream		Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
1	OHS*									
2	Environmental assessment									
3	Payroll tax									
4	Licensing system*									
5	Health workforce	(There are no 2008–09 milestones for this reform)								
6	Trade measurement*									
7	Rail safety									
8	Consumer law*									
9	Product safety*									
10	Trustee corporations*									
11, 12 & 13	Consumer credit*									
14	Development assessment	(There are no 2008–09 milestones for this reform)								
15	Construction code									
16	Chemicals & plastics									
17	Business names*									
18	Personal property securities*									
19	Business reporting*									
20	Food									
21	Mine safety									
22	Electronic conveyancing	(There are no 2008–09 milestones for this reform)								
23	Oil & gas									
24	Maritime safety									
25	Wine labelling									
26	Directors' liability									
27	Consumer credit (other)*	(There are no 2008–09 milestones for this reform—see Chapter 13)								

*Indicates the 13 streams of reform listed at clause 34(a) of the National Partnership: these reforms must be implemented if States and Territories are to remain eligible for full reward payments.

Deregulation priorities—the good news

Overall, Table 1 indicates that governments have made good or generally satisfactory progress against 2008–09 milestones across 18 of the 27 deregulation priorities (those rated green or amber).

Table 1 demonstrates that governments have made good progress against 2008–09 milestones across 13 of the 27 deregulation priorities (those rated green):

- deregulation priority 1—occupational health and safety
- deregulation priority 2—environmental assessment
- deregulation priority 4—licensing system
- deregulation priority 6—trade measurement
- deregulation priority 7—rail safety
- deregulation priority 8—consumer law
- deregulation priority 9—product safety
- deregulation priority 10—trustee corporations
- deregulation priority 17—business names
- deregulation priority 19—business reporting
- deregulation priority 21—mine safety
- deregulation priority 23—oil and gas
- deregulation priority 25—wine labelling.

Although environmental assessment and rail safety are listed above, the council has some specific concerns with these reform streams.

Environmental assessment (see Chapter 4)

Even though the milestones for bilateral assessment agreements to be settled with Victoria and the Australian Capital Territory have been met, implementation experience across all jurisdictions suggests that these agreements are not streamlining assessment processes for all developments. Progress toward using further streamlining mechanisms—bilateral approval agreements and strategic assessments—during 2009–10 also seems uncertain.

Rail safety (see Chapter 9)

While the single National Partnership milestone was met by New South Wales, Victoria and South Australia, Chapter 9 of this report finds that previously unmet rail safety reform milestones from the National Reform Agenda have not been completed.

Table 1 also shows that there are five reform streams where progress is generally satisfactory, but where milestones were completed late or only partially (those rated amber):

- deregulation priorities 11, 12 and 13—consumer credit
- deregulation priority 18—personal property securities
- deregulation priority 24—maritime safety.

In some of these cases there is a degree of risk that future milestones may not be met. The status of these five reform streams is summarised below.

Consumer credit (see Chapter 13)

Three related consumer credit reform streams—mortgage broking, margin lending and non-deposit lending—are assessed in Chapter 13.

There has been some good progress on the consumer credit reforms. The Commonwealth Government finalised a framework for the regulation of the stage one elements of the consumer credit regime.

However, the three milestones requiring the Commonwealth and the States and Territories to progress legislation to enable the Commonwealth scheme were only partially completed.

The Commonwealth has announced that the commencement of the regime will be deferred six months from 1 January 2010 to 1 July 2010. This announcement, which (as at 30 September 2009) had not been formally considered by COAG, constitutes a one year delay relative to the deadline set for implementation from July 2009.

Personal property securities (see Chapter 18)

All governments met the first milestone to sign an intergovernmental agreement at the time the National Partnership was agreed.

The Commonwealth has met its obligation to engage a contractor to build the Personal Property Securities register.

However, the two milestones requiring the Commonwealth and the States and Territories to progress legislation to enable the Commonwealth scheme were only partially completed.

As at 30 September 2009, delays in the passage of the Commonwealth legislation and delays with the introduction of referral legislation in Western Australia and Tasmania were the main risks to this reform.

Maritime safety (see Chapter 24)

The key milestone for this reform was for all jurisdictions—via the Australian Transport Council—to report to COAG on the outcome of a regulatory impact statement process and a proposed way forward, addressing financial implications and timing for legislation. This is intended as an interim milestone toward the signing of an intergovernmental agreement by early 2010.

The COAG Reform Council has assessed this milestone as partially completed on the basis that, while COAG agreed on 2 July 2009 that the Australian Maritime Safety Authority will become the sole regulator of commercial vessels in Australian waters, the Australian Transport

Council's report to COAG and the regulatory impact statement that informed this decision had not been made public (as at 30 September 2009). Jurisdictional progress reports also indicated that financial and legislative issues had not been resolved.

Notwithstanding these concerns, there remains scope for an intergovernmental agreement to be signed by early 2010.

Deregulation priorities—the bad news

Table 1 shows that there are five deregulation priorities where some or all jurisdictions have not met milestones and/or where there is a significant risk that future milestones or the ultimate objective is at risk (the pertinent jurisdictions are rated red in Table 1):

- deregulation priority 3—payroll tax
- deregulation priority 15—construction code
- deregulation priority 16—chemicals and plastics
- deregulation priority 20—food
- deregulation priority 26—directors' liability.

The status of these reforms is summarised below.

Payroll tax (see Chapter 5)

This reform stream required Western Australia, the Australian Capital Territory and the Northern Territory to have adopted, by the end of 2008, the first stage reforms already adopted by other States. The Northern Territory met the milestone. The Australian Capital Territory broadly met the milestone, implementing the stage one reforms in all but two small respects. Western Australia did not meet the milestone.

Some risks regarding the specification and timeframes for these reforms are addressed in Chapter 5 of this report.

Construction code (see Chapter 15)

While a consultation draft regulation impact statement was released by COAG on 30 April 2009, the Commonwealth did not finalise it by April 2009, as required by the single 2008–09 milestone for this reform (nor was it finalised by 30 September 2009).

Chapter 15 of this report also deals with two items of unfinished business from the antecedent National Reform Agenda:

- all variations to the Building Code of Australia to be eliminated or validated by the end of 2011
- delineation and streamlining of local government processes that impact on building regulation (ongoing).

This report finds that there has been some progress on these two items.

Chemicals and plastics (see Chapter 16)

At the time the National Partnership was agreed, all governments had met the first milestone under this reform for COAG to consider a new governance structure to oversee the reform and to agree a proposed interim response to Productivity Commission recommendations by November 2008. That said, Chapter 16 highlights a concern that the new governance structure—principally the Standing Committee on Chemicals—had not yet been implemented.

The second milestone under this reform was for all jurisdictions to report to COAG—via ministerial councils and the COAG Business Regulation and Competition Working Group—setting out implementation plans in response to the Productivity Commission's recommendations. As at 30 September 2009, implementation plans had not been submitted to COAG, although governments reported that they were expected to be considered at COAG's December 2009 meeting. Section 16.4 of this report highlights a number of risks to the overall objective of this reform stream.

Food (see Chapter 20)

This reform stream has one 2008–09 milestone with two elements.

The first element—reforms to voting arrangements for the ministerial council—had been agreed for draft food standards but not for other issues.

The second element required all jurisdictions to 'develop a proposal for the development of options and costs to improve national consistency in monitoring and enforcement.' This tentative and preliminary piece of work was not completed as at 30 September 2009.

The slow progress to date and other identified risks, such as unclear governance arrangements, make it probable that the 2009–10 milestones will not be met and that the ultimate objective to fully implement reforms by December 2010 may not be achieved on time.

Directors' liability (see Chapter 26)

As at 30 September 2009, jurisdictions had not reached agreement on the principles for increased consistency across jurisdictions for the imposition of personal criminal liability for corporate fault, as required by the second milestone under this reform. Audits had been conducted, but against alternative sets of principles, potentially rendering much of this work by jurisdictions redundant.

The lack of agreement on principles and the consequent delays in auditing legislation creates a risk that the milestone for all jurisdictions to enact legislation by December 2010 may not be achieved. However, this risk has been mitigated by the changes made to the implementation plan on 2 July 2009: COAG has given the Ministerial Council for Corporations clear direction to reach agreement on national principles by the end of October 2009 and a set of interim steps to lead to that agreement.

Deregulation priorities—no milestones

There are also four reforms for which there are no milestones in 2008–09:

- deregulation priority 5—health workforce
- deregulation priority 14—development assessment
- deregulation priority 22—electronic conveyancing

- deregulation priority 27—consumer credit (other).

While there are no milestones set for development assessment in 2008–09, Chapter 14 of this report highlights risks to the achievement of the objectives of this reform stream.

Deregulation priorities—recommendation

The COAG Reform Council's conclusions and recommendations are set out in Chapter 37.

Overall the council has found that:

- five reform streams are identified where milestones have not been met and/or where there is a significant risk that future milestones or the ultimate objective will not be achieved on time
- there are five reform areas where there is some slippage and a level of risk to future milestones
- there are some instances where reform streams are assessed as at risk even though the 2008–09 milestones were met or there were no 2008–09 milestones.

There are a number of broad themes into which the causes of delays or risks to the reforms can be grouped, including:

- legislative delays caused by factors such as the complexity of the existing arrangements in the area of reform or the coordination and sequencing of referral processes across nine parliaments
- difficulties reaching agreement on institutional arrangements, particularly regarding funding, where new national institutions are being established—this often has to do with the complexity of existing approaches taken across governments
- provisions in intergovernmental agreements and model laws that allow for significant variation from the national model at a jurisdictional level.

Of the various cases, it is the council's assessment—based principally on an assessment of the level of risk to the ultimate objective in each case—that there are seven matters that require COAG's greatest attention.

The council makes one recommendation regarding the 27 deregulation priorities (Box 1).

Box 1: Recommendation 1—deregulation priorities

Recommendation 1

The COAG Reform Council recommends that COAG **note** the COAG Reform Council's assessment findings on the deregulation priorities and **consider** any necessary steps to improve performance, particularly in the following seven reforms:

- deregulation priority 2—environmental assessment
- deregulation priority 14—development assessment
- deregulation priority 15—construction code
- deregulation priority 16—chemicals and plastics
- deregulation priority 20—food
- deregulation priority 24—maritime safety
- deregulation priority 26—directors' liability.

Competition reforms

The COAG Reform Council's assessment of the progress of governments in implementing the eight competition reform streams is presented in Part C of this report. This assessment is not relevant to reward payments as these only pertain to the 27 deregulation priorities dealt with in Part B of this report.

An aggregated summary of the council's assessment of the performance of the nine Australian governments against the 2008–09 milestones for the eight competition reform streams is provided in Table 2.

Unlike Table 1, Table 2 *does* capture the council's assessment against previously unmet milestones from the antecedent National Reform Agenda.

Table 2: Overall progress assessment—competition reforms

Stream		Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
1	Anti-dumping/countervailing									
2	Book importation									
3	Energy (NP milestones)									
	Energy (market)									
	Energy (smart meters)									
4	National access regime									
5	Infrastructure (ports)									
	Infrastructure (other)									
6	Occupational licensing									
7	Transport policy									
8	Road reform plan									

Competition reforms—the good news

Table 2 shows that the governments have made good or satisfactory progress against 2008–09 milestones across four of the eight competition reforms (those rated green):

- competition reform 1—anti-dumping/countervailing
- competition reform 2—book importation
- competition reform 4—national access regime
- competition reform 6—occupational licensing.

National access regime (see Chapter 30)

While the Commonwealth has met the single 2008–09 milestone to consult with States and Territories on proposed reforms to the National Access Regime, Chapter 30 of this report outlines the COAG Reform Council's ongoing concerns with the lack of progress in this reform area.

Competition reforms—the bad news

Table 2 shows that there are four of the eight competition reforms where some or all jurisdictions have not met milestones and/or where there is a significant risk that future milestones or the ultimate objective is at risk (the pertinent jurisdictions are rated red in Table 2):

- competition reform 3—energy
- competition reform 5—infrastructure

- competition reform 7—transport policy
- competition reform 8—road reform plan.

The status of these reforms is summarised below.

Energy (see Chapter 29)

Chapter 29 of this report deals with energy reforms in three parts.

Implementation plan milestones—Western Australia and the Commonwealth

The first part of Chapter 29 deals with the two specific milestones set for Western Australia and the Commonwealth in the implementation plan.

The council has assessed Western Australia as having partially completed its commitment in the National Partnership by legislating to adopt a modified version of the National Gas Law, notwithstanding that Western Australia has not reported to the Business Regulation and Competition Working Group as required by the milestone.

The Commonwealth has met its obligation for a report to be prepared on retail price regulation in South Australia. However, the South Australian Government has not accepted the findings of the report and there is no further process established under the National Partnership for this matter to be dealt with. This issue is not unique to South Australia. The issue of Australian Energy Market Commission reviews in relation to other jurisdictions is dealt with more fully in Chapter 29.

This milestone is also an example where the milestone accountability may need to be reconsidered by COAG (see Chapter 38).

National Reform Agenda milestones—energy market

Chapter 29 deals with five previously unmet milestones on the establishment of a national energy market from the earlier National Reform Agenda.

Some commitments remain unmet, including those to remove or harmonise derogations from the national framework and to develop options to integrate the spot and forward markets into the National Energy Market prudential requirements.

National Reform Agenda milestones—smart meters

Chapter 29 also deals with five previously unmet milestones on the roll-out of smart electricity meters from the National Reform Agenda.

Rule changes to enable energy ministers to direct the roll-out of smart meters had been introduced into the South Australian Parliament, but were not enacted as at 30 September 2009.

Queensland and Western Australia were both required to report to the Ministerial Council on Energy with timetables for the roll-out of smart meters. The Queensland Government provided a timetable late but within the quarter following the reporting period. The Western Australian Government had not reported to the Ministerial Council on Energy.

The final two milestones concern the commencement of a national roll-out of smart meters by the end of 2008. The report finds that only NSW and Victoria have committed to/commenced a

roll-out of smart meters. Some of the other jurisdictions have processes underway for pilots or trials and others have made no commitment to action at this time.

Infrastructure (see Chapter 31)

This reform stream comprises ongoing milestones under COAG's 2006 *Competition and Infrastructure Reform Agreement* (apart from the National Access Regime dealt with in Chapter 30).

Three elements due within 2008–09 are: reports to COAG on implementation of the *Competition and Infrastructure Reform Agreement*; an annual report to COAG on the application of competitive neutrality principles to government businesses; and implementation of port reviews.

The first element—reports to COAG on implementation of the *Competition and Infrastructure Reform Agreement*—has been achieved.

The second element—an annual report to COAG on the application of competitive neutrality principles to government businesses—has not yet been achieved. As at 30 September 2009, the council understands that it may be presented to COAG before the end of 2009.

In relation to the third element—implementation of port reviews—the council engaged KPMG to conduct a detailed assessment of jurisdictions' port reviews. All jurisdictions except Queensland and Western Australia are assessed as having completed reviews consistent with *Competition and Infrastructure Reform Agreement* principles. New South Wales and the Northern Territory are assessed as having partially met this milestone on the basis that some remaining implementation action is required. Victoria and South Australia are assessed as having completed their obligations to implement recommendations consistent with *Competition and Infrastructure Reform Agreement* principles.

Transport policy (see Chapter 33)

The single milestone set for 2008–09 was for all jurisdictions to develop milestones for four specific elements (regulation of heavy vehicles, rail safety, maritime safety and urban congestion) of a National Transport Policy by early 2009. While COAG did reach agreement on 2 July 2009 to implement certain reforms, no specific workplan and timetable were agreed, and no specific milestones were set in the revised implementation plan.

While a number of measures have been canvassed by transport ministers, it remains unclear whether a broader National Transport Policy will be agreed by COAG. Agreement to milestones—at least for the current four outputs in this reform—would be an important first step in expressing a commitment to a National Transport Policy.

Road reform plan (see Chapter 34)

The single milestone set for 2008–09 was for all jurisdictions to develop milestones by early 2009 for phase two of the COAG Road Reform Plan. This milestone was not achieved during the reporting period. It was expected (as at 30 September 2009) that a work plan and associated milestones developed by the Australian Transport Council may be considered by COAG at its December 2009 meeting. If this occurs there remains scope for the milestones set for 2010–11 (implementation of phase two reforms) and 2011–12 (proposals for mass-distance-location based charges) to be achieved on time.

Competition reforms—recommendation

The COAG Reform Council's conclusions and recommendations are set out in Chapter 37.

The council is particularly concerned that there has been a loss of momentum in key competition reform areas.

The council makes one recommendation regarding the eight competition reforms (Box 2).

Box 2: Recommendation 2—competition reforms

Recommendation 2

The COAG Reform Council recommends that COAG:

- **note** the COAG Reform Council's assessment findings on the competition reforms and **consider** any necessary steps to improve performance, particularly in the following four reforms areas:
  - competition reform 3—energy
  - competition reform 4—national access regime
  - competition reform 5—infrastructure
  - competition reform 7—transport policy
- **clarify** its agenda in the area of energy reform with a view to establishing a more coherent set of outputs and milestones in the implementation plan for this reform stream (set in the context of national energy reform achieved to date)
- **reassess** its agenda in the areas of infrastructure and transport, with a view to reinvigorating the competition reform agenda and establishing a more coherent set of outputs and milestones in the implementation plan
- **consider** disaggregating the energy, infrastructure and transport streams into component elements in the next edition of the implementation plan so that a more comprehensive assessment of performance can be presented next year.

Regulation making and review

Chapter 35 in Part D of this report presents the COAG Reform Council's assessment of the progress of governments in implementing part 3 of the implementation plan, which deals with ongoing steps to improve regulation making and review processes.

The milestones set to date for this reform are relatively unambitious. The single milestone set for 2008–09 for this reform was for jurisdictions to implement the specific action commitments set out in Appendix C of the *COAG Regulatory Reform Plan* by June 2009. Most of the action items and completion dates set out in Appendix C of the *COAG Regulatory Reform Plan* were expressed as actions already implemented by governments, and a few foreshadowed actions that were imminent when the plan was made in April 2007. Unsurprisingly therefore, the assessment is that most action items have been completed.

The COAG Reform Council's conclusions and recommendations are set out in Chapter 37. The council makes one recommendation regarding the general better regulation reform stream (Box 3).

Box 3: Recommendation 3—regulation making and review

Recommendation 3

The COAG Reform Council recommends that COAG **note** the COAG Reform Council's assessment findings on regulation making and review processes and **consider** whether the next edition of the implementation plan should include the specification of new milestones and deadlines, particularly for those jurisdictions that have not yet fully put in place all of the mechanisms specified in the *Regulatory Reform Plan*.

Performance assessment framework

Chapter 38 provides the COAG Reform Council's advice on the performance assessment framework for this National Partnership, examining the adequacy of the implementation plan and the efficacy of processes supporting the council's performance reporting role.

The council concludes that there are various ways in which the implementation plan could be improved to aid transparency and rigour in the performance reporting task, and makes one recommendation to COAG (Box 4).

Chapter 38 also postulates that there is potential for improvements to reporting and consultation timeframes that would benefit both the council and jurisdictions, and foreshadows the development of recommendations as part of the council's annual report to COAG in June 2010.

Box 4: Recommendation 4—improvements to implementation plan

Recommendation 4

The COAG Reform Council recommends that COAG **ask** the Business Regulation and Competition Working Group to bring forward an updated implementation plan before 30 June 2010 which:

- includes a fuller description of the intended reforms (by way of the insertion of a short summary of the specific reforms to be made and/or by explicit referencing of the relevant parts of intergovernmental agreements, reports or other documents that provide a description of the agreed reform)
- is more rigorous in the specification of milestones and deadlines to eliminate the following deficiencies identified throughout this report:
  - milestones that are actually statements of fact about an action that has already occurred
  - internally inconsistent deadlines
  - missing or inappropriate jurisdictional accountability
  - instances where there are no future milestones for relevant jurisdictions
  - cases where the intended reform is more fully developed and there is scope for greater specificity in the milestones and deadlines
- includes updated milestones to capture relevant remaining commitments from the National Reform Agenda.

PART A: BACKGROUND

Chapter 1: Introduction

Under the *National Partnership Agreement to Deliver a Seamless National Economy*, the Commonwealth and the States and Territories have agreed to implement 36 streams of business regulation and competition reform. The National Partnership provides for an up-front facilitation payment to the States and Territories of $100 million and reward payments totalling $450 million over 2011–12 and 2012–13.

The COAG Reform Council's role is to report to COAG annually to provide an independent assessment of whether the milestones in the National Partnership have been achieved.

This is the council's first annual report to COAG on the performance of governments against the *National Partnership Agreement to Deliver a Seamless National Economy* (the National Partnership).

1.1 The COAG reform agenda and framework for federal financial relations

The COAG reform agenda

In March 2008, the Council of Australian Governments (COAG) endorsed a new reform agenda for Australia, agreeing to work together to:

> boost productivity, workforce participation and geographic mobility, and support wider objectives of better services for the community, social inclusion, closing the gap on Indigenous disadvantage and environmental sustainability (COAG, 2008h, p. 2).

The reform process culminated on 29 November 2008 when COAG (2009l) reached agreement on the new *Intergovernmental Agreement on Federal Financial Relations*, and six major National Agreements and various National Partnership Agreements in the areas of healthcare, education, skills and workforce development, disability services, affordable housing, and Indigenous reform.

COAG (2009n) also agreed to the *National Partnership Agreement to Deliver a Seamless National Economy*.

The agenda also includes the *Agreement on Murray-Darling Basin Reform*, signed at COAG on 3 July 2008 (COAG, 2008a), and various further agreements that have been signed during 2009 (COAG, 2009f; 2009g; 2009s).

Framework for federal financial relations

Reform of the architecture of Commonwealth-State financial relations is critical to this reform agenda, with COAG agreeing to implement a new framework for federal financial relations. The key priorities of the framework are to modernise payments between the Commonwealth and the States and Territories, and to drive economic and social reforms (Commonwealth of Australia, 2009a, p. 8).

The *Intergovernmental Agreement on Federal Financial Relations* provides the overarching framework for the Commonwealth's financial relations with the States and Territories. It establishes a foundation for governments to collaborate on policy development and service delivery, and to facilitate the implementation of economic and social reforms. All policy and

financial relations between the Commonwealth and the States and Territories are now governed by the provisions of the intergovernmental agreement (Commonwealth of Australia, 2009a, pp. 8–9).

To support improved collaborative working arrangements, the intergovernmental agreement established two new forms of agreements between the Commonwealth and States and Territories—National Agreements and National Partnerships (Commonwealth of Australia, 2009a, p. 160).

National Agreements

National Agreements establish the policy objectives in the key service sectors of education, skills and workforce development, healthcare, affordable housing, disability services, and Indigenous reform. They set out the objectives, outcomes, outputs and performance indicators, which have been mutually agreed by all jurisdictions. The agreements also clarify the roles and responsibilities of the Commonwealth and States and Territories in the delivery of services and the achievement of outcomes.

National Partnership agreements

National Partnership agreements outline mutually agreed policy objectives in areas of nationally significant reform or to achieve service delivery improvements, and define the outputs and performance benchmarks. National Partnerships may provide for payments on the achievement by the States and Territories of performance benchmarks or for delivering reform progress.

In agreeing to the new federal financial relations framework, the Commonwealth and the States and Territories committed to enhanced accountability through simpler, standardised and more transparent performance reporting by all jurisdictions, and a focus on the achievement of outcomes, efficient service delivery and timely public reporting (COAG, 2009l, p. 5). The *Intergovernmental Agreement on Federal Financial Relations* gives the COAG Reform Council significant responsibilities for assessment and reporting on the performance of governments under National Agreements and National Partnerships (COAG, 2009l, p. A4).

1.2 The National Partnership Agreement to Deliver a Seamless National Economy

Objectives and outcomes

The objectives being pursued through the *National Partnership Agreement to Deliver a Seamless National Economy* are:

- to deliver more consistent regulation across jurisdictions and address unnecessary or poorly designed regulation
- to reduce excessive compliance costs on business, restrictions on competition and distortions in the allocation of resources in the economy.

These objectives are expected to contribute to the goals of the COAG reform agenda: to boost productivity and enhance Australia's longer-term growth by expanding productive capacity and improving workforce participation and labour mobility (COAG, 2009n, pp. 1–4).

Outputs—36 reform streams

The agreed outputs include 27 deregulation priorities agreed by COAG in March 2008, eight priority areas for competition reform agreed by COAG in July 2008 and ongoing efforts to

improve processes for regulation making and review (COAG, 2009n, p. 5). The specific milestones to be achieved across these 36 streams are set out in the National Partnership's implementation plan.

The 27 deregulation priorities are listed in Table 1.1. The eight competition reforms are listed in Table 1.2.

Responsibilities

Clause 18 of the National Partnership identifies nine of the 27 deregulation priorities as the responsibilities of the Commonwealth to establish national regulatory systems (COAG, 2009n, pp. 5–6). At Clause 21, the National Partnership identifies the remaining 18 deregulation priorities as joint responsibilities of the States and Territories and the Commonwealth (COAG, 2009n, p. 6).[2]

Clause 19 identifies two of the competition reform areas as principally Commonwealth matters, while Clauses 20 and 22 nominate the other six competition reform areas and the general obligation to improve regulation making processes as shared responsibilities (COAG, 2009n, p. 6).

Implementation plan

The Commonwealth and the States and Territories have agreed (clauses 11 and 23 of the National Partnership) to meet the milestones set out in the implementation plan. Clause 11 provides for the implementation plan to be reviewed and updated annually to ensure that it reflects any new commitments made by COAG (COAG, 2009n, p. 4). Clause 34(c) of the National Partnership states that the Commonwealth will ensure that the implementation plan is amended prior to any COAG Reform Council review to reflect any delays by the Commonwealth that impact on the capacity of States and Territories to meet their deadlines (COAG, 2009n, p. 7).

An initial version of the implementation plan was agreed by COAG on 29 November 2009 at the same time that COAG agreed to the *National Partnership Agreement to Deliver a Seamless National Economy* (COAG, 2009o).[3] This report refers to this document as the 'original' implementation plan.

On 2 July 2009, COAG agreed to a new edition of the implementation plan, referred to in this report as the 'current' implementation plan (COAG, 2009p).

Financial arrangements

The National Partnership provides for a facilitation payment to the States and Territories of $100 million in 2008–09, and reward payments of $200 million in 2011–12 and $250 million in 2012–13. The funding is to be distributed on a per capita basis (COAG, 2009n, pp. 7–8). Clause 15 of the National Partnership provides that this funding is only to be paid in respect of the 27 deregulation priorities (COAG, 2009n, p. 5).

[2] The distinction made by Clauses 18 and 21 is somewhat arbitrary. All 27 streams involve joint action by the Commonwealth and the States and Territories. Many identified as Commonwealth responsibilities involve the creation of a national system established in the Commonwealth jurisdiction by way of constitutional referral of powers from the States. The 27 reforms rely variously on referral legislation, application legislation, model legislation, model regulations, intergovernmental agreements, or simply cooperative action using existing provisions; in some cases a mix of these harmonisation mechanisms is used.

[3] This original version was attached to the National Partnership and referenced at Clause 11 as Attachment A.

The $100 million in facilitation payments were transferred to the States and Territories in June 2009 (Commonwealth Government, 2009b, p. 1).

In relation to the $450 million in potential reward payments:

- Clause 32 of the National Partnership stipulates that the Commonwealth will provide reward payments following COAG Reform Council advice as to the achievement of key milestones as set out in the implementation plan for the 27 deregulation priorities (COAG, 2009n, p. 8).
- Clause 34(a) provides that the States and Territories will continue to be eligible for their full reward payment even if the milestones for one of the 27 priorities are not met, so long as that one is not of a specified list of 13 of the priorities (COAG, 2009n, pp. 8–9).
- Clause 34(b) of the National Partnership further provides that States and Territories may be eligible for full or partial reward payments, reflecting an assessment by the Commonwealth on the level of progress, based on the advice of the COAG Reform Council (COAG, 2009n, p. 9).

Table 1.1 lists the 27 deregulation priorities for which reward payments can be made and indicates the 13 of these that must be completed in accordance with clause 34(a) for a jurisdiction to remain eligible for its full reward payment (COAG, 2009n, pp. 9–10).

Table 1.1: Deregulation priorities

National Partnership Agreement to Deliver a Seamless National Economy Reform streams – deregulation priorities	Listed at Clause 34(a)
1. Occupational health and safety	✓
2. Environmental assessment	
3. Payroll tax	
4. Licensing system	✓
5. Health workforce	
6. Trade measurement	✓
7. Rail safety	
8. Consumer law	✓
9. Product safety	✓
10. Trustee corporations	✓
11. Mortgage broking	✓
12. Margin lending	✓
13. Non-deposit lending	✓
14. Development assessment	
15. Construction code	
16. Chemicals and plastics	
17. Business names	✓
18. Personal property securities	✓
19. Business reporting	✓
20. Food	
21. Mine safety	
22. Electronic conveyancing	
23. Oil and gas	
24. Maritime safety	
25. Wine labelling	
26. Directors' liability	
27. Consumer credit (other)	✓

Table 1.2: Competition reforms

National Partnership Agreement to Deliver a Seamless National Economy Reform streams – competition reforms
1. Anti-dumping/countervailing
2. Book importation
3. Energy
4. National access regime
5. Infrastructure
6. Occupational licensing
7. Transport policy
8. Road reform plan

1.3 Role of the COAG Reform Council

General role

The COAG Reform Council assists COAG to drive its national reform agenda by strengthening accountability for the achievement of results through independent and evidenced-based monitoring, assessment and reporting on the performance of governments. The council is independent of individual governments and reports directly to COAG.

The role of the COAG Reform Council is to report to COAG on:

- the performance of the Commonwealth and the States and Territories in achieving the outcomes and performance benchmarks specified in National Agreements
- whether predetermined performance benchmarks have been achieved under National Partnerships
- the performance of the Commonwealth and the Basin States under five bilateral Water Management Partnerships under the *Agreement on Murray-Darling Basin Reform*
- the aggregate pace of activity in progressing COAG's agreed reform agenda
- other matters referred by COAG (COAG, 2009l, p. A4).

More specifically for National Partnerships, clause C19 of the *Intergovernmental Agreement on Federal Financial Relations* states that the COAG Reform Council will be the independent assessor of whether predetermined milestones and performance benchmarks have been achieved before an incentive payment is made to reward nationally significant reforms under a National Partnership; and that the final decision on payments will be made by the Commonwealth (COAG, 2009l, p. C4).

Clause C21 states that the COAG Reform Council may draw on existing subject experts or commission technical experts when performance assessments are required (COAG, 2009l, p. C4).

Performance reporting requirements

The *Intergovernmental Agreement on Federal Financial Relations* and the National Partnership set out the following requirements for the conduct of the performance reporting task:

- Clause 24 of the National Partnership provides that the COAG Reform Council will annually assess the achievement of milestones by the Commonwealth and the States and Territories (COAG, 2009n, p. 7).
- Clauses 1 and 25 state that performance reporting is to be carried out in accordance with Schedule C (Public Accountability and Performance Reporting) to the intergovernmental agreement (COAG, 2009n, p. 3 & 7).
- Clauses 26 and 27 provide that each party is to furnish a detailed report to the COAG Reform Council on its progress against the milestones within three months of the end of each financial year (COAG, 2009n, p. 7).
- Clause C22 of the intergovernmental agreement requires the COAG Reform Council to consult with the parties for a period of one month before making its assessment (COAG, 2009l, p. C4).

1.4 The COAG Reform Council's methodology

In addition to the requirements of the *Intergovernmental Agreement on Federal Financial Relations* and the *National Partnership Agreement to Deliver a Seamless National Economy*, the COAG Reform Council has established some further specific mechanisms for the way in which it will conduct its performance assessment and reporting task. These proposals, set out below, were discussed and agreed with the parties through bilateral and multilateral discussions held with jurisdictions' officials during the first half of 2009.

Consultation, reporting and publication timeframes

Jurisdictions are required to report to the COAG Reform Council by 30 September and the council is required to consult on its draft assessment for one month. There is no further guidance as to the timing of assessment reports for the National Partnership.

Clause C15 of the intergovernmental agreement provides that, in relation to National Agreements, the COAG Reform Council's reports should be provided to COAG no later than three months after receiving the performance information (COAG, 2009l, p. C3). The council has adopted this as a guide as to the timing of assessment reports for this National Partnership and has proposed to governments that its final report to COAG would therefore be due by 31 December each year.

To meet the consultation requirement of clause 22 of the intergovernmental agreement, the council consulted with jurisdictions on a draft of this report for one month from 4 November 2009 to 3 December 2009. The council also held bilateral meetings with each jurisdiction to discuss the draft report during this period.

Timing of reports and payments

Clause D31 of Schedule D to the *Intergovernmental Agreement on Federal Financial Relations* provides that the Commonwealth will make a determination as to whether incentive payments will be made as soon as possible after receipt of the report from the COAG Reform Council and such payments will be paid as a single instalment on the first possible (monthly) payment date after the determination (COAG, 2009l, p. D5).

The reward payments to be made in 2011–12 will therefore be contingent on receipt of the COAG Reform Council's report due on 31 December 2011 covering the reporting period ending 30 June 2011. Similarly, the reward payments to be made in 2012–13 will be contingent on receipt of the COAG Reform Council's report due on 31 December 2012 covering the reporting period ending 30 June 2012.

It is therefore likely that, factoring in timing for COAG and Commonwealth decision making processes, reward payments will flow to States and Territories in the latter part of the relevant financial year.

This sequencing means that there will be two COAG Reform Council reports—December 2009 and December 2010—preceding the years in which reward payments are due. These initial reports will be important in highlighting any milestones that have not been met, or risks to future milestones being met, that may flow through to the subsequent reporting periods. The subsequent assessments to be made in the reports due in December 2011 and December 2012 will inform Commonwealth decisions on reward payments.

The implementation plan includes a column for milestones to be met in 2012–13, although currently only two of the 36 streams of reform include 2012–13 milestones. Clause 35 of the National Partnership provides that any reward payments which are not allocated by the Commonwealth in any particular year will be retained and made available in the subsequent year, subject to performance (COAG, 2009n, p. 9). These arrangements—and implementation experience—may lead to a need for the COAG Reform Council to produce a fifth report in December 2013.

Understanding the proposed reform

The National Partnership agreement and the implementation plan do not provide a detailed explanation of the intended reform under each stream. To understand the intended reform it is necessary to refer to COAG communiqués, ministerial council communiqués, Business Regulation and Competition Working Group papers, Productivity Commission reports, and other primary sources. So that readers of this report are able to understand the council's progress assessment, the second section in each chapter outlines the council's understanding of the intended reform and the history of the development of the proposed reform.

Chapter 38 of this report makes some recommendations about this and other aspects of the performance reporting framework for this National Partnership.

Progress Assessment

The third section in each chapter dealing with the 36 reform streams presents the council's commentary on the progress of jurisdictions against each 2008–09 milestone, having regard to the factual progress information, and the council's understanding of the intended reform and the intent of each milestone.

At the end of these sections, tables are used to provide a visual representation of the council's assessment of progress against individual milestones.

The tables in the chapters use a green-amber-red representation of progress against individual milestones (white cells indicate that there is no milestone for the relevant jurisdiction).

If the council's progress assessment is that a milestone has been fully or largely completed on time it is rated **green**.

If the council's progress assessment is that a milestone has not been completed it is rated **red**.

However, the council has not used a simple binary assessment of whether a jurisdiction has exactly met a milestone on time (or not) because this would not provide a sufficiently nuanced representation of progress. The council has had regard to three factors in assessing and rating progress: completeness, timeliness and impact on the ability of governments to meet future milestones. Having regard to these factors, the council has exercised discretion regarding milestones that would otherwise be rated red as follows:

- a **green** rating is applied where a milestone has been fully or largely completed, late but within the reporting period, and where the council considers that it is unlikely that this will impact on the ability of governments to meet subsequent milestones
- an **amber** rating is applied where a milestone:
  - has been fully or largely completed, late but within the reporting period, and the council's assessment is that there is only a small risk that this will impact on the ability of governments to meet subsequent milestones
  - has been fully completed, late and after the end of the reporting period, and the council's assessment is that it is unlikely that this will impact on the ability of governments to meet subsequent milestones (this scenario would only apply to milestones completed in the first quarter after the reporting period up to the council's cut-off date for progress reporting)
  - has been only partially completed, and the council's assessment is that it is unlikely that this will impact on the ability of governments to meet subsequent milestones.

Each section concludes with a table presenting the council's overall assessment across the relevant jurisdictions for the reform stream as a whole. There are some instances where a reform stream has more than one milestone and the council's findings result in different ratings being applied to the individual milestones. In these cases, an overall rating has been determined by giving greater weight to milestones requiring more substantive reform action. These overall assessments form the basis of the table presented in the Executive Summary.

All of these tables are intended to only provide a visual representation of progress. For a full understanding of progress readers should refer to the commentary set out in the progress and risk assessment sections in each chapter.

Risk assessment

Each chapter on the reform streams is concluded with a risk assessment. To the extent that the progress assessment indicates unsatisfactory performance and/or a level of risk to the

achievement of subsequent milestones, this section sets out the council's assessment of those risks. These sections also explore broader risks to the ultimate objective of each reform stream.

Methodological matters

Further information on more administrative and machinery aspects of the COAG Reform Council's reporting methodology can be found at Appendix A.

1.5 Structure of this report

This report is organised into six parts:

- Part A sets out the context for this report:
  - Chapter 1 explains the place of this National Partnership in the broader COAG reform agenda; sets out the performance reporting requirements of the *Intergovernmental Agreement on Federal Financial Relations* and the *National Partnership Agreement to Deliver a Seamless National Economy*; describes the role of the COAG Reform Council; and sets out the council's approach to its task.
  - Chapter 2 places the current agenda of business regulation and competition reform in its historical context and highlights the potential benefits of ongoing reform effort.
- Part B presents the COAG Reform Council's assessment of the progress of governments in implementing the 27 deregulation priorities. Clauses 15 and 32 of the National Partnership stipulate that reward payments will only be made in respect of these 27 deregulation priorities (COAG, 2009n, p. 5 & 8). The chapters of Part B are each divided into four sections:
  - Outputs and milestones: this section reproduces the outputs and milestones from the current implementation plan and sets out any changes that have been made since the original version of the implementation plan
  - The proposed reform: this section presents the council's understanding of the intended reform and the background to the development of the reform
  - Progress report and assessment: this core section of each chapter provides, for each 2008–09 milestone, a factual account of reform progress, based on jurisdictional progress reports and the council's own research; and the council's commentary on the progress of jurisdictions against each 2008–09 milestone
  - Risk assessment: this section sets out the council's assessment of any risks to the achievement of future milestones or to the longer–term objective of each reform.
- Part C presents the COAG Reform Council's assessment of the progress of governments in implementing the eight competition reform streams. Clause 33 of the National Partnership states that these competition reform items will not be the subject of reward payments (COAG, 2009n, p. 8). The chapters in Part C are organised in the same way as the Part B chapters.
- Part D presents the COAG Reform Council's assessment of the progress of governments in implementing part 3 of the implementation plan, which deals with ongoing steps to improve

regulation making and review processes. Clause 33 of the National Partnership states that these further regulatory reform initiatives will not be the subject of reward payments (COAG, 2009n, p. 8).

- Part E provides a preliminary overview of the three additional streams of reform referred to the COAG Reform Council by COAG on 2 July 2009.
- Part F presents the COAG Reform Council's conclusions and recommendations:
  - Chapter 37 sets out the council's conclusions and recommendations to COAG arising from its assessment of progress against 2008–09 milestones and its assessment of the level of risk to the achievement of future milestones and the ultimate objective of the reform streams
  - Chapter 38 provides the council's advice on the performance assessment framework for this National Partnership, in accordance with clause C30 of the *Intergovernmental Agreement on Federal Financial Relations* (COAG, 2009l, p. C5).

Table 1.3 shows the structure of the report.

Table 1.3: Structure of the report

Part	Chapter	Implementation plan	Stream No.	Topic
A	1	-	-	Introduction
	2	-	-	The context for ongoing reform
B	3	Part 1 - Deregulation priorities	1	Occupational health and safety
	4		2	Environmental assessment
	5		3	Payroll tax
	6		4	Licensing system
	7		5	Health workforce
	8		6	Trade measurement
	9		7	Rail safety
	10		8	Consumer law
	11		9	Product safety
	12		10	Trustee corporations
	13		11, 12, 13 & 27	Consumer credit (mortgage broking, margin lending, non-deposit lending and other consumer credit)
	14		14	Development assessment
	15		15	Construction code
	16		16	Chemicals & plastics
	17		17	Business names
	18		18	Personal property securities
	19		19	Business reporting
	20		20	Food
	21		21	Mine safety
	22		22	Electronic conveyancing
	23		23	Oil & gas
	24		24	Maritime safety
	25		25	Wine labelling
	26		26	Directors' liability
C	27	Part 2 - Competition reforms	1	Anti-dumping/countervailing
	28		2	Book importation
	29		3	Energy
	30		4	National access regime
	31		5	Infrastructure
	32		6	Occupational licensing
	33		7	Transport policy
	34		8	Road reform plan
D	35	Part 3 - Regulatory reform	-	Regulation making and review
E	36	-	-	New streams
F	37	-	-	Conclusions and recommendations
	38	-	-	Performance reporting framework

Chapter 2: The context for ongoing business regulation and competition reform

2.1 The history of business regulation and competition reform

Microeconomic reform is change to policies, regulation and institutional arrangements with a view to changing the behaviour of individual economic actors, such as consumers, households, businesses or industries. Generally, this is done to improve efficiency and productivity and, in turn, improve living standards (Productivity Commission, 1999a, p. 15).

Over the last 30 years, successive Australian governments, both Commonwealth and State and Territory, have undertaken widespread and significant microeconomic reforms to achieve this end. Many of these reforms have required significant levels of cooperation between the Commonwealth, States and Territories (Gallop, 2001, pp. 45–46).

Although there has been significant microeconomic reform in Australia during this period, there remains a need to continue reform to ensure the maintenance of high living standards—let alone their improvement—in the context of a significantly expanding and ageing population. In its 2006 research paper on the *Potential Benefits of the National Reform Agenda*, the Productivity Commission (2006b, p. xxix) noted that Australia's economic growth and significant increases in household incomes have been underpinned by wide-ranging reforms, but found:

> An ageing population, global competition and ongoing technological change mean that further reform is needed if Australians are to achieve their potential for even higher living standards in the future.

In its 2008 Economic Survey of Australia, the Organisation for Economic Cooperation and Development (2008, p. 2) presented the challenge to Australia in the following terms:

> Although product market regulation is competition friendly overall, the functioning of markets could be improved, particularly by reducing their segmentation arising from differing regulations across the states. Regulatory harmonisation and coordination across jurisdictions, which the authorities revived in the context of the National Reform Agenda and more recently, the COAG reform agenda to achieve a seamless national economy, is a key challenge for the years ahead.

This chapter gives a brief outline of the history of Australia's microeconomic reforms and the potential benefits of the further microeconomic reforms that are articulated in the *National Partnership Agreement to Deliver a Seamless National Economy* and the subject of this report.

Trade and capital market reforms

In the 1970s and 1980s the Commonwealth Government initiated a number of important trade and capital market reforms.

In 1973 the government adopted a 25 per cent reduction of all tariffs. This across-the-board tariff reduction was followed with more reductions in January 1977, an extension of the general tariff reduction program in 1991 and further reductions in November 1996 (Emmery, 1999).

A number of significant capital market reforms occurred in the 1980s, including the 1983 floating of the Australian dollar, the abolition of exchange controls over movements of capital within and outside Australia, the deregulation of interest rates and the decision to allow foreign banks to compete in the Australian banking market (Kelly, 1992). The floating of the Australian

dollar is considered by many to be one of the most important economic policy decisions made by an Australian government, chiefly because it ensured that the Reserve Bank of Australia had greater monetary policy flexibility and was no longer obliged to buy and sell foreign exchange at a given price (Stevens, 2006, p. 2).

The importance of this flexibility is that significant capital flows can now occur in and out of Australia with far less disruption than prior to the float (Stevens, 2006, p. 1). This reform has been a key factor in managing inflation in the Australian economy, maintaining stable interest rates, and weathering, through automatic adjustment, external shocks to the system such as the Asian financial crisis of 1997 (Stevens, 2006, pp. 3–4). Taken together, these effects have contributed significantly to Australia's economic stability over the period since the float (Stevens, 2006, p. 4).

National Competition Policy

At a Special Premier's Conference in July 1991, Commonwealth, State and Territory leaders agreed to establish a national approach to competition policy (National Competition Council, 2009a).

Governments agreed to develop:

> a national competition policy which would give effect to the principles set out below:
>
> (a) No participant in the market should be able to engage in anticompetitive conduct against the public interest;
>
> (b) As far as possible, universal and uniformly applied rules of market conduct should apply to all market participants regardless of the form of business ownership;
>
> (c) Conduct with anti-competitive potential said to be in the public interest should be assessed by an appropriate transparent assessment process, with provision for review, to demonstrate the nature and incidence of the public costs and benefits claimed;
>
> (d) Any changes in the coverage or nature of competition policy should be consistent with, and support, the general thrust of reforms:
>
> (i). to develop an open, integrated domestic market for goods and services by removing unnecessary barriers to trade and competition;
>
> (ii). in recognition of the increasingly national operation of markets, to reduce complexity and administrative duplication (National Competition Policy Review Committee of Inquiry, 1993, pp. xviii-xix).

This agreement led to the then Prime Minister, the Hon Robert Hawke AC MP, commissioning an independent inquiry into competition policy, chaired by Professor Frederick Hilmer (National Competition Council, 2009a). The *National Competition Policy Report*, often referred to as the Hilmer Report, was released on 25 August 1993. The report recommended the implementation of a national competition policy and, in particular, supported the introduction of a number of significant reforms.

These included:

- extending the reach of the *Trade Practices Act 1974* (Cwlth) so that it would apply competitive conduct rules, in modified form, to all business activity in Australia

- introducing new arrangements in the *Trade Practices Act 1974* (Cwlth) for third party access to nationally significant infrastructure

- a program of review of all Commonwealth, State and Territory laws that restrict competition with a view to ensuring that the laws are compatible with specific competition principles requiring restrictions on competition to be of public benefit and five-year review cycles for laws and regulations

- introducing competitive neutrality principles where government businesses compete with non-government businesses and extending prices surveillance to State and Territory government businesses

- restructuring public monopoly businesses to increase competition by separating regulatory and commercial functions, the separation of 'natural monopoly' and potentially competitive activities, and the break up of these potentially competitive activities among smaller business units

- the establishment of a National Competition Council, by the Commonwealth, the States and the Territories, to oversee the new elements of these arrangements (National Competition Policy Review Committee of Inquiry, 1993, pp. xxi–xxxvii).

On 25 February 1994 COAG (1994) agreed to the competition policy principles set out in the Hilmer Report. On 11 April 1995 COAG announced the National Competition Policy and Related Reforms in response to the Hilmer Report's recommendations (COAG, 1995).

The National Competition Policy encompassed a package of general competition reforms as well as industry specific reforms. These reforms were underpinned by the *Competition Policy Reform Act 1995* (Cwlth) and associated State and Territory application laws, the *Agreement to Implement the National Competition Policy and Related Reforms* (COAG, 1995), the *Competition Principles Agreement* (COAG, 2007d) and the *Conduct Code Agreement* (National Competition Council, 1998).

The *Competition Policy Reform Act 1995* (Cwlth) and the three National Competition Policy agreements encompassed the reforms listed above from the Hilmer Report and the following additional competition reforms:

- reform of the oversight of prices, including consideration of whether price monitoring should be extended to all government businesses that have a market monopoly

- specific 'related reforms' to increase competition in key infrastructure services where there were pre-existing agreements, including gas, electricity and road transport

- specific 'related reforms' to better manage Australia's water resources, where there were pre-existing government agreements in place

- the national implementation of guidelines and principles in accordance with those supported by the then Office of Regulation Review.

The National Competition Policy also involved establishing a number of new institutions.

The Australian Competition and Consumer Commission (a merger of the former Trade Practices Commission and Prices Surveillance Authority) was formed in 1995 under the *Trade Practices Act 1974* (Cwlth) to administer the legislation and related laws. The *Trade Practices Act* also established the Australian Competition Tribunal, formally the Trade Practices Tribunal, with authority to review Australian Competition and Consumer Commission determinations.

The National Competition Council was established as an independent body to assess progress by governments in implementing the National Competition Policy reforms (National Competition Council, 2009d). In accordance with the *Agreement to Implement the National Competition Policy and Related Reforms*, the National Competition Council assessed governments' progress on the reforms prior to 1 July 1997, and in 1999 and 2001. COAG later extended the National Competition Council's assessment role up to and including 2005 (National Competition Council, 2009d).

The Agreement to Implement the National Competition Policy and Related Reforms (COAG, 1995) established a mechanism for payments from the Commonwealth Government to the States and Territories, where the States and Territories achieved satisfactory progress against the national competition policy reform commitments. The payments originally included two components: a competition payment component and a Financial Assistance Grants pool component. The Financial Assistance Grants component was discontinued when the Goods and Services Tax commenced.

The National Competition Council made recommendations to the Commonwealth Government on the allocation of the national competition policy payments for each of three periods, and the Commonwealth Government allocated the payments after considering the National Competition Council's advice (National Competition Council, 2009a). Where the National Competition Council considered that a government had not satisfactorily complied with its reform commitments or demonstrated a preparedness to address non-compliance, the council recommended a 'permanent payments deduction'. Where a government indicated a preparedness to address non-compliance, the council recommended a 'specific payments suspension', which was a temporary hold on payments until the non-compliance was addressed (National Competition Council, 2009a).

These payments have been recognised in subsequent appraisals of the National Competition Policy as a key mechanism for motivating reform and assisting with the negotiation of reforms within each jurisdiction (Gallop, 2001, p. 47).

The competition payments were made to the States and Territories from 1997–98 until 2005–06. The payments totalled (in 1994–95 dollars) $200 million for the first tranche, $400 million for the second tranche and $600 million for the third tranche (National Competition Council, 2009a). The National Competition Council delivered its final assessment of the progress on the National Competition Policy and Related Reforms in its 2005–2006 annual report (National Competition Council, 2006). The council's conclusions and the Productivity Commission's review of the National Competition Policy are discussed in section 2.2 of this chapter.

Tax reform

An *Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations* was agreed by all governments on 9 April 1999. This agreement underpinned the introduction of a consumption tax and new arrangements for the distribution of taxation income by the Commonwealth to the States and Territories (COAG, 1999).

The principal objectives of the intergovernmental agreement were:

- the abolition of the Wholesale Sales Tax and its replacement with the Goods and Services Tax
- the elimination of a number of State and Territory based taxes
- the provision to the State and Territory governments of the revenue from the Goods and Services Tax
- the 'improvement in the financial position of all State and Territory Governments ... relative to that which would have existed' if the previous taxation arrangements had continued (COAG, 1999, p. 2).

The intergovernmental agreement also set out a Commonwealth commitment to continue to provide Specific Purpose Payments to the States and Territories, which funded specific programs (COAG, 1999, p. 2).

The Goods and Services Tax took effect on 1 July 2000, with a broadened tax base as a result of applying a flat rate tax for most goods and services. All revenues from the tax are transferred to the States and Territories on a monthly basis according to per person relativities developed by the Commonwealth Grants Commission (COAG, 1999, pp. 3, 14).

Industrial relations regulation

Industrial relations regulation and reform has been a key priority of Australian governments since Federation.

The overarching themes of industrial relations reform from the 1980s to today—albeit framed by political differences—have been a move away from a highly centralised employment bargaining system to enterprise level bargaining, and a negotiation of the interplay between Commonwealth and State and Territory industrial relations systems.[4]

In 1985 the *Report of the Committee of Review into Australian Industrial Relations Law and Systems* (Hancock Report) recommended a number of reforms to the Australian conciliation and arbitration system. The recommendations in this report led to the *Industrial Relations Act 1988* (Cwlth). Amendments to the *Industrial Relations Act* in 1993 promoted the use of enterprise bargaining and established the Industrial Relations Court of Australia (Parliament of Australia, 2009b).

In 1996, the Commonwealth Parliament passed the *Workplace Relations and Other Legislation Amendment Act 1996* (Cwlth). This law replaced the *Industrial Relations Act 1988* (Cwlth) and enforced voluntary unionism, introduced Australian Workplace Agreements (non-union contracts between employers and workers) and transferred the responsibilities of the Industrial Relations Court to other courts, such as the Federal Court of Australia (Parliament of Australia, 2009b).

In 2005, the Commonwealth Parliament passed the *Workplace Relations Amendment (Work Choices) Act 2005* (Cwlth) which redrafted the *Workplace Relations Act 1996* (Cwlth). The

[4] For further information on industrial relations history in Australia, see the Parliamentary Library of Australia's 'History of Employment Law (Parliament of Australia, 2009b) and *Labour Law* (Creighton & Stewart, 2005).

legislation established the Australian Fair Pay Commission and extended the ambit for Australian Workplace Agreements by overriding State and Territory legislation which dealt with workplace laws, as it applied to corporations (Parliament of Australia, 2009b).

In 2009, the Commonwealth Parliament passed the *Fair Work Act 2009* (Cwlth). The law created a new body, Fair Work Australia, to oversee the national workplace relations system, and through a series of transitional arrangements will replace the *Workplace Relations Amendment (Work Choices) Act 2005* (Cwlth). The new system endorses enterprise-level collective bargaining (Parliament of Australia, 2009b).

Company regulation reform

Prior to 2001, Australia had a cooperative State and Territory based system for the regulation of companies and the financial services industry, rather than a truly national system of company regulation (Ford, Austin, & Ramsay, 2009).

This approach to company regulation arose because there was often agreement by governments on a nationally consistent approach to regulation of companies, however, the Commonwealth parliament has limited constitutional power to legislate on the formation, operation, winding up and fundraising of companies and the regulation of the securities and futures industry (Ford, Austin, & Ramsay, 2009).

On 29 June 1990, the Commonwealth, States and the Northern Territory agreed to the preparation of national legislation based on the *Corporations Act 1989* (Cwlth) and the *Australian Securities Commission Act 1989* (Cwlth). In 2001, the *Corporations Act 2001* (Cwlth) and the *Australian Securities and Investments Commission Act 2001* (Cwlth) became the national laws governing corporations and securities in Australia.

The formal agreement between the Commonwealth, States and the Northern Territory to adopt a national legislative scheme and establish a Ministerial Council on Corporations was made in 2002—the *Corporations Agreement 2002* (COAG, 2002a). The *Corporations Agreement 2002* was amended in 2005 to make the Australian Capital Territory a party to the agreement (COAG, 2005a).

Superannuation

Prior to the introduction of compulsory occupational superannuation in 1992, there had been a number of government inquiries and proposals to introduce a universal contributory national superannuation or insurance scheme (Treasury [Cwlth], 2001, p. 75). These proposals were driven by concern about the uneven coverage of superannuation, and associated superannuation tax concessions, which was concentrated among professionals, public sector employees and the financial sector (Treasury [Cwlth], 2001, p. 75) .

Compulsory occupational superannuation was introduced in 1992, through the Commonwealth Government's 'superannuation guarantee' legislation (Treasury [Cwlth], 2001, p. 82). The superannuation guarantee legislation required employers to make tax deductible superannuation contributions on behalf of their employees. The superannuation guarantee commenced operation with an employer contribution amount of three per cent of the employees salary, with higher levels of compulsory employer contributions being phased in over a ten-year period and reaching nine per cent in 2002–03 (Australian Prudential Regulation Authority, 2007, p. 4).

The superannuation guarantee legislation did not originally specify the superannuation fund to which the employer contributions were to be made, which practically resulted in most employers paying all of their contributions into one fund. In 2005 amending legislation came into effect which allowed employees to nominate any complying fund for their employer superannuation guarantee contributions to be made (Australian Prudential Regulation Authority, 2007, pp. 4–5).

National Reform Agenda

In February 2006, COAG (2006d, p. 1) agreed to a new National Reform Agenda. In announcing the National Reform Agenda, COAG stated:

> This new wave of collaborative reform builds on the success of a quarter of a century of national economic and social policy reform, which has fundamentally reshaped the Australian economy and increased living standards. As national demographic trends begin to bite and global competition intensifies, it is vital that all governments work together to deliver the best possible reform outcomes for Australia. Complacency is not an option.

The COAG National Reform Agenda comprised three streams of reform: human capital, competition and regulatory reform.

The human capital stream involved reforms covering health, education and training and work incentives. COAG stated that the aim of this reform stream was 'to provide Australians with the opportunities and choices they need to lead active and productive lives' (COAG, 2006d, p. 2).

The competition stream of the National Reform Agenda was designed as a continuation of and addition to the National Competition Policy reforms (COAG, 2006d, pp. 4–5). The reform stream focused on further reform and initiatives in transport, energy, infrastructure regulation and planning and climate change adaptation and innovation.

The regulatory reform stream involved two initiatives. The first was a broad initiative to promote best practice regulation making and review. The second initiative involved reforms to reduce the regulatory burden with respect to particular cross-jurisdictional 'hot-spots', where overlapping and inconsistent regulatory regimes were impeding economic activity.

The 'hot-spot' areas were rail safety, occupational health and safety, national trade measurement, chemicals and plastics, development assessment arrangements and building regulation (COAG, 2006d, pp. 8–9). On 14 July 2006, COAG (2006e) agreed to add four additional cross-jurisdictional areas to the regulatory reform stream: business registration, the development of bilateral agreements under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth), personal property securities and product safety.

In January 2006, the Regulation Taskforce (2006) released *Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business*. The Regulation Taskforce report informed the regulatory reform streams of the National Reform Agenda. The taskforce made recommendations for 99 reforms of existing regulation and proposed a further 51 areas of regulation which needed further investigation by the Commonwealth Government or COAG.

The Regulation Taskforce (2006, p. v) report also included 28 recommendations for reform of the regulatory process, which were aimed at addressing the 'systemic causes of bad regulation.' The Taskforce (2006, p. 182) concluded that the 'six principles of good regulatory process [set out in this report] should be endorsed by government'.

On 10 February 2006, COAG (2006d, p. 9) also agreed in principle to establish a COAG Reform Council to report to COAG annually on progress in implementing the National Reform Agenda.

On 13 April 2007, COAG (2007e, p. 4) agreed that the council's role was to monitor progress in implementing the National Reform Agenda reforms and to assess the costs and benefits of reforms referred to it unanimously by COAG. It also agreed that as the reforms were implemented, the council would provide COAG with an assessment of the costs and benefits of individual reform packages, giving consideration to the differences between jurisdictions. Following receipt of the council's assessment of the benefits of a specific reform, the Commonwealth, State and Territory governments would agree to consider if any 'fair-sharing' payments were required by any government, given the relative costs and benefits of the reforms.

COAG (2007e, p. 3) initially referred to the COAG Reform Council seven specific areas of reform: transport pricing, rail safety, infrastructure regulation, electricity smart meters, the National Energy Market Operator, a national system of trade measurement and improvements to the Building Code of Australia.

Under the National Reform Agenda, the National Competition Council continued its responsibility for third party infrastructure access regulation, while its other monitoring responsibilities were transferred to the COAG Reform Council (COAG, 2007e, p. 4).

The COAG Reform Council (2008; 2009a) delivered two annual reports to COAG which assessed progress on the seven specific areas of reform—a role which is now taken up and expanded in this report.

2.2 The potential benefits of further reform

The microeconomic reform of the past 30 years was designed to provide benefits to businesses, consumers and the overall Australian economy, with the overarching rationale of increasing the living standards of Australians (Productivity Commission, 1999a, p. xiii). The current COAG reform agenda is a continuation of this work.

This section outlines the potential benefits of the deregulation, competition and regulatory reform priorities that make up the microeconomic reforms in the *National Partnership Agreement to Deliver a Seamless National Economy*. The National Partnership reforms build on and expand the important initiatives already undertaken or completed in Australia. For this reason, it is instructive to consider the benefits that have already flowed from microeconomic reform, and the potential benefits of the current COAG reform agenda.

Previous assessment of benefits of reform

In 1999 the Productivity Commission (1999a) investigated the relationship between microeconomic reforms and productivity. The commission identified a number of improvements in workforce skills, technological advancement, efficiency of resource use and management of business and concluded that:

> Microeconomic reforms have a number of links to these changes:
>
> - direct, specific links to production relationships, for example, through the effects of tariff, tax and industrial relations reforms on resource allocation

- opening the economy to overseas trade and investment and enhancing competition from domestic as well as overseas sources; and
- influencing business expectations and attitudes through changes to the general policy and institutional environment in which they operate (Productivity Commission, 1999a, p. xiv).

The Productivity Commission undertook further, targeted work on the benefits of microeconomic reforms in its 2005 inquiry report on the *Review of National Competition Policy Reform* (2005) and its 2007 research report on the *Potential Benefits of the National Reform Agenda* (2006b).

In *Review of National Competition Policy Reform*, the Productivity Commission (2005, p. xvii) concluded that the National Competition Policy and related reforms directly contributed to a 2.5 per cent increase in Australia's gross domestic product.[5] This increase in Australia's gross domestic product and national income had substantially boosted tax revenues, which increased the capacity of governments to fund a range of services and social welfare support (2005, p. xvii).

The Productivity Commission noted that although there had been transitional costs incurred by the National Competition Policy reforms, overall the reforms would deliver substantial benefits. The commission stated that:

> By opening up large new areas of the economy to competition, the reforms have reinforced the role of tariff reductions and other policy changes in the development of a more cost conscious, responsive and innovative business culture in Australia. This will facilitate continuing productivity improvement and provide a platform for future wages growth and increases in living standards (2005, p. xxiiii).

In its 2007 report on the *Potential Benefits of the National Reform Agenda*, the Productivity Commission (2006b) assumed full implementation of the reforms and the full adjustment of the economy and, based on these assumptions, concluded that the competition and regulatory reforms could:

- increase gross domestic product by nearly two per cent
- raise household consumption by more than $400 per person per annum (2005–06 dollars)
- raise the funds available to governments by around $5 billion (2005–06 dollars), with about 40 per cent of that increase going to the States, Territories and local government (Productivity Commission, 2006b, p. xxviii).

The commission's analysis of the potential benefits of the competition and regulatory reforms is directly relevant to assessing the potential benefits of the *National Partnership Agreement to Deliver a Seamless National Economy* reforms. COAG has adopted aspects of the National Reform Agenda as part of its current reform agenda.

The National Competition Council also prepared annual reports on the progress of the national competition policy and related reforms. In its 2005–2006 annual report (its final report on the National Competition Policy) it concluded that many of the objectives of the reform agenda had

[5] Gross domestic product is the total market value of goods and services produced in Australia within a given period after deducting the cost of goods and services used up in the process of production, but before deducting allowances for the consumption of fixed capital (Australian Bureau of Statistics, 2009).

been met, but further work was required (National Competition Council, 2006). The National Competition Council stated:

> The key areas of unfinished NCP business include: completing the legislation review program; improving the application of competitive neutrality principles; better adherence to structural reform principles; and improvement by all governments of their regulation gatekeeping arrangements (National Competition Council, 2006, p. 67).

Some items identified by the National Competition Council as 'unfinished' business—particularly, competitive neutrality principles and improved regulation gatekeeping arrangements—are included within the *National Partnership Agreement to Deliver a Seamless National Economy*.

Examinations of a number of the reforms included in the National Partnership agreement have identified the following quantifiable benefits that will flow from their implementation:

- It is estimated that the standard business reporting reform will save Australian business $800 million a year once implemented (COAG, 2008k, p. xx).
- The Productivity Commission estimated in its *Review of Consumer Policy Framework* report that if its recommendations were adopted in full, the package of consumer policy reforms (which includes the National Partnership's consumer policy, product safety, consumer credit and occupational licensing reforms) could provide a net gain to the community of between $1.5 billion and $4.5 billion a year (Productivity Commission, 2008d, p. 323).
- It is estimated that elimination of unnecessary up-stream oil and gas regulation could provide gains to the community amounting to 'billions' of dollars (Productivity Commission, 2009l, p. 2).
- It is estimated that a national electronic conveyancing system could result in total potential savings to consumers and the economy of around $150 million per year (National Electronic Conveyancing Office, 2007b, p. 7).
- It is estimated that wine labelling reform could achieve potential savings for wine producers of $25 million per year on labelling costs (Ministerial Council on Consumer Affairs, 2008, p. 5).
- The cost benefit analysis of options for an electricity smart meter roll-out calculated the net present value of smart meters as up to $3.3 billion over 20 years for a national distributor-led roll-out of smart meters (Ministerial Council on Energy Standing Committee of Officials, 2008a, p. 42).
- It has been estimated that a one per cent improvement in the efficiency of delivery of national transport services will increase annual gross domestic product by approximately $500 million (in 2002 prices) (Department of Transport and Regional Services [Cwlth], 2004).

In March 2008, the Business Council of Australia (2008) released a report titled *Towards a Seamless Economy: modernising the regulation of Australian business.* The report called on

governments to pursue greater regulatory reform to alleviate the difficulties that businesses face in doing business across Australia, which in the Business Council of Australia's view, is 'made unnecessarily confusing, complex and costly by the inability of governments to make adequate progress in harmonising and rationalising existing regulation' (Business Council of Australia, 2008, p. 3).

Assessing potential benefits of reform

The *National Partnership Agreement to Deliver a Seamless National Economy* is designed to:

> contribute to the following outcomes:
>
> (a) creating a seamless national economy, reducing costs incurred by business in complying with unnecessary and inconsistent regulation across jurisdictions;
>
> (b) enhancing Australia's longer-term growth, improving workforce participation and overall labour mobility; and
>
> (c) expanding Australia's productive capacity over the medium-term through competition reform, enabling stronger economic growth (COAG, 2007e, p. 4).

It is important to note that the benefits flowing from some reforms will be more easily quantifiable than others, particularly over the short to medium term.

COAG has adopted a number of mechanisms which will contribute to the ongoing monitoring and assessment of the benefits of the *National Partnership Agreement to Deliver a Seamless National Economy*.

The first mechanism is the COAG Reform Council's annual performance reports. This work will provide continual assessment of the progress of reform.

The second mechanism for assessing the benefits of reform is under clause 18 of the *Intergovernmental Agreement on Federal Financial Relations* (2009l), which provides that, '[t]o assist the COAG Reform Council in its role, the Productivity Commission will also report to COAG on the economic impacts and benefits of COAG's agreed reform agenda every two to three years'.

It is expected that the Productivity Commission will provide a detailed economic analysis every two to three years, which looks both retrospectively at the realised impacts and benefits of reform and prospectively at likely future benefits.

The third mechanism for assessing the benefits of reform is the COAG Reform Council's role in monitoring and reporting on the aggregate pace of reform. Clause A11(d) of the *Intergovernmental Agreement on Federal Financial Relations* (2009l) states that the COAG Reform Council will report to the Prime Minister, as chair of COAG, on 'monitoring the aggregate pace of activity in progressing COAG's agreed reform agenda.'

The council has not yet finalised its framework for reporting on the aggregate pace of reform, however it is likely to involve an assessment of the progress in implementing reforms, and a broader assessment on progress in achieving the goals of the reform agenda.

PART B: DEREGULATION PRIORITIES

Chapter 3: Occupational health and safety

Key points

Progress assessment

It is the COAG Reform Council's assessment that:

- the milestone for the completion of the final report of the *National Review into Model Occupational Health and Safety Laws* was completed on time
- the milestone for the establishment of Safe Work Australia was largely completed within the reporting period
- the milestone for the release of a model occupational health and safety bill and consultation regulatory impact statement was completed by 30 September 2009.

Risk assessment

The COAG Reform Council considers that:

- there is a risk of delay in agreement being reached on the model occupational health and safety bill, which may lead to delays with later milestones
- there is potential for one or more governments not to proceed with the reform—Western Australia in particular has announced it is reserving its position on the implementation of the model law.

3.1 Output and milestones

Table 3.1 reproduces the output and milestones in the implementation plan for deregulation priority 1—occupational health and safety.

Table 3.1: Occupational health and safety—output and milestones

Output				
1. Occupational health and safety (OH&S): Nationally uniform OH&S laws, comprising a model Act, model regulations and model codes of practice.				
Milestones				
2008–09	2009–10	2010–11	2011–12	2012–13
Independent review of the national OH&S system: final report to Workplace Relations Ministers' Council (WRMC) by 30 Jan 2009 Commonwealth: establish new national entity, Safe Work Australia All jurisdictions: Safe Work Australia to release model OH&S Bill exposure draft and draft Regulatory Impact Statement (RIS) for public comment by May 2009	All jurisdictions: WRMC to agree model OH&S Bill by Sept 2009 All jurisdictions: Safe Work Australia to commence developing model regulations by Oct 2009 All jurisdictions: Safe Work Australia to commence developing model codes of practice by late 2009	All jurisdictions: Safe Work Australia to finalise model regulations by early 2011	All jurisdictions: enact model legislation and regulations and complete all related transition arrangements by Dec 2011	

Source: (COAG, 2009p, p. 1)

Occupational health and safety is listed at clause 34(a) of the *National Partnership Agreement to Deliver a Seamless National Economy* (COAG, 2009n, pp. 9–10). In effect, this means that this reform must be implemented for a jurisdiction to remain eligible for its full reward payment.

3.2 The proposed reform

The reform

On 3 July 2008, COAG made the *Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety* (COAG, 2008n). Clause 1.4 of the Agreement states that the fundamental objective of this reform is to:

- enable the development of uniform, equitable and effective safety standards and protections for all Australian workers
- address the compliance and regulatory burdens for employers with operations in more than one jurisdiction
- create efficiencies for governments in the provision of occupational health and safety regulatory and support services
- achieve significant and continual reductions in the incidence of death, injury and disease in the workplace (COAG, 2008n).

The outputs to deliver this objective are a model occupational health and safety law, model regulations and model codes of practice to be adopted in each jurisdiction and supported by a nationally consistent approach to compliance and enforcement policy. At the time of making the agreement, COAG (2008k, p. 2) also agreed that there would be no reduction or compromise in workplace safety through this process.

Current system

All Australian governments regulate occupational health and safety in a number of ways. All jurisdictions have a generic occupational health and safety act. A number of industries and sectors have specific regulation in some jurisdictions, such as:

- Commonwealth laws relating to employees of the Commonwealth Government, workers in the nuclear industry, seafarers, the offshore oil and gas industry, and chemicals
- laws in some States regarding mining, which, in Queensland and Western Australia, is regulated separately, and, in New South Wales, is covered by both the generic occupational health and safety law and separate laws for metalliferous and coal mining
- State and Territory laws relating to electrical safety, rail safety, maritime safety, and transportation of dangerous goods (National Review into Model OHS Laws, 2008a, p. 2; 2008b, p. 7).

This reform relates primarily to generic occupational health and safety laws. Sectoral regulation of health and safety in regard to maritime safety, mine safety, chemicals, and rail safety are covered by separate reforms streams in the *National Partnership Agreement to Deliver a Seamless National Economy*.

Generic occupational health and safety regulation has essentially the same structure in all jurisdictions, such that:

- there is a principal law defining the rights and duties of all parties who influence the risks to health and safety at the workplace
- there is subordinate legislation setting certain minimum health and safety standards
- voluntary standards and codes of practice provide guidance to the various duty holders on how to meet legal requirements (Industry Commission, 1995b, pp. 39–40; National Review into Model OHS Laws, 2008a, p. 2).

Background

In 1995, the Industry Commission[6] inquiry report, *Work, Health and Safety*, recommended an overhaul of Commonwealth-State arrangements for occupational health and safety. The Commission was strongly supportive of a cooperative federal approach to this overhaul based on:

- the development of a template law covering the central elements of occupational health and safety law, including duties of care, defences for those with a duty of care, and provision for nationally agreed health and safety standards
- a review of subordinate occupational health and safety legislation in all jurisdictions in line with COAG's best practice regulatory principles
- provision for codes of practice developed in one jurisdiction to be recognised in others (Industry Commission, 1995b, pp. 150–165 & 207–209).

The Industry Commission also recommended some changes to the national institutional arrangements for occupational health and safety, including:

- the establishment by COAG of a new ministerial council comprising ministers responsible for occupational health and safety, workers' compensation and rehabilitation to:
  - agree on template law and standards
  - develop nationally consistent enforcement policies and practices
  - benchmark performance of occupational health and safety programs in each jurisdiction
- the restructure of the National Occupational Health and Safety Commission—which was established by the Commonwealth in 1985 to develop national occupational health and safety strategies and standards—to make it more effective and more directly responsible to the new ministerial council (Industry Commission, 1995b, pp. 195–217).

In 1997, the Labour Ministers' Council[7] agreed to new directions for the National Occupational Health and Safety Commission. This included a shift in emphasis away from the development of national standards and codes toward identifying emerging problems in occupational health

[6] The Industry Commission has since been renamed the Productivity Commission.
[7] The Labour Ministers' Council was the predecessor of the Workplace Relations Ministers' Council.

and safety and providing guidance for businesses on dealing with those problems—specifically recognising small business needs (O'Neill & Thomas, 2005).

The Labour Ministers' Council also agreed that the Commission would be responsible for a new comparative performance monitoring system and that the development and approval of national standards became the province of the ministerial council. These decisions were cast by ministers as a partial response to the 1995 *Work, Health and Safety* report (Reith, 1997).

In 2002, the National Occupational Health and Safety Commission developed the *National OHS Strategy 2002–2012* (Johnstone, 2009, p. 37). On 24 May 2002, the Workplace Relations Ministers' Council (2002, p. 4) approved the *National OHS Strategy*. A 'nationally consistent regulatory framework' is one of the 'nine areas for national action' in the Strategy (Australian Safety and Compensation Council, 2005, pp. 10–11).

In 2004, the Productivity Commission, in its *National Workers' Compensation and Occupational Health and Safety Frameworks* report, revisited some of the issues considered by the Industry Commission in 1995. In particular, the Productivity Commission recommended a stronger cooperative federal approach to occupational health and safety—and a medium term objective of a single uniform national regime—including a restructure of the National Occupational Health and Safety Commission and an intergovernmental agreement to drive reform and set out a timetable for the achievement of reforms (Productivity Commission, 2004a, pp. 85–101).

These key recommendations were rejected by the Commonwealth Government on 24 June 2004 (O'Neill & Thomas, 2005).

In October 2005, the National Occupational Health and Safety Commission was replaced by the Australian Safety and Compensation Council, comprising representatives of all jurisdictions, industry and unions. The Australian Safety and Compensation Council's role was to advise governments on the development of policies relating to occupational health and safety. This role included promoting national consistency in the occupational health and safety regulatory framework (Australian Safety and Compensation Council, 2005).

On 10 February 2006, COAG agreed to request:

- the Australian Safety and Compensation Council to develop strategies to improve the development and adoption of national occupational health and safety standards
- the Workplace Relations Ministers' Council to identify priority areas that should be harmonised across the occupational health and safety laws in each State and Territory (COAG, 2006c, pp. 5–6).

On 13 April 2007, COAG agreed a timetable for achieving national occupational health and safety standards and harmonising elements in relevant laws (COAG, 2007e, p. 2). COAG further agreed on 26 March 2008 to finalise an intergovernmental agreement to harmonise occupational health and safety laws by May 2008 (COAG, 2008h, p. 4).

On 4 April 2008, the Commonwealth Minister for Employment and Workplace Relations, the Hon Julia Gillard MP, announced a national review into occupational health and safety laws. The National Review into Model Occupational Health and Safety Laws panel, comprising Mr Robin Stewart-Crompton, Mr Barry Noel Sherriff and Ms Stephanie Mayman, was

appointed to conduct the review. The panel was asked to examine the content of occupational health and safety laws in each State and Territory and, on the basis of that examination, develop a model law that could be adopted by all jurisdictions (Gillard, 2008b).

3.3 Progress report and assessment

The following actions have been taken by governments regarding the 2008–09 milestones for deregulation priority 1.

Milestone 1: Independent review of the national OH&S system: final report to Workplace Relations Ministers' Council (WRMC) by 30 Jan 2009

Progress report

The first report of the National Review into Model Occupational Health and Safety Laws was submitted to the Workplace Relations Ministers' Council on 31 October 2008. It dealt with the priority matters of duties of care and the nature and structure of offences (National Review into Model OHS Laws, 2008a). The final report of the review, dealing with remaining matters, was submitted to ministers on 30 January 2009 (National Review into Model OHS Laws, 2009).

Together, the reports make 232 recommendations on the structure and content of the model national occupational health and safety law. The Workplace Relations Ministers' Council met on 18 May 2009 and released its response to the recommendations. The ministers agreed to most recommendations and issued instructions to the Safe Work Australia Council to begin drafting the model law (Workplace Relations Ministers' Council, 2009b).

Progress assessment

It is the COAG Reform Council's assessment that this milestone was completed on time.

Milestone 2: Commonwealth: establish new national entity, Safe Work Australia

Progress report

Clause 1.3 of the *Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety* provides:

- the operational, funding and reporting arrangements for a replacement body for the Australian Safety and Compensation Council
- that the replacement body would be responsible for developing, monitoring and maintaining the model law, including its compliance and enforcement provisions
- that the operation of the agreement will be reviewed no later than six years after the commencement of the Act establishing the replacement body (COAG, 2008n).

Clause 3.1.2 of the agreement requires the Commonwealth to use its best endeavours to have the legislation to establish the replacement body passed by the Commonwealth Parliament (COAG, 2008n).

On 4 September 2008, the Commonwealth Government introduced the Safe Work Australia Bill 2008 into the House of Representatives to establish the replacement body—Safe Work Australia—as an independent statutory authority (Gillard, 2008a, p. 7145). On 4 December 2008, the Safe Work Australia Bill 2008 was laid aside after being sent between the two houses of Parliament three times without passing (Parliament of Australia, 2009g).

On 12 February 2009, the Workplace Relations Ministers' Council agreed to establish Safe Work Australia as an 'executive' agency under section 65 of the *Public Service Act 1999* (Cwlth) (Gillard, 2009b).

Under this arrangement, Safe Work Australia was directly accountable to the Commonwealth minister, in this case the Minister for Employment and Workplace Relations, rather than to the Workplace Relations Ministers' Council as required by the *Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety* (Attorney-General's Department [Cwlth], 2009b; COAG, 2008n).

Since then, the following further steps in the establishment of Safe Work Australia have occurred:

- the Safe Work Australia Council, with representation from all jurisdictions, employees and employers, was established on 31 March 2009
- the Council held its first meeting on 10 June 2009, at which it agreed its 2009–2012 Strategic Plan and its 2009–2010 Operational Plan
- the Workplace Relations Ministers' Council agreed to these plans at its meeting of 11 June 2009
- Safe Work Australia was established on 1 July 2009 within the Education, Employment and Workplace Relations portfolio
- recruitment of the Safe Work Australia Chief Executive Officer commenced (Safe Work Australia, 2009b; Safe Work Australia Council, 2009a; Workplace Relations Ministers' Council, 2009a).

On 13 May 2009, the bill was reintroduced into the House of Representatives as the Safe Work Australia Bill 2008 (No. 2) (Gillard, 2009a, p. 3609). The Bill passed that house without amendment on 12 August 2009 and passed the Senate without amendment on 7 September 2009 (Parliament of Australia, 2009h).

The *Safe Work Australia Act 2009* (Cwlth) received assent on 18 September 2009. Sections 1 and 2 of the Act, providing for its short title and for commencement of the provisions of the Act, commenced with assent. The remaining, substantive provisions commence on proclamation or within six months of assent (Attorney-General's Department [Cwlth], 2009c). None of these provisions were commenced by 30 September 2009.

Progress assessment

It is the COAG Reform Council's assessment that this milestone was largely completed within the reporting period.

A number of key steps toward the establishment of Safe Work Australia in a manner consistent with the *Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety* had occurred by 30 September 2009, including its establishment as an 'executive agency' pending the passage of legislation. These steps have been a pragmatic response to the initial rejection of the legislation that enabled the key work on the harmonisation of occupational health and safety laws to continue.

A number of jurisdictions have reported to the council that there are no implications of Safe Work Australia having been established in this way (Australian Capital Territory Government, 2009b, p. 3; Commonwealth Government, 2009b, p. 9; Queensland Government, 2009a, p. 4; Tasmanian Government, 2009b, p. 3). Importantly, it appears that this interim approach avoided a potential cause of delay to this reform.

Milestone 3: All jurisdictions: Safe Work Australia to release model OH&S Bill exposure draft and draft Regulatory Impact Statement (RIS) for public comment by May 2009

Progress report

The exposure draft occupational health and safety bill and draft regulatory impact statement were released on 28 September 2009 for comment by 9 November 2009 (Safe Work Australia, 2009a).

The Workplace Relations Ministers' Council (2009b) issued drafting instructions to the Safe Work Australia Council on 18 May 2009. The first meeting of the Safe Work Australia Council agreed to recommend to ministers a revised timeframe of:

- September 2009 for the release of the exposure draft occupational health and safety bill and draft regulatory impact statement
- the end of 2009 for submission of the draft bill to the Workplace Relations Ministers' Council for approval.

The Safe Work Australia Council's 2009–2012 Strategic Plan (2009b), however, maintains a December 2011 deadline for the implementation of the national occupational health and safety system despite the revised timeframes for consultation on the legislation. This overarching deadline is consistent with the final National Partnership milestone for this reform.

Progress assessment

It is the COAG Reform Council's assessment that this milestone was completed late but within the quarter following the end of the reporting period.

The exposure draft bill and consultation regulatory impact statement were released on 28 September 2009 in accordance with the revised work program deadline of September 2009 set out by the Safe Work Australia Council.

If the new deadline for agreement to a model bill by the end of 2009 is adhered to there will be:

- up to 17 months for Safe Work Australia to finalise model regulations by early 2011 as required under the implementation plan
- a further nine to 12 months for all governments to enact model legislation and regulations and complete all transitional arrangements by the December 2011 deadline in the implementation plan.

The COAG Reform Council's view is that there is sufficient time for each of these activities to be completed as set out above. The council will closely follow these remaining actions and advise COAG accordingly in its 2009–10 report if any concerns develop that this reform will not be completed on time.

Table 3.2 provides the council's assessment of progress on the milestones in this reform.

Table 3.2: Occupational health and safety—progress assessment by milestone

Milestone	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
1									
2									
3									

Table 3.3 provides the council's overall assessment of progress on this reform. The overall assessment takes into account the completion of the three substantive milestones (and that there was only a relatively minor delay in completing the third milestone).

Table 3.3: Occupational health and safety—overall progress assessment

	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Overall assessment									

3.4 Risk assessment

Possible further delays developing the model law

There has been a minor delay in releasing the model occupational health and safety law for consultation purposes. The COAG Reform Council is closely monitoring progress with the development of the model law and as at 30 September 2009 the revised timeframes for its agreement by ministers have been followed.

Will all governments implement the law?

The council notes that the Western Australian Minister for Commerce, The Hon Troy Buswell MLA (2009a), announced after the Workplace Relations Ministers' Council meeting on 18 May 2009 that the Western Australian Government:

> supported the principle of nationally harmonised [occupational health and safety] laws but could not support the introduction of an OHS regime which would adopt inferior standards to the existing State regime… [w]e will continue our dialogue with the [ministerial] council but at this stage we are not committing to a system that we are not convinced is in the best interests of Western Australian workers and businesses.

Mr Buswell (2009b) made a further statement on 19 May 2009 that:

> After the legislation is passed by the Federal Parliament, it will then be up to the Western Australian Government to make the final decision on introducing mirror legislation to our State Parliament.

This qualified support for harmonised occupational health and safety laws and reservation of the Western Australian Government's position on the implementation of a model law was restated in the Western Australian Government's (2009b, p. 2) report to council.

The COAG Reform Council will continue to monitor whether any jurisdiction formally decides it will not proceed with its obligations under the *Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety*.

A genuinely 'national' scheme?

There is potential for the scheme set out in the *Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety* and the *Safe Work Act 2009 (Model Safe Work Provisions)* to be implemented in a way that retains or creates separate approaches to occupational health and safety regulation. This potential lies in the provision in subclause 5.1.8 of the intergovernmental agreement (COAG, 2008n) and in the provisions covered by 'jurisdictional notes' in the draft bill. The 'jurisdictional notes' in the exposure draft bill allow different approaches to be taken by jurisdictions in enacting certain parts of the bill (Safe Work Australia, 2009c).

There are many circumstances where it is appropriate for governments to enact a modified law and therefore the model bill needs to make provision for it to occur. For example, it may be necessary to have different provisions relating to the separate justice systems of the jurisdictions and the interaction of the model law with other laws in a jurisdiction. The Commonwealth Government reported that the jurisdictional notes do not pose a risk to the achievement of the reform as:

- the notes cover issues of terminology, drafting protocols and interaction of the occupational health and safety law with other laws—and in some cases are specifically required to provide for uniformity of policy outcomes where this may be undermined by local terminology or protocols
- the notes do not change the overall rights and obligations of the parties under the model law
- the model law is being drafted in accordance with the Australasian Parliamentary Counsel's Committee *Protocol on Drafting National Uniform Legislation*, which is designed to promote consistency in national uniform legislation
- subclause 5.1.1 specifically obliges jurisdictions to 'enact or give effect to their own laws that mirror the model laws as far as possible having regard to the drafting protocols in each jurisdiction' (Commonwealth Government, 2009c, pp. 1–3; 2009d, p. 2).

The council has not reviewed the implications of the jurisdictional notes as they may be applied by each jurisdiction and generally accepts that the notes cover the circumstances reported by the Commonwealth Government. However, a small number of the jurisdictional notes appear to cover a broad range of possible exclusions, deviations and other differences to the model law. There may therefore be the potential for significant differences across jurisdictions in application of the model law, particularly given that there is already an inherent risk that separate parliamentary processes in each jurisdiction could undermine the uniform application of the legislation.

The council will closely monitor the versions of the model bill passed by jurisdictions by the end of 2011, as required by the milestones for this reform.

Chapter 4: Environmental assessment

Key points

Progress assessment

It is the COAG Reform Council's assessment that all milestones for this reform were completed late but within the reporting period.

Risk assessment

Key risks to the output of this reform are that:

- bilateral assessment agreements have only had partial success in reducing the regulatory burden of environmental assessment and approvals processes
- new milestones are needed for the implementation of reforms in this area.

4.1 Output and milestones

Table 4.1 reproduces the output and milestones from the implementation plan for deregulation priority 2—environmental assessment and approvals processes.

Table 4.1: Environmental assessment—output and milestones

Output				
2. Environmental assessment and approvals processes: A consistent and efficient system of environmental assessment and approval.				
Milestones				
2008–09	2009–10	2010–11	2011–12	2012–13
Commonwealth and VIC: finalise bilateral assessment agreement by end 2008 Commonwealth and ACT: finalise bilateral assessment agreement by early 2009	All jurisdictions: deliver implementation plans on opportunities for approvals bilateral agreements and strategic assessments to COAG by mid 2009			

Source: (COAG, 2009p, p. 2)

4.2 The proposed reform

The reform

The aim of this reform is to use existing provisions of the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth) to reduce the regulatory burden of environmental assessment and approval processes where both Commonwealth and State or Territory environmental planning laws are involved. There are two aspects of this reform:

- the negotiation of bilateral assessment agreements allowing for a single environmental assessment process: this will result in the Commonwealth accrediting a jurisdiction's environmental assessment processes as satisfying the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth)

- the investigation of potential bilateral approval agreements—allowing for a single approvals process as well as a single assessment process—or 'strategic assessments', which allow a class or classes of development (or actions) under a policy, program or plan to be approved rather than as individual developments (Department of the Environment, Water, Heritage and the Arts [Cwlth], 2009a).

Bilateral assessment agreements were already in place between the Commonwealth and the governments of New South Wales, Queensland, Western Australia, South Australia, Tasmania and the Northern Territory at the time of making the National Partnership.

Finalising bilateral assessment agreements with the remaining two jurisdictions—Victoria and the Australian Capital Territory—was required to complete the first aspect of this reform and provide a stepping stone to the second aspect. Finalisation of these agreements is the subject of the 2008–09 milestones for this reform.

There is only one bilateral *approval* agreement in place: between the Commonwealth and New South Wales regarding the Sydney Opera House (Department of the Environment, Water, Heritage and the Arts [Cwlth], 2009c, p. 348).

Background

Development is generally regulated through State and Territory environmental planning and assessment regulations. The 1992 *Intergovernmental Agreement on the Environment* (COAG, 1992b, p. 3) provides for the accreditation by the Commonwealth and the States and Territories of each others' environmental assessment and approval processes.

In December 1992, COAG agreed that all relevant policies and programs would be developed within the framework of the *Intergovernmental Agreement on the Environment* and the associated *National Strategy for Ecologically Sustainable Development*. COAG also agreed to encourage business, unions and community groups to use the strategy as a basis for actions which contribute to the pursuit of Australia's national goal for ecologically sustainable development (COAG, 1992a).

COAG agreed in 1997 to the *Heads of Agreement on Commonwealth/State Roles and Responsibilities for the Environment* which committed governments to:

> reform in the following five areas … needed to develop a more effective framework for intergovernmental relations on the environment:
>
> - matters of National Environmental Significance;
> - environmental assessment and approval processes;
> - listing, protection and management of heritage places;
> - compliance with State environmental and planning legislation; and
> - better delivery of national environmental programmes (COAG, 1997).

The Commonwealth put key aspects of the agreement into effect through the revision of Commonwealth environment legislation and the consolidation of a number of laws into the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth).

The *Environment Protection and Biodiversity Conservation Act* gives the Commonwealth Government jurisdiction over seven matters deemed to be of national environmental significance: world heritage sites; national heritage places; wetlands of international importance; nationally threatened species and ecological communities; migratory species; Commonwealth marine areas; and nuclear actions (Commonwealth Government, 2000). The Commonwealth Government (2009c, p. 4) reported that from 25 November 2009, the environment of the Great Barrier Reef Marine Park will become the eighth matter of national environmental significance. The Act also takes jurisdiction over actions which affect Commonwealth land or that are carried out by a Commonwealth agency (Commonwealth Government, 2000).

Actions which have a significant impact on any one of these matters are known as 'controlled actions' and require approval by the Commonwealth Minister under the Act (Commonwealth Government, 2000).

The *Environment Protection and Biodiversity Conservation Act* also allows for the making of bilateral agreements with the States and Territories to accredit their environmental assessment and approvals processes (Commonwealth Government, 2000).

On 10 February 2006, COAG (2006d, p. 8) agreed to a range of measures to ensure best-practice regulation making and review, and action to address six specific regulation 'hotspots' where cross-jurisdictional overlap impedes economic activity.

On 14 July 2006, COAG (2006e) agreed to address four further areas for cross-jurisdictional regulatory reform, including environmental assessment and approvals processes. This included agreement that senior officials would report back by the end of 2006 with strategies to improve and streamline environmental approvals processes, within the existing architecture of the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth) (COAG, 2006e).

On 26 March 2008, COAG (2008d, pp. 6–7) agreed on 27 areas of regulatory reform including the following specific actions on environmental assessment and approval processes:

- the finalisation of bilateral assessment agreements between the Commonwealth and Victoria, South Australia and the Australian Capital Territory by mid 2008
- a report on progress with development of approvals bilaterals under the *Environment Protection and Biodiversity Conservation Act* from the Business Regulation and Competition Working Group (BRCWG) by October 2008
- a report on the case for further reforms of environmental assessment and approval processes from the BRCWG by December 2008.

On 31 October 2008, the Commonwealth Minister for the Environment, Heritage and the Arts, the Hon Peter Garrett AM MP, commissioned an independent review of the *Environment Protection and Biodiversity Conservation Act* (Department of the Environment, Water, Heritage and the Arts [Cwlth], 2009b).

The interim report of the *Independent Review of the Environment Protection and Biodiversity Conservation Act 1999* was released on 29 June 2009. The interim report identifies scope for further efficiencies to be achieved in greater use of bilateral agreements and strategic assessments under the Act (Department of the Environment, Water, Heritage and the Arts [Cwlth], 2009c, p. 346). Public comments on the interim report were called for by 3 August 2009 and the report had not been finalised as at 30 September 2009.

4.3 Progress report and assessment

The following actions have been taken by governments regarding the 2008–09 milestones for deregulation priority 2.

Milestone 1: Commonwealth and VIC: finalise bilateral assessment agreement by end 2008

Progress Report

An Agreement between the Commonwealth and the State of Victoria was made on 20 June 2009 (Commonwealth of Australia & State of Victoria, 2009). The Agreement will:

> enable the Commonwealth to rely primarily on the Victorian assessment processes set out in Schedule 1 in assessing actions under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (Commonwealth of Australia & State of Victoria, 2009, p. 2).

Progress Assessment

It is the COAG Reform Council's assessment that this milestone was completed late but within the reporting period.

The bilateral agreement between the Commonwealth and Victoria was completed six months after the date specified in the milestone and a year after the date originally agreed by COAG for the finalisation of agreements by those jurisdictions that had yet to do so (at the time: Victoria, South Australia and the Australian Capital Territory).

The council does not consider this to be a significant risk to future milestones in this stream.

Milestone 2: Commonwealth and ACT: finalise bilateral assessment agreement by early 2009

Progress Report

An Agreement between the Commonwealth and the Australian Capital Territory was made on 4 June 2009 (Commonwealth of Australia & Australian Capital Territory, 2009). The Agreement will:

> enable the Commonwealth to rely primarily on the Australian Capital Territory process set out in Schedule 1 in assessing actions under the EPBC Act. (Commonwealth of Australia & Australian Capital Territory, 2009).

Progress Assessment

It is the COAG Reform Council's assessment that this milestone was completed late but within the reporting period.

The agreement between the Commonwealth and the Australian Capital Territory was reached around three months after the date specified in the milestone and around nine months after the original date set by COAG for finalising remaining agreements. The council does not consider this to be a significant risk to future milestones in this stream.

Box 4.1 provides a summary of jurisdictions' implementation experience with the bilateral assessment agreement process.

Box 4.1: Environmental assessment bilateral agreements—implementation experience

Developments are required to be referred to the Commonwealth Government as possible controlled actions before they can be deemed as such and considered under the terms of a bilateral agreement. Arrangements vary between agreements as to which party holds the referral information. The Commonwealth Government (2009b, p. 12) reported that since 2000 it has received 3287 referrals and that 739 were determined to be controlled actions under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth).

The New South Wales Government (2009c) reported that since 2000, 559 referrals have been made of which 113 were deemed to be controlled actions and 22 were assessed under the bilateral agreement with the Commonwealth which was signed on 18 January 2007. However, the Commonwealth Government (2009b) reported that 18 out of 36 controlled actions were assessed under the bilateral agreement and that one additional project was assessed under an accredited assessment. New South Wales (2009c) reported two issues requiring resolution: ensuring that referral information meets both New South Wales and Commonwealth requirements; and resolving differences in the implementation of offsets.

The Victorian Government (2009b, p. 5) reported that since the commencement of its bilateral agreement on 20 June 2009, 17 referrals have been made of which four were deemed to be controlled actions. No projects have yet been assessed, but Victoria reported that one or more projects are likely to be assessed in the near future.

The Queensland Government (2009a, p. 7) reported that since the commencement of its bilateral agreement on 13 August 2004, 431 referrals have been made, of which 72 were deemed to be controlled actions and 56 were assessed under the agreement. Queensland reported that it has found the bilateral assessment agreement process to be effective in streamlining the approvals process and that it is currently renegotiating with the Commonwealth, following the expiration of its agreement on 13 August 2009.

(Box 4.1 continued)

The Western Australian Government (2009b, pp. 4–5) did not report on the number of referrals under its bilateral agreement, as it does not hold referral information under its bilateral agreement. The Commonwealth (2009b, p. 12) reported that 34 out of 109 controlled actions were assessed under the agreement. Western Australia (2009b, p. 4) reported that the definition of 'action' in the bilateral agreement has led to limited early assessments and as a result limited the potential for improvement of environmental outcomes and more efficient and certain processes.

The South Australian Government (2009a, pp. 4–5) reported that no referrals have been made since the commencement of its bilateral agreement on 2 July 2008. The Commonwealth Government (2009c, p. 4) reported that eight referrals were determined to be controlled actions, none of which were assessed under the bilateral agreement.

The Tasmanian Government (2009b, p. 12) did not report on the number of referrals made under its bilateral agreement. However, the Commonwealth Government reported that 139 referrals have been made since December 2008, 26 of which were deemed to be controlled actions. Ten of these 26 were assessed under the bilateral agreement. Tasmania reported that bilateral agreements have streamlined the process but not created a single set of conditions for approval. Tasmania (2009b, pp. 5–6) noted that the majority of referrals do not require assessment and therefore represent duplication and potential inconsistency without benefit.

The Australian Capital Territory Government (2009b, p. 6) reported that since the commencement of its bilateral agreement on 4 June 2009, no referrals have been made. It reported that while bilateral assessment agreements are not specifically difficult to execute, their benefits are potentially overstated.

The Northern Territory Government (2009, p. 5) reported that since the commencement of its bilateral agreement on 28 May 2007, two referrals have been designated as requiring assessment. However, the Commonwealth Government reported that 17 out of 26 controlled actions were assessed under its bilateral agreement.

Two observations can be drawn from the figures for all governments:

- There are a large number of matters initially referred to the Commonwealth but then not deemed to be 'controlled actions'. This suggests that there may be scope for improved guidance for proponents and/or officials responsible for making referrals with a view to reducing the number of unnecessary referrals.

- Less than a majority of controlled actions have been assessed under bilateral agreements. It is not clear why a greater proportion of developments are not being assessed under the bilateral agreements, although explanations provided in jurisdiction progress reports include: delays in the referral of proposals to the Commonwealth and differing information requirements and definitions of key terms in the agreements reducing their coverage.

Overall, the figures suggest that improvements need to be made to increase the effectiveness of the bilateral agreements for the benefit of proponents.

Table 4.2 provides the council's assessment of progress on the milestones in this reform.

Table 4.2: Environmental assessment—progress assessment by milestone

Milestone	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
1									
2									

Table 4.3 provides the council's overall assessment of progress on this reform.

Table 4.3: Environmental assessment—overall progress assessment

	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Overall assessment									

4.4 Risk assessment

Only partial success with assessment agreements

Although the 2008–09 milestones for this reform have been completed within the reporting period, there remain questions about the use and value of bilateral assessment agreements by jurisdictions in environmental assessment. The Commonwealth Government (2009c, p. 5) reported that assessment bilateral agreements are designed to provide for a robust and transparent assessment of the impacts of an action on matters of national environmental significance. However, it is the council's assessment that the contribution of the agreements to the stated output for this reform—of reducing the regulatory burden of environmental assessment and approval processes where both Commonwealth and State and Territory environmental planning laws are involved—remains unclear.

The *Independent Review of the Environment Protection and Biodiversity Conservation Act 1999* is considering how to improve the use of bilateral agreements (Department of the Environment, Water, Heritage and the Arts [Cwlth], 2009c, pp. 346–351). Once the Commonwealth Government has released its responses to the review, COAG may wish to update the implementation plan of the *National Partnership Agreement to Deliver a Seamless National Economy* accordingly.

New milestones needed

The sole remaining milestone for this reform in the current edition of the implementation plan is for jurisdictions to agree implementation plans for further reforms in the form of bilateral approvals agreements or strategic assessment agreements by mid 2009 (to be completed in the 2009–10 reporting period) (COAG, 2009p, p. 2). The council is hopeful that new milestones will be included in a future edition of the implementation plan to form the basis of the council's 2009–10 assessment.

Chapter 5: Payroll tax

Key points

Progress assessment

It is the COAG Reform Council's assessment that the single 2008–09 milestone for this reform to implement the first stage of payroll tax harmonisation was completed by the Northern Territory and largely completed by the Australian Capital Territory. The milestone was not met by Western Australia.

Risk assessment

The COAG Reform Council considers that the key risks to this reform are:

- the lack of transparency about what the agreed payroll tax reforms are, with little detail released on stage one reforms and even less detail on the stage two reforms
- the lack of specific milestones for administrative harmonisation of payroll tax arrangements.

5.1 Output and milestones

Table 5.1 reproduces the output and milestones from the implementation plan for deregulation priority 3—payroll tax harmonisation.

Table 5.1: Payroll tax—output and milestones

Output
3. Payroll tax harmonisation: Consistent administration of payroll tax by 1 July 2012.

Milestones				
2008–09	2009–10	2010–11	2011–12	2012–13
WA, ACT and NT: adopt first stage reforms already adopted by the other States by end 2008	WA, SA and NT: consider second stage of reforms already agreed by NSW, VIC, QLD and TAS by late 2009	NSW, VIC, QLD and TAS (and WA, SA and NT should any agree): deliver second stage reforms by mid 2010	States and Territories: complete reforms by 30 June 2012	

Source: (COAG, 2009p, p. 2)

5.2 The proposed reform

The reform

This reform is aimed at reducing the costs of payroll tax administration for business by adopting uniform definitions and administrative procedures across all States and Territories (COAG, 2008d, p. 3).

Payroll tax is a State and Territory tax calculated on wages paid or payable by an employer to its employees, when the total wages bill of an employer (or group of employers) exceeds an exemption threshold amount (State Revenue Office [Vic], 2009b). The payroll tax rate and tax-free threshold varies between the States and Territories (State Revenue Office [Vic], 2009b).

At its inaugural meeting on 13 October 2006, the Council for the Australian Federation (2006, p. 3)—comprising all State and Territory first ministers—agreed to develop proposals for the harmonisation of payroll tax legislation and administration, except for payroll tax rates and thresholds. On 29 March 2007, the States-only Ministerial Council of Treasurers agreed to the States Payroll Consistency Project, to be pursued in two stages as follows:

- *Stage One:* the adoption of common administration provisions and definitions for: timing of lodgement; motor vehicle allowances; accommodation allowances; a range of fringe benefits; work performed outside a jurisdiction; employee share acquisition schemes: superannuation contributions for non-working directors; and grouping[8] of business

- *Stage Two:* the harmonisation of remaining definitions not covered by stage one (Costa, et al., 2007).

The States-only ministerial council has not released any detail of the specific content of the stage one reforms. However, COAG (2008d, p. 8) agreed that the other States and Territories should harmonise the payroll tax administrative arrangements listed as stage one reforms with the relevant provisions that apply in New South Wales and Victoria.

Box 5.1 details the administrative arrangements that apply to the stage one matters in the *Payroll Tax Act 2007* (NSW) and *Payroll Tax Act 2007* (Vic).

[8] Grouping refers to business entities considered to be a group for payroll tax purposes. Under the NSW and Victorian laws, which other States and Territories have harmonised to, or are in the processing of harmonising to, groups can arise by virtue of being 'related bodies corporate' under the *Corporations Act 2001* (Cwlth); by using common employees; by being commonly controlled business; or by a process of tracing direct and indirect corporate interests.

Box 5.1: Payroll tax—stage one arrangements in New South Wales and Victoria

- Timing of lodgement: monthly payroll tax returns are due seven days after the end of the month, except for June when returns are due 21 days after the end of the month
- Motor vehicle allowances: must be within the rates used by the Australian Taxation Office to be exempt from payroll tax calculations
- Accommodation allowances: must be within the rates used by the Australian Taxation Office to be exempt from payroll tax calculations
- A range of fringe benefits:
  - the payroll taxable value of fringe benefits is to be determined by grossing-up the fringe benefits using the lower, Type 2, gross-up rate defined in the *Fringe Benefits Act 1986* (Cwlth)
  - the records kept for the purposes of fringe benefits tax legislation will be acceptable for payroll tax purposes
- Work performed outside a jurisdiction:
  - wages paid in a State or Territory for services performed in another country for more than six months are exempt from payroll tax (including the first six months)
  - wages paid for services performed in another country for less than six months are liable for payroll tax
- Employee share acquisition schemes: employee share acquisition schemes are liable to payroll tax and a grant of shares or options that constitutes a fringe benefit under Commonwealth tax law will be treated as a wage for payroll tax purposes
- Superannuation contributions for non-working directors: all non-monetary superannuation contributions are subject to payroll tax and will be valued as either the agreed value or the value attributed to the contribution, whichever is the greater amount
- Grouping of business: the grouping provisions include:
  - a test for determining a controlling interest of 'more than 50 per cent'
  - tracing provisions apply to determine 'controlling interest'
  - a test for common employees
  - the commissioner's discretion to exclude a member will apply to members that have been grouped under any grouping provision, other than the grouping of corporations within the meaning of the *Corporations Act 2001* (Cwlth)
  - a designated group employer will claim the tax free threshold and other group members will not be able to claim it (State Revenue Offices [NSW & Vic], 2007).

The stage two reforms are not defined beyond not being included in stage one. At this time, it appears that this would cover the following payroll tax provisions harmonised by New South Wales and Victoria in 2007, including:

- consistent exemption provisions for charities
- adoption and maternity leave exemptions
- exemptions for contractors, employment agents
- removing the exemption for financial planners
- exemptions for wages paid under a community development employment scheme
- exemptions for wages paid to employees participating in voluntary work for bushfires or emergency relief
- replacing the exemption for apprentices/trainees with alternative assistance
- treatment of portable long service leave and redundancy schemes
- a consistent approach to trust distributions, anti-avoidance provisions, and periods for refunds and reassessment (Commonwealth Government, 2009b, p. 15; State Revenue Offices [NSW & Vic], 2007).

The effort needed to achieve stage one and stage two reforms varies across governments, depending on existing differences in their current payroll tax administrative arrangements.

The COAG Reform Council understands that in addition to legislative changes (the stage one and stage two reforms) the States and Territories have agreed to increased harmonisation of payroll tax administrative arrangements (Australian Capital Territory Government, 2009b, p. 7; New South Wales Government, 2009c; South Australian Government, 2009a, p. 6; Tasmanian Government, 2009b, p. 7; Victorian Government, 2009b, p. 7).

On 12 July 2008, the Commissioners of the State and Territory Revenue Offices (2008, pp. 2–3) agreed to 'A Protocol for maintaining Payroll Tax Harmonisation between States and Territories' which sets out the intention to maintain legislative harmony and the intention to 'establish and maintain administrative harmony of their respective harmonised payroll tax regimes'. Schedule 1 of this protocol sets out the desired outcomes of administrative harmony for information sharing, revenue rulings, web content, private rulings, exemption decisions, assessment notices, objections, appeals, customer education, compliance, e-business, registration and information updates, application of penalties and interest and training (Commissioners of State and Territory Revenue Offices, 2008, pp. 5–6).

'A Protocol for maintaining Payroll Tax Harmonisation between States and Territories' is published on the COAG Reform Council's website (www.coag.gov.au/crc).

The Victorian Government (2009b, p. 7) reported that a Commissioners' Payroll Tax Harmonisation Committee was formed following the 12 July 2008 agreement by the States and Territories, in order to 'maintain momentum for administrative harmony.' The Payroll Tax

Harmonisation Committee is responsible for overseeing the development of harmonised administrative practices (Victorian Government, 2009b, p. 8).

Administrative harmonisation of payroll tax arrangements is not covered at this stage by the milestones in the National Partnership.

Background

Payroll tax harmonisation predates the signing of the *National Partnership Agreement to Deliver a Seamless National Economy*. Details of the harmonisation efforts previously undertaken by governments follow.

New South Wales and Victoria

New South Wales and Victoria agreed on 5 March 2007 to comprehensively harmonise their payroll tax legislation and administration (along similar lines to stages one and two above) with effect from 1 July 2007 (Brumby & Costa, 2007, p. 1). This included the streamlining of administrative arrangements and harmonisation of legislation on payroll tax (Office of State Revenue [NSW], 2007).

The administrative changes agreed included common payroll tax forms and systems, the creation of a 'one-stop shop' for payroll tax administration and common interpretations of payroll tax law (Brumby & Costa, 2007, p. 1).

In addition to harmonising their laws, New South Wales and Victoria commenced harmonising their payroll tax revenue rulings. The State Revenue Office of Victoria stated that over 30 joint New South Wales and Victorian. revenue rulings have been issued (State Revenue Office [Vic], 2009a).

On 26 March 2008 COAG (2008d, pp. 7–8) agreed that:

- all jurisdictions would implement stage one—the remaining jurisdictions to do this are included in the single 2008–09 milestone for this reform
- Queensland and Tasmania would harmonise with New South Wales and Victoria from 1 July 2008
- South Australia would be closely harmonised with New South Wales and Victoria from 1 July 2008
- the remaining jurisdictions (Western Australia, Australian Capital Territory and Northern Territory) would give further consideration to participating in stage two—this is partially reflected in the single 2009–10 milestone for this reform.

On 3 July 2008 COAG (2008f, pp. 1–2), welcomed the agreement reached between:

> all States and Territories to harmonise their payroll tax administration from 1 July 2008 though the adoption, in a range of Stage 1 areas, of common definitions and common treatment of various employee allowances and lodgement dates.

COAG also noted that further harmonisation:

> will proceed after 1 July 2008 with Western Australia, South Australia, the Australian Capital Territory and the Northern Territory considering a broader range of harmonisation initiatives already agreed to by New South Wales, Victoria, Queensland and Tasmania.

Queensland

The Queensland *Pay-roll Tax (Harmonisation) Amendment Act 2008* (Qld) amended the *Payroll Tax Act 1971* (Qld) with effect from 1 July 2008. The amendments were designed to align Queensland's payroll tax system with arrangements in New South Wales and Victoria (Office of State Revenue [Qld], 2008). The legislative changes included:

- changes to employment agent provisions
- new termination payment provisions
- new employment share acquisition scheme provisions (Office of State Revenue [Qld], 2008).

Tasmania

The Tasmanian *Payroll Tax Act 2008* (Tas) came into effect on 1 July 2008. The law was designed to ensure that Tasmania's payroll tax system aligned with the New South Wales and Victorian arrangements (State Revenue Office [Tas], 2008). The changes included:

- aligning Tasmania's grouping provisions, contractor provisions, employment agent provisions and employee share acquisition scheme provisions with New South Wales and Victoria
- adopting the Australian Taxation Office exemption rates for accommodation and motor vehicle allowances
- expanding the current payroll tax exemptions to include all not-for-profit organisations (State Revenue Office [Tas], 2008).

South Australia

The South Australian *Payroll Tax (Harmonisation Project) Amendment Act 2008* (SA) made some of the stage one changes to the *Pay-roll Tax Act 1971* (SA), effective from 1 July 2008. The changes included:

- amendments to the definition of liable wages for work performed in another country
- changes to the taxable value of fringe benefits
- changes to confirm that shares or options issued under an employee share acquisition scheme are liable wages
- changes to accommodation allowance rates
- changes to motor vehicle allowance rates

- changes to ensure that superannuation contributions to non-employee directors are taxable wages
- new exemptions for maternity leave and adoption leave payments; bush fire and emergency service work payments; payments under the Commonwealth Development Employment Scheme; and payments by charities in respect of employees undertaking direct charitable activities of the organisation
- a range of harmonisation measures to grouping provisions.

The remaining stage one changes were made through the *Payroll Tax Act 2009* (SA), which commenced on 1 July 2009, replacing the old *Pay-roll Tax Act 1971* (SA). The new law was created to fully harmonise the South Australian payroll tax system with that of New South Wales, Victoria, Tasmania and the Northern Territory (RevenueSA, 2009). The key harmonisation changes brought about by this law were:

- change to the date of lodgement of annual returns
- specific provision for the collection and recovery of tax from third parties (such as agents, trustees, executors and liquidators) and provisions of indemnities and rights of recovery for third parties
- amendment to the exemption for charitable bodies
- further changes to the grouping provisions
- changes to the contractor and employment agent provisions (RevenueSA, 2009).

On the basis of the above legislative action, the various stage one payroll tax administrative matters are harmonised in New South Wales, Victoria, Queensland, South Australia and Tasmania.

Western Australia, the Australian Capital Territory and Northern Territory

Western Australia, the Australian Capital Territory and the Northern Territory are to implement the stage one reforms as a 2008–09 milestone for this reform stream.

5.3 Progress report and assessment

The following actions have been taken by governments regarding the 2008–09 milestone for deregulation priority 3.

Milestone 1: WA, ACT and NT: adopt first stage reforms already adopted by the other States by end 2008.

Progress report

Western Australia

In its 2008–09 Budget, the Western Australian Government announced that it would introduce payroll tax harmonisation reforms, commencing from 1 July 2008 (Ripper, 2008). This excluded the grouping provisions, which would instead commence on 1 July 2009 (Ripper, 2008).

The reforms were included in the Payroll Tax Assessment Amendment Bill 2008 (WA), which was passed by the Legislative Assembly on 11 June 2008. The Bill was introduced into the Legislative Council on 17 June 2008 and was referred to the Standing Committee on Uniform Legislation and Statutes Review (Parliament of Western Australia, 2008b). The Bill lapsed on the prorogation of parliament for the general election in September 2008.

After the election, the Barnett Government announced that it would implement the stage one measures and some stage two measures in its 2009–10 Budget (Department of Treasury and Finance [WA], 2009a).

The 2009–10 Budget provides for a one-off payroll tax rebate and exemption for parental leave and volunteer emergency services work. The 2009–10 Budget also provided for two new exemptions to wages paid to employees on parental leave (including maternity, adoption and paternal leave for fathers) and leave to perform volunteer emergency services work (Department of Treasury and Finance [WA], 2009a).

The budget measures do not cover the stage one reforms to payroll tax administration. Further legislation to implement the stage one reforms has yet to be introduced into the Western Australian Parliament.

The Commonwealth Government (2009b, p. 14) reported that the Western Australian Treasurer wrote to the Commonwealth Minister for Finance and Deregulation on 6 March 2009 committing Western Australia to the stage one reforms. The Western Australian Government (2009b, p. 6) reported that the payroll tax bill will be reintroduced in 2009 and will include the first stage reforms, as well as two second stage reforms, with a retrospective commencement date of 1 July 2009.

Australian Capital Territory

The Payroll Tax Amendment Bill 2007 was introduced into the Legislative Assembly on 6 December 2007 and passed that house on 4 March 2008 (Australian Capital Territory Government, 2008). The *Payroll Tax Amendment Act 2007* (ACT) commenced on 1 July 2008, and its provisions have been incorporated into the *Payroll Tax Act 1987* (ACT).

The amendments to the *Payroll Tax Act 1987* (ACT) largely incorporate the stage one reforms, as set out in section 5.2 above. However, in respect of two of the stage one reforms, the Australian Capital Territory laws differ from the New South Wales and Victorian legislation in:

- not providing a different June deadline—21 days after the end of the month, rather than seven days—for the lodgement of monthly payroll tax returns
- providing that the minister may determine the exemption rate for accommodation allowance rather than specifying the Australian Taxation Office rates—although if the minister does not specify a rate, the Australian Taxation Office rates apply.

Northern Territory

The Pay-roll Tax Amendment (Harmonisation) Bill 2008 (NT) was introduced into the Legislative Assembly on 7 May 2008 and passed that house on 20 June 2008 (Northern Territory Government, 2007). The *Pay-roll Tax Amendment (Harmonisation) Act 2008* (NT) commenced on 1 July 2008 and its provisions have been incorporated into the *Pay-roll Tax Act 2009* (NT).

The *Pay-roll Tax Act 2009* (NT) incorporates the stage one reforms, as set out in section 5.2 above.

Progress assessment

Western Australia

It is the COAG Reform Council's assessment that the Western Australian Government did not complete this milestone within the reporting period.

Australian Capital Territory

It is the COAG Reform Council's assessment that the Australian Capital Territory Government largely completed this milestone on time. However, the council notes that there are some differences between the Australian Capital Territory laws and the arrangements in New South Wales and Victoria regarding two of the stage one reforms: the timing of lodgement and accommodation allowances.

The first difference between the Australian Capital Territory law and the New South Wales and Victorian laws is relatively minor, with the Australian Capital Territory law providing a longer period of time for June payroll tax reports.

The second discrepancy of the Australian Capital Territory law is that the relevant Minister may determine the exemption rate for accommodation allowances, and the Australian Taxation Office exemption rates will only apply if the Minister does not make this determination. The default exemption rate under the New South Wales and Victorian laws is the Australian Taxation Office rate. The council is of the view that this distinction does have an effect on the harmonisation objective of the 2008–09 milestone for this reform. This difference in the Australian Capital Territory law means that, as a matter of practice, it is possible that the accommodation exemption rate will differ between the Australian Capital Territory, and all other States and Territories.

Northern Territory

It is the COAG Reform Council's assessment that the Northern Territory Government completed this milestone on time.

Table 5.2 provides the council's overall assessment of progress on this reform.

Table 5.2: Payroll tax—overall progress assessment

	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Overall assessment									

5.4 Risk assessment

The goal of payroll tax harmonisation is being achieved slowly. The council has identified a number of risks in relation to this reform.

Stage one and stage two reform milestones

The Australian Capital Territory has not consistently implemented all stage one reforms. Western Australia has not implemented the stage one reforms at all.

These two facts may not be a significant concern to the achievement of the later milestones in this reform given that the deadline for completion of all stage one and two reforms is set at 30 June 2012. Western Australia has ample opportunity to catch up on the achievement of this reform, however, the council notes that the Australian Capital Territory Government (2009a, p. 3) reported that it has not committed to the second stage payroll tax reforms. Consequently, there is no specific opportunity for the Australian Capital Territory to catch up in the same way.

Lack of transparency on agreed milestones

As discussed in section 5.2 above, there has been little detail released on the stage one reforms and even less detail on the stage two reforms.

The stage one reforms have been assessed on the basis of a review of the arrangements in New South Wales and Victoria in regard to the publicly stated list of matters that comprise stage one. There is no clear list of matters that comprise stage two, so it will be difficult for the council to assess when jurisdictions complete stage two, and whether States and Territories have completed stage two reforms consistently, or whether jurisdictions have incorporated differences in the application of the stage two reforms. The Northern Territory Government (2009, p. 7) reported that jurisdictions 'have retained minor departures [in stage two reforms] to take account of some exemption and region based differences'.

COAG may wish to consider whether the implementation plan could be amended to provide a more specific outline of the stage two reforms for payroll tax harmonisation.

The current edition of the implementation plan includes milestones for each jurisdiction, except for the Australian Capital Territory, to agree and implement the second stage reforms. The Australian Capital Territory Government (2009a, p. 3) has reported that it has not committed to undertaking the second stage payroll tax reforms, although it is 'currently considering the feasibility of implementing some second stage reforms'.

Long lag times for implementing reform

The council notes that there is a substantial lag between the first jurisdictions harmonising on 1 July 2007 and the last jurisdictions harmonising by 30 June 2012, or later if the implementation plan timeframes are not followed. Long lag times between the passage of harmonised legislation by individual jurisdictions are a noted risk to national consistency efforts (Australasian Parliamentary Counsel's Committee, 2008, pp. 20–21). This risk has already been demonstrated by the Australian Capital Territory Government amending its payroll tax legislation in a way that is not wholly consistent with the stage one reforms adopted by other jurisdictions.

For this reason, COAG may wish to include a milestone, perhaps set to coincide with the 30 June 2012 deadline, for a review of all payroll tax arrangements for consistency in the next edition of the implementation plan.

Administrative harmonisation

As discussed in section 5.2 above, the council understands from jurisdiction reports and the 'Protocol for maintaining Payroll Tax Harmonisation between States and Territories', that States and Territories have agreed to administrative harmonisation measures, in addition to the legislative harmonisation measures of the stage one and two reforms.

The implementation plan does not specifically include any milestones with respect to administrative harmonisation of payroll tax arrangements, but includes a 2011–12 milestone for States and Territories to have completed reforms by 30 June 2012. COAG may wish to consider whether the implementation plan could be amended to include specific milestones that reflect the States and Territories agreement to undertake a series of measures to increase administrative harmonisation of payroll tax.

In addition, the council notes that administrative harmonisation is likely to require a high level of cooperation among jurisdictions and work to develop systems to ensure that administrative harmonisation is achieved in an ongoing way. The Northern Territory Government (2009, p. 7) reported that there is a risk that State and Territory revenue authorities will not agree to consistent administrative processes.

Chapter 6: Licensing system

Key points

Progress assessment

It is the COAG Reform Council's assessment that the milestone for an intergovernmental agreement covering the key elements of the new national system was largely completed by 30 September 2009 although the issues of funding the system and the allocation of licence fees were not agreed by governments.

Risk assessment

The COAG Reform Council considers that, as of 30 September 2009, the main potential risk to the achievement of this reform was the possible difficulties in resolving the financial implications and allocation of fees in the national licensing system.

6.1 Output and milestones

Table 6.1 reproduces the output and milestones from the implementation plan for deregulation priority 4—licenses of tradespeople.

Table 6.1: Licensing system—output and milestones

Output				
4. Licences of tradespeople: Establish a national trade licensing system.				
Milestones				
2008–09	2009–10	2010–11	2011–12	2012–13
All jurisdictions: draft Intergovernmental agreement (IGA) to be agreed by BRCWG prior to consideration by COAG in early 2009 • IGA to include the following key elements of the new national system: • scope of	All jurisdictions: agree draft legislation by 2009 Host jurisdiction: enact legislation by April–June 2010	All jurisdictions except host jurisdiction: enact legislation (which appropriately applies the host jurisdiction legislation in their jurisdiction) by late 2010 All jurisdictions: establish the new national licensing body including Board and CEO by	All jurisdictions: new licensing body to commence development and finalise licensing eligibility criteria (including qualifications), licence discipline standards and other licensing policy developed for first tranche of selected priority trades for approval	All jurisdictions: new national licensing system to commence on 1 July 2012 All jurisdictions: assist new licensing body to develop and finalise licensing eligibility criteria (including qualifications), licence discipline standards and

legislation; • governance arrangements; • principles and objectives; • allocation of licence fees, noting that it is not intended that jurisdictions would be significantly disadvantaged compared to current arrangements; and • transitional arrangements.	1 Jan 2011	of Ministerial Council by end 2012	other licensing policy for next tranche of trades and approved through RIS and Ministerial Council processes by 30 June 2013

Source: (COAG, 2009p, pp. 2–3)

Licensing of tradespeople is listed at clause 34(a) of the *National Partnership Agreement to Deliver a Seamless National Economy* (COAG, 2009n, pp. 9–10). In effect, this means that this reform must be implemented for a jurisdiction to remain eligible for its full reward payment.

6.2 The proposed reform

The reform

On 30 April 2009, COAG made the *Intergovernmental Agreement for a National Licensing System for Specified Occupations* (COAG, 2009i). The objectives of the national licensing system set out in clause 4.1 of this agreement are to:

- ensure that licences issued by the national licensing body allow licensees to operate in all Australian jurisdictions
- ensure that licensing arrangements are effective and proportional to that required for consumer protection, and worker and public health and safety, while ensuring economic efficiency and equity of access
- facilitate a consistent skill base for licensed occupations
- ensure that effective coordination exists between the national licensing body and relevant jurisdictional regulators
- promote national consistency in:
  - licensing structures and policy across comparable occupational areas

  - regulation affecting the conduct requirements of licensees
  - the approaches to disciplinary arrangements affecting licensees
- provide flexibility to deal with jurisdiction or industry specific issues
- provide access to public information about licensees (COAG, 2009i, p. 4).

Through this agreement, COAG (2009i, p. 2) agreed to adopt, at least initially, a 'national delegated agency model' where a national licensing body will be established to develop policy and administer the system but may delegate to jurisdictional regulators the provision of licensing services. The working arrangements between the national licensing body and jurisdictional regulators may be established by way of a service-level agreement (COAG National Licensing Steering Committee, 2009a).

The National Licensing System will be implemented in a phased approach, with:

- the first tranche of occupations—electrical, air conditioning and refrigeration, plumbing, gas fitting and property services—to be included by 1 July 2012
- the second tranche of occupations—building and building-related occupations, land transport (passenger vehicle and dangerous goods), maritime occupations, conveyancers and valuers—to be included by 1 July 2013 (COAG National Licensing Steering Committee, 2009a).

Victoria will be the host jurisdiction for the legislation establishing the national licensing system. However, the legislation itself will be drafted cooperatively by the Parliamentary Counsel's Committee, a national committee comprising the heads of the offices of parliamentary counsel for the Commonwealth, the States, the Territories, and New Zealand (Australasian Parliamentary Counsel's Committee, 2009; COAG National Licensing Steering Committee, 2009a).

Background

Licensing in many occupational and professional areas is undertaken by the States and Territories. Licensing systems have developed in different ways in each jurisdiction and, depending on the jurisdiction and occupation in question, licensing may be focused on different objectives, including consumer protection, occupational health and safety or public safety. Licences issued for the same occupation by jurisdictions often have different eligibility requirements and scopes of work covered. There is also varying licence nomenclature, duration, licence structures and fee structures (Regulation Taskforce, 2006, pp. 41–44).

It has long been recognised that these separate licensing systems are a barrier to labour mobility across State and Territory borders (Regulation Taskforce, 2006, pp. 41–44).

All governments agreed to the *Mutual Recognition Agreement* in May 1992, which provided for the States and Territories to refer to the Commonwealth powers for mutual recognition of goods for sale and occupations (COAG, 1992c, p. 1). The *Mutual Recognition Act 1992* (Cwlth) implemented the agreement with the aim of improving the mobility of licensed individuals between jurisdictions. Under the Act, mutual recognition of licenses can occur through a

ministerial declaration of licensing equivalence by relevant State and Territory ministers (Commonwealth of Australia, 2009b).

In 2003, the Productivity Commission (2003, pp. xvi–xxv), released its *Evaluation of the Mutual Recognition Schemes*, which found that the *Mutual Recognition Agreement* had generally been effective but that improvements could be made to the design of the schemes in relation to their operation, coverage and scope.

On 10 February 2006, COAG (2006d) agreed to new measures to enable people with qualifications to move more freely across borders without the need for additional testing and registration. This included more effective mutual recognition arrangements through better information on the equivalence of licences from different jurisdictions and the introduction of a licensing recognition website for:

- electricians, plumbers, motor mechanics, refrigeration and air-conditioning mechanics, carpenters and joiners, and bricklayers by June 2007
- all licensed occupations where people normally receive certificates and diplomas, by December 2008 (COAG, 2006d, pp. 13–14).

As part of COAG's response, the COAG Skills Recognition Steering Committee—a group of senior officials chaired by the Department of the Prime Minister and Cabinet—was established to oversee these changes and to bring about full and effective mutual recognition (COAG Skills Recognition Steering Committee, 2008).

In December 2007, the Steering Committee commissioned an evaluation of the effectiveness of the changes to the scheme made through COAG's response to the Productivity Commission's 2003 findings. The evaluation was also to consider further reform options.

In July 2008, this second evaluation found that the changes to the scheme had led to some improvement in the recognition of licences, but there remained some concerns. One option identified by this evaluation was a national licensing approach, which would first need to be supported by a rigorous cost-benefit analysis (Allen Consulting Group, 2008, pp. 59–64; COAG Skills Recognition Steering Committee, 2008).

In parallel to these developments, the April 2006 *Report of the Taskforce on Reducing Regulatory Burdens on Business* highlighted, among other things, that the Mutual Recognition Agreement had not been successfully implemented (Regulation Taskforce, 2006, p. 41). The Taskforce recommended that:

> COAG should consider measures to align the national training system with occupational licensing and registration regulations, including the development and adoption of minimum effective national standards for licensing and registration across a range of industries and sectors (Regulation Taskforce, 2006, p. 43).

COAG (2008k) announced on 3 July 2008 that it would develop a national trade licensing system to be agreed in December 2008.

6.3 Progress report and assessment

The following actions by jurisdictions have been taken regarding the 2008–09 milestone for deregulation priority 4.

Milestone 1: All jurisdictions: draft Intergovernmental agreement (IGA) to be agreed by BRCWG prior to consideration by COAG in early 2009

IGA to include the following key elements of the new national system:

- **scope of legislation;**
- **governance arrangements;**
- **principles and objectives;**
- **allocation of licence fees, noting that it is not intended that jurisdictions would be significantly disadvantaged compared to current arrangements; and**
- **transitional arrangements.**

Progress report

The *Intergovernmental Agreement for a National Licensing System for Specified Occupations* was signed by all governments at COAG on 30 April 2009. In regard to the key elements identified in the milestone, the agreement sets out:

- the scope of the national licensing system and the minimum requirements for the legislation in Part 3 and clause 6.9 respectively
- the governance arrangements for the system, including:
  - that decisions by the ministerial council will be by consensus during the implementation of the system (clause 5.3)
  - that the ministerial council will be responsible for determining its voting arrangements once the system has been implemented (clause 5.4)
  - processes for agreeing to include new occupations in the system (clauses 5.5 and 5.6)
  - processes for jurisdictions to initiate amendments to the national licensing policy and where jurisdictions may be able to act unilaterally (clauses 5.7 to 5.9)
  - the functions of the ministerial council, the national licensing body, the national licensing board and occupational licence advisory committees (clauses 5.10 to 5.33)
- the objectives and principles of the system, including the objectives listed earlier in this chapter (Part 4)
- that the obligations of State or Territory parties under the agreement are subject to satisfactory resolution of the financial arrangements for the national licensing system through COAG (clause 8.1)
- transitional arrangements during the implementation phase (Part 13), including:
  - a steering committee of senior officers from first ministers departments to advise the ministerial council on implementation of the national licensing system

- consultation arrangements to take account of the views of relevant stakeholders
- arrangements for the establishment, membership and operation of interim advisory committees for each occupational area
- arrangements for the amendment of the agreement, so long as they are consistent with the requirements of the *National Partnership Agreement to Deliver a Seamless National Economy* (COAG, 2009i).

Progress assessment

It is the COAG Reform Council's assessment that this milestone was largely completed within the reporting period.

As noted above, the *Intergovernmental Agreement for a National Licensing System for Specified Occupations* was signed at COAG on 30 April 2009 and made provision for most of the key elements specified in this milestone. However, the agreement did not make provision for the allocation of licence fees, instead providing that State and Territory obligations under the agreement are subject to satisfactory resolution of this issue by COAG.

The reason for the agreement not providing for the allocation of fees is the commitment in the agreement (clause 8.3) that no jurisdictions will be significantly disadvantaged through the implementation of the national licensing system (COAG, 2009i, p. 10).

Across the jurisdictions and the relevant occupations, there are a range of different approaches to funding the licensing and regulatory systems. These include different approaches to, and principles of, cost-recovery, and different activities, such as conduct requirements, compliance, and inspection activities being included within the scope of cost-recovery calculations.

To resolve these issues, consultancy firm PricewaterhouseCoopers has been commissioned by the COAG National Licensing Steering Committee (2009b) to:

- examine the financial impact of establishing the national licensing system
- evaluate appropriate information technology systems to form the basis of the system, including advising on their costs.

The Commonwealth Government (2009b, p. 16) reported that the PricewaterhouseCoopers reports on these issues were considered by the Steering Committee on 2 September 2009 and would be considered by the Ministerial Council on Federal Financial Relations, which is responsible for this reform.

As at 30 September 2009, the COAG Reform Council had not seen these reports and was not aware of their findings or recommendations to the ministerial council.

Table 6.2 provides the council's overall assessment of progress on this reform.

Table 6.2: Licensing system—overall progress assessment

	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Overall assessment									

6.4 Risk assessment

Financial issues remain unresolved

As at 30 September 2009, the main risk to the long-term achievement of this reform was the potential for difficulties in resolving the financial implications and allocation of fees in the national licensing system. If these issues are not resolved satisfactorily, they could potentially absolve States and Territories of their obligations to implement the reforms through the operation of clause 8.1 of the *Intergovernmental Agreement for a National Licensing System for Specified Occupations* (COAG, 2009i, p. 10). Some jurisdictions have highlighted this as a risk to this reform (Australian Capital Territory Government, 2009b, p. 8; Northern Territory Government, 2009, p. 9; Queensland Government, 2009a, p. 10; Western Australian Government, 2009b, p. 8). However, the Victorian Government (2009a) reported that processes are underway to resolve funding arrangements.

Agreement on legislation, which was due by December 2009, will be difficult without first settling these financial matters. If these issues have not been resolved at the time of publication, they will need to be resolved by April 2010 at the latest to allow for the scheduled passage of legislation in the Victorian Parliament—as the host jurisdiction for the legislation—by June 2010, in accordance with the relevant 2009–10 milestone (Commonwealth Government, 2009b, p. 17; Victorian Government, 2009b, p. 10).

Failure to pass the legislation in this timeframe would mean the legislation would have to be passed in the second half of 2010. However, a Victorian general election will be held on 27 November 2010 (Lundie, 2009). This could in turn lead to a shortened sitting in the second half of 2010 and could disrupt the progress of this reform.

Chapter 7: Health workforce

Key points

Progress assessment

There are no 2008–09 milestones for health workforce agreement.

However, governments have made progress on the legislative processes which constitute the 2009–10 milestones for this reform.

Risk assessment

The COAG Reform Council considers that:

- there is a risk of delays in the passage of referral legislation by the end of 2009 for a number of governments
- there is a risk that a genuinely national registration and accreditation scheme will not be achieved if the Health Practitioner Regulation National Law 2009 bill (Qld) is implemented in a way that retains or creates jurisdiction specific registration processes.

7.1 Output and milestones

Table 7.1 reproduces the output and milestones from the implementation plan for deregulation priority 5—health workforce agreement.

Table 7.1: Health workforce agreement—output and milestones

Output				
5. Health workforce agreement: A national registration and accreditation scheme for health professionals.				
Milestones				
2008–09	2009–10	2010–11	2011–12	2012–13
	QLD: enact legislation by end 2009 All jurisdictions: enact referencing legislation by end 2009 Commonwealth amend relevant legislation by end 2009	All jurisdictions implementation of the registration and accreditation scheme and complete all related transitional arrangements by 1 July 2010		

Source: (COAG, 2009p, p. 3)

7.2 The proposed reform

The reform

The aim of this reform is to establish a national registration and accreditation scheme for health professionals by 1 July 2010.

On 26 March 2008, COAG (2008p, p. 4) signed the *Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions*. Clause 5.3 of the agreement provides that the objectives of the national registration and accreditation scheme are to:

a) provide for the protection of the public by ensuring that only practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered;

b) facilitate workplace mobility across Australia and reduce red tape for practitioners;

c) facilitate the provision of high quality education and training and rigorous and responsive assessment of overseas-trained practitioners

d) have regard to the public interest in promoting access to health services; and

e) have regard to the need to enable the continuous development of a flexible, responsive and sustainable Australian health workforce and enable innovation in education and service delivery (COAG, 2008m, p. 3).

The national registration and accreditation scheme will at first cover the following ten health professions: chiropractic care, dental care (including dentists, dental therapists, dental hygienists, dental prosthetists), medicine, nursing and midwifery, optometry, osteopathy, pharmacy, physiotherapy, podiatry and psychology by 1 July 2010 (Australian Health Workforce Ministerial Council, 2009a, p. 3).

COAG (2006f, p. 4) has noted that other health professional groups, such as Aboriginal health workers, may be covered by the national registration and accreditation scheme at a later date. The exposure draft bill of the Health Practitioner Regulation National Law (discussed below) provides for the extension of the national scheme to Aboriginal and Torres Strait Islander health practice, Chinese medicine, and medical radiation practice from 1 July 2012 (Australian Health Workforce Ministerial Council, 2009b).

Background

In January 2006, the Productivity Commission (2006a) released its *Australia's Health Workforce* research report, which examined issues affecting the health workforce including the supply of, and demand for, health professionals. The report included discussions and recommendations on registration and accreditation of health care professionals where:

- registration was defined as the process that gives professionals the legal right to practice
- accreditation was defined as the process of assessing and evaluating education and training courses and institutions to ensure standards and consistency of education and training (Productivity Commission, 2006a, p. 111).

The key recommendations of *Australia's Health Workforce* were that:

- when a health professional is required to be registered, registration should be on the basis of uniform national standards for that profession
- a single statutory, national accreditation board for health workforce education and training should be established, with responsibility for the functions carried out by existing health care accreditation bodies (Productivity Commission, 2006a, pp. 137–138).

The Productivity Commission (2006a, p. 131) noted that, at least initially, the new national accreditation board could delegate functions to appropriate existing accreditation bodies.

On 10 February 2006, COAG supported the key directions in *Australia's Health Workforce*, including the registration and accreditation recommendations. COAG (2006d, p. 12) requested senior officials to complete further work on the recommendations from the Productivity Commission report and to report back to COAG in mid 2006.

On 14 July 2006, COAG (2006f, p. 4) agreed to establish a national registration scheme and a national accreditation scheme for health education and training by 1 July 2008. COAG further agreed to consult with stakeholders on its preferred model for the schemes, which would:

- 'involve health professions participating in the [registration] scheme's governance through profession-specific panels and committees'
- 'ensure that accreditation activities retain and draw on essential health profession-specific expertise' (COAG, 2006f, p. 4).

On 13 April 2007, COAG (2007e, p. 6) announced that it had agreed on the arrangements for establishing a national accreditation and registration system for health professionals, with its key features including a 'continuing role for Health Ministers, a single, consolidated scheme and a new national professional board for each of the nine professions'.

The *Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions*—agreed on 26 March 2008—sets out the key principles and operational arrangements for the scheme, including:

- the establishment of the Australian Health Workforce Ministerial Council comprising the health ministers from the Commonwealth, States and Territories which will have responsibility for:
  - policy direction
  - the inclusion of new professions in the scheme
  - the appointment of members of boards, members of the Australian Health Workforce Advisory Council and the national agency's management committee
- the establishment of a national agency responsible for ensuring that the scheme operates consistently with the legislation and the directions of the Australian Health Workforce Ministerial Council
- the establishment of a board for each of the health professions covered by the scheme, which will be responsible for registration and accreditation functions (COAG, 2008m).

The agreement also establishes implementation processes and deadlines, including requirements that:

- the States and Territories use their best endeavours to submit the bill or bills necessary to ensure a national scheme by 1 July 2010, with Queensland as the host jurisdiction for the law establishing the national registration and accreditation system
- New South Wales, Victoria, South Australia, Tasmania, the Australian Capital Territory and the Northern Territory are to use their best endeavours to enact laws that apply the Queensland law by 1 July 2010
- Western Australia is to enact corresponding legislation within the same timeframe which is substantially similar to the Queensland law

- the States and Territories are to repeal existing registration laws with the effect of abolishing current registration boards for the health professions covered by the scheme (COAG, 2008m).

7.3 Progress report and assessment

There are no 2008–09 milestones for deregulation priority 5.

However, the following actions have been taken by governments regarding the 2009–10 milestones to enact legislation, and referencing legislation, by the end of 2009.

On 4 September 2008, Australian health ministers announced that the national registration and accreditation scheme would be implemented through national laws introduced into the Queensland parliament in two stages (Australian Health Workforce Ministerial Council, 2008, p. 1).

The first stage is the *Health Practitioner Regulation (Administrative Arrangements) National Law Act 2008* (Qld), which received assent on 25 November 2008. This law establishes and sets out the roles and powers of:

- the Australian Health Workforce Ministerial Council
- the Australian Health Workforce Advisory Council
- the Australian Health Practitioner Regulation Agency
- the Australian Health Practitioner Regulation Agency Management Committee
- the National Health Practitioner Boards for each of the health professions covered by the law (Office of the Queensland Parliamentary Counsel, 2008a).

All provisions of this Act had commenced by 30 September 2009 except for:

- Part 3—which establishes and provides for the functions, membership, and powers of the Australian Health Workforce Advisory Council
- Schedule 1—which contains the constitution and procedures for the Australian Health Workforce Advisory Council (Office of the Queensland Parliamentary Counsel, 2009b, p. 39).[9]

The second stage is the passing of the law providing the substantive arrangements for a national registration and accreditation scheme. The exposure draft bill for this second law—the Health Practitioner Regulation National Law 2009 (Qld)—was released on 12 June 2009, following an initial public consultation process (Australian Health Workforce Ministerial Council, 2009b).

A second round of public consultation was initiated after the release of the exposure draft bill. The period for submissions on the draft bill ended on 17 July 2009.

[9] This law is exempted from the provisions of the *Acts Interpretation Act 1954* (Qld), which means that the general rule that applies to the commencement of Queensland legislation—that un-commenced provisions that are still not commenced by that time automatically commence one year after the date of assent of the Act—does not apply in this case.

In August 2009, the Senate Community Affairs Legislation Committee (2009) released the *National registration and accreditation scheme for doctors and other health workers* report. The Senate committee's report considered the design of the national registration and accreditation scheme, with specific focus on the exposure draft of the Health Practitioner Regulation National Law bill.

The committee made three recommendations to the Australian Health Workforce Ministerial Council. The first two recommendations relate to proposed amendments to the Health Practitioner Regulation National Law bill and the third recommendation was for the ministerial council to ensure that the national registration and accreditation scheme contains 'sufficient flexibility' for the composition of the different health professions' national boards to 'properly reflect the characteristics and needs of the individual professions' (Senate Community Affairs Legislation Committee, 2009, p. vii).

The COAG Reform Council understands that the Health Practitioner Regulation National Law 2009 (Qld) bill was expected to be introduced into the Queensland parliament in October 2009 (Australian Capital Territory Government, 2009b, p. 10; Commonwealth Government, 2009b, p. 19). The other States and Territories will enact adopting or corresponding legislation following the enactment of the law. The Commonwealth Government (2009b, p. 20) will make consequential amendments to its laws to support the implementation of the national scheme.

7.4 Risk assessment

Possible delays with legislation

The 2009–10 milestones in the implementation plan are for Queensland to enact legislation, all jurisdictions to enact referencing legislation and for the Commonwealth to amend relevant legislation by the end of 2009.

As at 30 September 2009, there was likely to be delay within a number of States and Territories enacting referencing legislation by the end of 2009. The Western Australian (2009b, p. 10) and Northern Territory governments (2009, p. 11) reported that they were unlikely to enact referencing legislation until 2010, and the South Australian Government (2009a, p. 9) reported that it was likely to introduce a referencing bill in November 2009. The Australian Capital Territory Government (2009b) reported that it was likely to introduce its legislation in two phases, with the first phase being introduced in December 2009 and the second phase (containing consequential legislation) in early 2010. The jurisdictions that had identified a delay in achieving these milestones indicated that this was due to the delay in finalising the national law and/or the limited number of parliamentary sitting days that remained in 2009.

There is a risk that a delay in achieving this 2009–10 milestone will hold up progress on the 2010–11 milestone for the scheme to be operational by 1 July 2010. The Western Australian Government (2009b, p. 10) reported its concern that delays enacting referencing legislation will put pressure on transitional arrangements and on establishing an operational scheme.

A genuinely 'national' scheme?

There is potential for the scheme set out in the *Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions* and the exposure draft Health Practitioner Regulation National Law 2009 bill (Qld) to be implemented in a way that retains or creates separate, jurisdiction specific registration processes. This potential lies in the provision in Attachment A, clause 1.25 of the intergovernmental agreement (COAG, 2008m, p. 14) and

in Part 5 of the draft bill which provides for national boards to delegate any functions, besides the power to delegate, to a State or Territory based committee.

There may be circumstances where such delegation is appropriate and therefore the agreements and draft bill need provide for it. However, the aim of this reform is to establish a truly national accreditation and registration system so that it is easy for health professionals to work across borders, without overlapping State and Territory registration and accreditation arrangements.

The council will closely monitor the use of this delegation for any indication that separate State and Territory registration and accreditation requirements or processes are being maintained.

Chapter 8: Trade measurement

Key points

Progress assessment

It is the COAG Reform Council's assessment that the 2008–09 milestones for this reform, including those relating to the previous National Reform Agenda, were completed by 30 September 2009.

8.1 Output and milestones

Table 8.1 reproduces the output and milestones from the implementation plan for deregulation priority 6—national system of trade measurement.

Table 8.1: Trade measurement—output and milestones

Output				
6. National system of trade measurement: The establishment of a national system of trade measurement funded and administered by the Commonwealth.				
Milestones				
2008–09	2009–10	2010–11	2011–12	2012–13
All jurisdictions: Commonwealth to provide the necessary information to enable jurisdictions to agree relevant staffing and resources to be transferred to the Commonwealth by March 2009 Commonwealth: National Measurement Institute (NMI) to commence stakeholder consultation	All jurisdictions: finalise regulations by Aug 2009 Commonwealth: NMI to complete all related transitional arrangements by Apr 2010 All jurisdictions and Commonwealth (through NMI): complete transfer of staff and resources by 30 June 2010 All jurisdictions: complete all	Commonwealth: NMI to establish benchmark for end of year evaluation system performance by Sept 2010		

(including with States and Territories) on trade measurement regulations by Nov–Dec 2008	related transitional arrangements so that Commonwealth scheme is operational by 1 July 2010
Commonwealth: NMI to provide drafting instructions for regulations to the Office of Legislative Drafting and Publishing by Apr 2009	

Source: (COAG, 2009p, p. 4)

Trade measurement is listed at clause 34(a) of the *National Partnership Agreement to Deliver a Seamless National Economy* (COAG, 2009n, pp. 9–10). In effect, this means that this reform must be implemented for a jurisdiction to remain eligible for its full reward payment.

National Reform Agenda milestones[10]

On 13 April 2007, COAG (2007e, p. 3) agreed that the COAG Reform Council would monitor and report annually to COAG on implementation of this reform.

In addition to the milestones specified in the implementation plan, as reproduced above, COAG (2009d, pp. 2–3) agreed to two additional milestones in its response to recommendations in the COAG Reform Council's 2009 *Report to the Council of Australian Governments on Implementation of the National Reform Agenda*.

These milestones are:

- the Commonwealth agrees to provide:
  - formal offers of employment to affected State and Territory employees by July 2009
  - details of the assets required from States and Territories for the operation of the National Trade Measurement System together with a market valuation of those assets by the end of May 2009.

[10] These milestones are not to be considered as part of the COAG Reform Council's advice as to the achievement of milestones for the purposes of the Commonwealth Government's decisions regarding the making of reward payments under Clause 32 of the *National Partnership Agreement to Deliver a Seamless National Economy* (COAG, 2009n, p. 8).

- the States and Territories agree to:
  - provide relevant employment details of staff currently engaged in trade measurement activities to the National Measurement Institute by 1 May 2009
  - provide employment options to affected staff should they not accept the offer of transfer to the National Measurement Institute
  - maintain necessary resourcing, including staffing, funding and specialised equipment to pre-2007 levels until the establishment of the system
  - offer to transfer specialised equipment at no cost to the National Measurement Institute.

8.2 The proposed reform

The reform

The aim of this reform is to ensure that nationally-consistent and equitable trade measurement practices and standards are used for all transactions based on measurement. The reform will be achieved through the establishment of a national system of trade measurement by 1 July 2010, funded and administered by the Commonwealth.

Background

The trade measurement system is aimed at ensuring that trade in goods sold by measurement is accurate, consistent and conforms to the International System of Units. Transactions involving measurement impact all Australians and cover the broad spectrum of the economy, from the sale of consumer goods such as milk and bread to multi-million dollar exchanges of minerals and agricultural produce. An effective system of trade measurement engenders confidence in the measurements used in transactions and assists in maintaining Australia's competitiveness in global markets (National Measurement Institute, 2008d).

The National Measurement Institute[11] (2008c, p. 5) estimates that greater than $400 billion of trade occurs annually in Australia that is based on some form of measurement.

The Australian Constitution gives the Commonwealth Government the power to make laws for trade measurements.[12] However, in the absence of Commonwealth laws regulating trade measurement, responsibility for the trade measurement system has traditionally been shared between the Commonwealth and the States and Territories. The States and Territories have each enacted their own trade measurement legislation and implemented their own compliance programs (National Measurement Institute, 2008c, p. 6).

In 1990, Ministers from each State and Territory, except Western Australia, signed a formal agreement to implement uniform trade measurement legislation (UTML Review Committee, 2001, p. 7). The adoption of uniform legislation by these States and Territories was intended to 'provide a high level of consistency of regulation between jurisdictions' (Tan, 2008, p. 4).

[11] The National Measurement Institute is responsible for national functions in physical, legal, chemical and biological measurement and the administration of the *National Measurement Act 1960* (Cwlth). For more information see: http://www.measurement.gov.au

[12] Australian Constitution s 51(xv).

However, despite the adoption of uniform legislation, the sharing of responsibility for trade measurement between States and Territories resulted in 'inconsistency between the jurisdictions and avoidable additional regulatory costs to business, consumers and government' (National Measurement Institute, 2008c, p. 6).

In 2004, the Ministerial Council for Consumer Affairs agreed to review the national arrangements for trade measurement. A discussion paper released by the review in June 2006 identified multiple ways in which the current trade management system could impede economic activity and create inefficiencies including:

- difficulties in achieving a coordinated approach to decision making leading to divergent policy interpretation and enforcement of some aspects of the legislation
- national retailers may need to consult multiple jurisdictions for approval of new selling methods for particular products
- barriers for licensed certifiers of trade measuring instruments who operate across jurisdictions caused by having to pay different licence fees and comply with different reporting requirements
- State and Territory boundaries creating a barrier to the efficient delivery of services by trade measurement authorities in rural and remote areas
- efforts to harmonise trade measurement systems between Australia and New Zealand being restricted due to legislative and administrative differences within Australia
- difficulties for Australia in entering into national mutual recognition arrangements with other countries on trade measurement matters, potentially raising costs for exporters and importers (Ministerial Council on Consumer Affairs, 2006, p. 4).

The *Final Report – Review of National Arrangements for Administering Trade Measurement in Australia* was published on 30 August 2006 (Tan, 2008, p. 5).

In February 2006, COAG (2006b, p. 8; 2006d, p. 9) identified trade measurement as one of six regulatory 'hot-spots' (where overlapping and inconsistent regulatory regimes impeded economic activity) and asked the Ministerial Council for Consumer Affairs to develop a timeline for the introduction of a national trade measurement system.

The ministerial council subsequently recommended that a trade measurement system administered by the Commonwealth was the:

> 'best option to remove existing structural problems, to rationalise the different regulatory regimes of the States and Territories, and to address the challenges presented by new measurement technologies' (National Measurement Institute, 2009).

On 13 April 2007, COAG (2007e, p. 2) agreed to the establishment of a national system of trade measurement funded and administered by the Commonwealth Government at an estimated cost of $29 million over four years. The Commonwealth subsequently decided that the National Measurement Institute would take responsibility for administering the national system (Ministerial Council on Consumer Affairs, 2007, p. 2).

A transition period of three years was put in place for the transfer of responsibility from the States and Territories to the Commonwealth, with the new system to commence on 1 July 2010 (COAG, 2007a, p. 3).

In its 2007–08 Budget, the Commonwealth (2007a, p. 284) provided $30.1 million over four years to establish a national trade measurement system. The *National Measurement Amendment Act 2008* (Cwlth), which provides a legislative basis for the new national trade measurement system, commenced on 1 July 2009.

8.3 Progress report and assessment

The following actions have been taken by governments regarding the 2008–09 milestones for deregulation priority 6.

Milestone 1: All jurisdictions: Commonwealth to provide the necessary information to enable jurisdictions to agree relevant staffing and resources to be transferred to the Commonwealth by March 2009

Progress Report

On 30 April 2009, in response to the COAG Reform Council's 2009 report, COAG (2009d, pp. 2–3) agreed to specific commitments for the Commonwealth and States and Territories to enable the transfer of staff and resources to occur.

The Commonwealth Government (2009b, p. 21) reported that:

- an asset valuations report was finalised by the National Measurement Institute on 27 February 2009 and provided to all jurisdictions in March 2009
- the National Measurement Institute provided draft job descriptions and position translation information to States and Territories in April 2009.

Progress Assessment

It is the COAG Reform Council's assessment that this milestone was completed within the reporting period.

Milestone 2: Commonwealth: NMI to commence stakeholder consultation (including with States and Territories) on trade measurement regulations by Nov–Dec 2008

Progress Report

The National Measurement Institute (2008a, p. 1; 2008b, p. 2; 2008c, p. 2) released the:

- *Consultation Paper: National Trade Measurement Servicing Licensing* in September 2008—for the purposes of consulting on the transitional arrangements for trade measurement instrument servicing licenses currently held under State and Territory trade measurement regimes until a simplified national licensing system is developed
- *Consultation Paper: National Trade Measurement Public Weighbridge Licensing* in November 2008—for the purposes of consulting on the public weighbridge licensing requirements to be put in place as part of the national trade measurement system

- *Consultation Paper: National Trade Measurement Legislation Proposal to Amend the National Measurement Regulations 1999* (Cwlth) in December 2008—for the purposes of consulting on the scope and content of the national trade measurement regulations.

The period for public comment on the last of these papers closed on 9 February 2009 (National Measurement Institute, 2008a, p. 2).

The Commonwealth Government (2009b, p. 21) reported that it has completed this consultation.

Progress Assessment

It is the COAG Reform Council's assessment that this milestone was completed on time.

Milestone 3: Commonwealth: NMI to provide drafting instructions for regulations to the Office of Legislative Drafting and Publishing by Apr 2009

Progress Report

The Commonwealth Government (2009b, p. 21) reported that the National Measurement Institute provided drafting instructions to the Office of Legislative Drafting and Publishing in April 2009. The National Trade Measurement Regulations 2009 were made by the Governor General on 7 September 2009 (Attorney-General's Department [Cwlth], 2009a, p. 1).

Progress Assessment

It is the COAG Reform Council's assessment that this milestone was completed within the reporting period.

The following actions have been taken by governments regarding the National Reform Agenda milestones agreed by COAG in response to the council's 2009 report.

Milestone 4: Commonwealth: agrees to provide:

- **formal offers of employment to affected State and Territory employees by July 2009**
- **details of the assets required from States and Territories for the operation of the National Trade Measurement System together with a market valuation of those assets by the end of May 2009.**

Progress Report

Offers of employment

The Commonwealth Government (2009b, p. 21) reported that:

- offers were provided to State and Territory trade measurement staff (excluding New South Wales regional staff who have received an invitation to express interest to be made an offer) in early July 2009
- New South Wales regional staff received their formal letters of employment late August 2009 and responses were expected by 25 September 2009.

Asset details

The Commonwealth Government (2009b, p. 21) reported that:

- an asset valuations report was finalised on 27 February 2009 and provided to all jurisdictions in March 2009
- following review by the States and Territories, revised lists of specialised trade measurement assets together with current valuations were provided in June 2009.

Progress Assessment

It is the COAG Reform Council's assessment that this milestone was completed within the reporting period.

Milestone 5: States and Territories: agree to:

- **provide relevant employment details of staff currently engaged in trade measurement activities to the National Measurement Institute by 1 May 2009**
- **provide employment options to affected staff should they not accept the offer of transfer to the National Measurement Institute**
- **maintain necessary resourcing, including staffing, funding and specialised equipment to pre-2007 levels until the establishment of the system**
- **offer to transfer specialised equipment at no cost to the National Measurement Institute**

Progress Report

Employment details

The Commonwealth Government (2009b, p. 21) reported that States and Territories provided employment details of staff engaged in trade measurement in May and June 2009.

The Western Australian Government (2009b, p. 12) reported that issues in relation to continued membership of a defined benefits superannuation scheme are not yet resolved.

Employment options

The New South Wales (2009c), Victorian (2009b, p. 14), Western Australian (2009b, p. 12) and Tasmanian (2009b, p. 12) governments reported that processes for managing displaced staff are in place. The Queensland (2009a, p. 14), South Australian (2009a, p. 11) and the Australian Capital Territory (2009b, p. 13) governments reported that this requirement has been completed. The Northern Territory Government (2009, p. 13) reported that it is likely that all affected staff will transfer to the National Measurement Institute.

Resourcing

All States and Territories have reported that necessary resourcing levels are being maintained. The Commonwealth Government (2009b, p. 22) reported that some jurisdictions had initially raised concerns regarding the maintenance of specialised equipment and that these concerns are currently being resolved.

Specialised equipment

The Commonwealth Government (2009b, p. 22) reported that 'all jurisdictions have agreed to transfer specialised equipment to the National Measurement Institute at no cost'.

Progress Assessment

It is the COAG Reform Council's assessment that this milestone was completed within the reporting period. The council notes, however, that it will be important to ensure that the minor issues yet to be resolved do not delay the commencement of the national system on 1 July 2010.

Table 8.2 provides the council's assessment of progress on the milestones in this reform.

Table 8.2: Trade measurement—progress assessment by milestone

Milestone	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Implementation plan milestones									
1									
2									
3									
National Reform Agenda Milestones[13]									
4									
5									

Table 8.3 provides the council's overall assessment of progress on this reform.

Table 8.3: Trade measurement—overall progress assessment

	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Overall assessment									

[13] As noted above these milestones are not to be considered as part of the COAG Reform Council's advice as to the achievement of milestones for the purposes of the Commonwealth Government's decisions regarding the making of reward payments under Clause 32 of the *National Partnership Agreement to Deliver a Seamless National Economy* (COAG, 2009n, p. 8).

8.4 Risk assessment

Good progress is being made against the 2008–09 milestones leading to the establishment of the national trade measurement system by 1 July 2010.

The Commonwealth Government (2009b, p. 22) has identified the following risks to the commencement of the system:

- parliamentary processes potentially causing delays to the finalisation of regulations by all jurisdictions by August 2009
- the significant transfer of assets, including premises and staff, required from jurisdictions by 30 June 2010.

Based on progress to date, the council has no significant concerns about the ability of governments to have the national trade measurement system established by the deadline of 1 July 2010.

Chapter 9: Rail safety

Key points

Progress assessment

It is the COAG Reform Council's assessment that the milestone for New South Wales, Victoria and South Australia to enact legislation and regulations by the end of 2008 was completed on time. However, the remaining National Reform Agenda milestones were not completed on time.

Risk assessment

The COAG Reform Council considers that:

- the remaining National Reform Agenda milestones require new deadlines—the delay in introducing model legislation remains the key barrier to the completion of these milestones
- progress in introducing the model legislation has been slow and poses a risk to the achievement of the 2009–10 milestone for Queensland, Western Australia, Tasmania and the Northern Territory to enact the model legislation and regulations by the end of 2009.

9.1 Output and milestones

Table 9.1 reproduces the output and milestones in the implementation plan for deregulation priority 7—rail safety regulation.

Table 9.1: Rail safety—output and milestones

Output				
7. Rail Safety Regulation: Rail safety legislation and associated regulation, through enactment of COAG agreed model legislation and regulation.				
Milestones				
2008–09	2009–10	2010–11	2011–12	2012–13
VIC, NSW, SA: enact legislation and regulation by end 2008	TAS, QLD, WA and NT: enact legislation and regulation by end 2009			

Source: (COAG, 2009p, p. 5)

The Australian Capital Territory was removed from the implementation plan following COAG discussion on 2 July 2009 as rail safety in the Australian Capital Territory is soon to be covered by New South Wales laws and regulations (Australian Capital Territory Government, 2009b, p.

15; Commonwealth Government, 2009b, p. 4). Although not required under the implementation plan, the Australian Capital Territory Government (2009a) reported that it will implement the national model safety bill and will include a function that allows the New South Wales regulator to operate in the Australian Capital Territory.

National Reform Agenda milestones[14]

In addition to the implementation plan milestones, there are five outstanding National Reform Agenda milestones assessed in this report. These milestones are:

- all jurisdictions: identification of local variations in legislation and regulations (April 2007)
- all jurisdictions: establish national rail operator accreditation and examine measures for further development of cross-jurisdictional regulation of interstate rail operators (end 2007)
- all jurisdictions: increased coordination between regulatory agencies to reduce inconsistencies between jurisdictions and portfolios (end 2007)
- all jurisdictions: development of national train driver licensing framework (end 2008)
- all jurisdictions: review of rail safety regulatory arrangements (June 2008).

9.2 The proposed reform

The reform

This reform aims to reduce the burden on rail operators of complying with a number of different rail safety regimes within and between jurisdictions. This aim is being pursued through the development of nationally consistent rail safety regulation for implementation by all States and Territories through:

- the model Rail Safety Bill 2006 as agreed on 2 June 2006 by the Australian Transport Council (2006) and amended in December 2007 (National Competition Council, 2009c)
- the model Rail Safety Regulations 2006 agreed by Commonwealth, State and Territory transport ministers in December 2006 (National Competition Council, 2009c)
- the development of national guidelines for rail operators by the National Transport Commission, a task which the COAG Reform Council (2009b, p. 33) assessed as completed in its 2009 *Report to the Council of Australian Governments on Implementation of the National Reform Agenda*.

[14]These milestones are not to be considered as part of the COAG Reform Council's advice as to the achievement of milestones for the purposes of the Commonwealth Government's decisions regarding the making of reward payments under Clause 32 of the *National Partnership Agreement to Deliver a Seamless National Economy* (COAG, 2009n, p. 8).

Background

Rail forms an essential part of Australia's infrastructure system, particularly when freight must be transported in large quantities or over long distances. From 1974 to 1999, rail carried over one third of all domestic freight, with large increases in tonnages of coal and minerals (Productivity Commission, 1999b, p. xx).

Australia's rail network has been transformed significantly over the past 20 years through a series of reforms including:

> corporatisation, privatisation, expanded use of contracting and, for much of the rail network, vertical separation of above- and below-rail operations[15] (Productivity Commission, 2006d, p. 126).

Movement toward a nationally consistent rail safety regulatory regime began with the 1993 report of the Intergovernmental Working Group on Rail Safety, titled *A National Approach to Rail Safety Regulation*. The report, which was endorsed by the Australian Transport Council, noted that there was no Australia-wide approach to rail safety and that the main focus of any national approach should be to offer consistent regulation to interstate operators (Booz Allen & Hamilton, 1999, pp. I-1).

In July 1996, Commonwealth, State and Northern Territory ministers signed the *Intergovernmental Agreement in Relation to National Rail Safety*, which set out:

> guidelines for the establishment of a safety accreditation system for interstate operations and stating that all parties would make legislative provision for accreditation and mutual recognition (Productivity Commission, 1999b, p. 50).

This agreement was followed by the signing of the *Heads of Agreement on Interstate Rail Reform* by Commonwealth and State ministers at the National Rail Summit on 10 September 1997 (Australian Transport Council, 1997). Ministers considered that it was possible to substantially improve the performance of interstate rail and noted that:

> no party involved in interstate rail is satisfied with the service provided by the infrastructure, the arrangements for access to it, and regulation of operations across State borders (Australian Transport Council, 1997).

Despite the considerable progress made since 1991, the inconsistent regulation of rail safety has remained a concern. Where reform has occurred, it has largely been on an individual jurisdiction basis and this has resulted in the 'emergence of a multiplicity of standards and regulatory bodies' (Productivity Commission, 2006d, p. 320). This has added to the regulatory burden faced by rail operators working in multiple jurisdictions.

For example, a submission to the Exports and Infrastructure Taskforce (2005, p. 49) in 2005 noted that operators of inter-state trains must comply with seven rail safety regulators, three transport accident regulators, six rail access regimes, 15 pieces of occupational health and safety legislation and 75 pieces of environmental legislation.

The Exports and Infrastructure Taskforce (2005, p. 49) found that progress in harmonising rail (and road) transport regulation across jurisdictions could be described, at best, as slow. To break

[15] 'Above-rail operations are the freight and passenger services that train operators provide using locomotives, freight wagons, and passenger carriages. Below-rail infrastructure is the fixed physical infrastructure such as rail lines, sleepers, and signalling equipment' (Webb, 2009).

the deadlock, the taskforce (2005, p. 49) believed that a renewed commitment by all parties combined with a reinvigorated agenda was required.

On 3 June 2005, COAG (2005b, p. 3) agreed to reinvigorate the road and rail regulation harmonisation agenda in light of the Exports and Infrastructure Taskforce recommendations.

Also on 3 June 2005, the Australian Transport Council (2005) agreed in-principle to a number of reforms for the development of national model rail safety legislation. It noted that the proposals 'will provide for the first time, the basis for a nationally consistent approach to rail safety regulation across Australia'.

In February 2006, COAG (2006d, pp. 8–9) identified rail safety regulation as one of its priority regulatory 'hot spots', where 'overlapping and inconsistent regulatory regimes are impeding economic activity.'

The Productivity Commission (2006d) examined the issue of rail safety regulation as part of its December 2006 report on *Road and Rail Freight Infrastructure Pricing*. The commission (2006d, p. 322) found that there were efficiency gains that could be achieved from the adoption of a single rail-safety framework. The commission (2006d, p. 344) subsequently recommended that national consistency and coordination of rail regulatory frameworks, including safety, should be expedited by all governments.

As part of the regulation reforms under the National Reform Agenda, COAG (2007e, p. 2) agreed in April 2007 to the implementation of national rail safety legislation and a nationally consistent rail safety regulatory framework. The objective of these reforms is to improve rail safety and efficiency and to enable Australia to efficiently meet the forecast growth in its national freight task.

On 13 April 2007, COAG (2007e, p. 3) referred seven competition and infrastructure reforms—including rail safety regulation—to the COAG Reform Council for monitoring and reporting on implementation. In its first report to COAG on these reforms in March 2008, the COAG Reform Council (2008) found with respect to the rail safety reform stream:

> The COAG commitment to implement national rail safety legislation and a nationally-consistent rail safety regulatory framework by 1 July 2007 has not been met. Only Victoria managed to meet the deadline. Several other jurisdictions have since either passed the required legislation or are in the throes of doing so. Two jurisdictions, Tasmania and the Northern Territory, have yet to introduce legislation, due to competing legislative priorities. As a consequence, the implementation of the national rail operator accreditation arrangements has also been delayed. This highlights another concern of the CRC at the potential for the inability to implement one reform to have a cascading effect of delaying other reforms that are dependent on its implementation.

In its 2009 *Report to the Council of Australian Governments on Implementation of the National Reform Agenda*, the council found that:

> Progress in implementing rail safety reforms remains slow, due largely to further delays in the passage of the model rail safety legislation in a number of jurisdictions. New South Wales, Victoria and South Australia are the only jurisdictions to have passed the model legislation. Many of the other reforms in this area are dependent on the passage of this legislation, and consequently all milestones in this reform stream are stalled (with the exception of the nationally approved guidelines) (COAG Reform Council, 2009b, p. vii).

The council (2009b, p. 36) further noted that the already overdue National Reform Agenda reforms hinged on enactment of the model legislation in all jurisdictions. As a result, the council recommended that COAG agree to new timeframes for these remaining matters.

On 30 April 2009, COAG (2009d) broadly supported the council's recommendations regarding rail safety but noted its concern 'that any revised timeframes do not result in further slippage in implementation of the reforms'.

9.3 Progress report and assessment

The following actions have been taken by governments regarding the 2008–09 milestone for deregulation priority 7.

Milestone 1: VIC, NSW, SA: enact legislation and regulation by end 2008

Progress report

The COAG Reform Council (2009b, p. 32) in its 2009 *Report to the Council of Australian Governments on Implementation of the National Reform Agenda* assessed New South Wales, Victoria and South Australia as having completed this milestone.

New South Wales

The *Rail Safety Act 2008* (NSW) commenced by proclamation on 1 January 2009 (Independent Transport Safety and Reliability Regulator [NSW], 2009).

The Rail Safety (Drug and Alcohol Testing) Regulation 2008, Rail Safety (General) Regulation 2008 and Rail Safety (Offences) Regulation 2008 commenced on 1 January 2009.

Victoria

The *Rail Safety Act 1996* (Vic) came into operation on 1 August 2006. The Act has a number of different commencement dates for its various components. All components of the Act had commenced by 30 June 2008 (Office of the Chief Parliamentary Counsel [Vic], 2009b, p. 1).

The *Rail Safety Regulations 2006* commenced on 1 August 2006 for the most part, with some sections commencing on 1 November 2006 (Office of the Chief Parliamentary Counsel [Vic], 2009b, p. 285).

South Australia

The *Rail Safety Act 2007* (SA) received assent on 8 November 2007 and commenced by proclamation on 29 September 2008 (Office of Parliamentary Counsel [SA], 2008a, p. 105).

The *Rail Safety (Alcohol and Drug Testing) Regulations 2008* (SA) and the *Rail Safety (General) Regulations 2008* (SA) commenced on 29 September 2008.

Progress assessment

It is the COAG Reform Council's assessment that this milestone was completed on time by New South Wales, Victoria and South Australia.

The following actions have been taken by governments regarding the remaining National Reform Agenda milestones.

Milestone 2:

- **all jurisdictions: Identification of local variations in legislation and regulations (April 2007)**
- **all jurisdictions: Establish national rail operator accreditation and examine measures for further development of cross-jurisdictional regulation of interstate rail operators (end 2007)**
- **all jurisdictions: Increased coordination between regulatory agencies to reduce inconsistencies between jurisdictions and portfolios (end 2007)**
- **all jurisdictions: Development of national train driver licensing framework (end 2008)**
- **all jurisdictions: Review of rail safety regulatory arrangements (June 2008)**

Progress report

As noted in the COAG Reform Council's 2009 report to COAG, implementation of the remaining National Reform Agenda milestones is contingent on all jurisdictions having enacted the model law and regulations. Under the *National Partnership Agreement to Deliver a Seamless National Economy* this is required to be done by the end of 2009.

In its 2009 report, the council also recommended the development of new timeframes for these remaining milestones. On 30 April 2009, COAG broadly supported this recommendation but new timeframes have not yet been developed.

That said, the following progress has been made by jurisdictions against the National Reform Agenda milestones.

Identification of local variations

The New South Wales (2009c) and Victorian (2009b, p. 15) governments reported that they have discussed local variations with the National Transport Commission. The South Australian (2009a, p. 12) and the Northern Territory (2009, p. 14) governments reported that they have identified variations in their legislation. The Northern Territory Government had not introduced its legislation.

National rail operator accreditation

The New South Wales Government (2009c) reported that the model legislation includes provisions for the coordination of the determination of applications, and the South Australian Government (2009a, p. 13) similarly reported that rail transport operator accreditation has been achieved through the *Model Rail Safety Act 2007* (SA). The Commonwealth (2009b, p. 24), Victorian (2009b, p. 15), Queensland (2009a, p. 15) and South Australian (2009a, p. 13) governments referred to the progress made toward the development of a national rail safety regulatory system and investigator. The Northern Territory Government (2009, p. 14) reported that through the Rail Safety Regulators Panel, a national approach to the audit of interstate operators and a National Audit plan are in place.

Increased coordination between regulatory agencies

The New South Wales Government (2009c) reported that the National Transport Commission 'addressed the management of interfaces with other portfolios, policy makers and regulatory bodies as part of Phase A of the Review of Institutional Arrangements to support the National Model Rail Safety Legislation'. The New South Wales (2009c) and Victorian (2009b, p. 15) governments reported that memorandums of understanding have been established between relevant regulatory agencies in each jurisdiction respectively. The Queensland Government (2009a, p. 15) reported that a rail working group has been formed to do this work and develop a plan for transition, with the group reporting to COAG in early 2010. The South Australian Government (2009a, p. 13) referred to the development of a national rail safety regulator. The Northern Territory Government (2009, p. 14) referred to the work of the Rail Safety Regulators Panel (see above).

National train driver licensing

The Victorian Government (2009b, p. 15) reported that:

> The Transport and Logistics Industry Skills Council is currently developing a project to produce an agreed set of competencies for train drivers. The Rail Industry Safety Standards Board is also producing a code of practice for the rail industry about "errant" rail safety workers.
>
> [The National Transport Commission] has therefore concluded that initiatives already being undertaken by industry will bring about the improvements in core competencies required and that this is consistent with the COAG directive. If these initiatives are not successful, the case for a national train driver licence would be re-examined in the future.

The governments of New South Wales (2009c) and Queensland (2009a, p. 15) indicated that the National Transport Commission determined not to proceed with this project but rather decided to identify improvements to the existing system.

Review of rail safety regulatory arrangements

The New South Wales Government (2009c) reported that this milestone was completed with the commencement of the *Rail Safety Act 2008* (NSW) on 1 January 2009.

Progress Assessment

It is the COAG Reform Council's assessment that these milestones were not completed during the reporting period.

As noted above, COAG agreed on 30 April 2009 to set new deadlines for these milestones to follow passage of the legislation by all jurisdictions. These deadlines should be set soon given that the legislation is to be in place in all jurisdictions by the end of 2009 under the implementation plan. It would be best if the deadlines, once agreed, are included in the next edition of the implementation plan.

Identification of local variations

While some progress has been made on identifying local variations, this has been on a jurisdiction by jurisdiction basis and completion of this milestone is largely dependent on the remaining jurisdictions passing the model legislation.

National rail operator

Given the different interpretations of this milestone by jurisdictions, as noted above, it appears that it has not been completed and its final output remains unclear.

Increased coordination between regulatory agencies

The reporting by jurisdictions has been inconsistent and the nature of the increased coordination is unclear.

National train driver licensing

The status of the national train driver licensing proposal is unclear, with some jurisdictions reporting that the proposal will not be proceeding and other jurisdictions indicating that work is still ongoing.

Review of rail safety regulatory arrangements

Under the National Reform Agenda, this milestone requires a detailed review of industry safety regulation framework, including implementation of nationally consistent accreditation, regulatory oversight and training arrangements .The introduction of the model rail safety legislation does not satisfy this requirement. In the absence of evidence that a review was undertaken, it is the council's assessment that this milestone was not completed within the reporting period.

Table 9.2 provides the council's assessment of progress on the milestones in this reform.

Table 9.2: Rail safety—progress assessment by milestone

Milestone	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Implementation plan milestones									
1									
National Reform Agenda milestones[16]									
2									

Table 9.3 provides the council's overall assessment of progress on this reform.

Table 9.3: Rail safety—overall progress assessment

	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Overall assessment									

9.4 Risk assessment

Lack of new deadlines

The key risk to this reform is the lack of new deadlines for the remaining National Reform Agenda milestones to be completed.

[16] As noted above these milestones are not to be considered as part of the COAG Reform Council's advice as to the achievement of milestones for the purposes of the Commonwealth Government's decisions regarding the making of reward payments under Clause 32 of the *National Partnership Agreement to Deliver a Seamless National Economy* (COAG, 2009n, p. 8).

A new set of deadlines should be in place at the end of 2009 to coincide with the 2009–10 requirement that all jurisdictions are to have the model law and regulations in place—the key barrier to the completion of these remaining reforms. These new deadlines could then be incorporated in the next edition of the implementation plan.

Progress in introducing the model legislation has been slow

Given the timing of the 2009–10 milestone, substantial progress against passage of the legislation by the remaining jurisdictions should have been made by 30 September 2009. The following progress has occurred:

- In Queensland, the Transport (Rail Safety) Bill 2008 was introduced into parliament on 12 February 2008 but lapsed on the prorogation of parliament for the general election—a further bill may be introduced by early 2010 (Queensland Government, 2009b, p. 1).

- In Western Australia, the Rail Safety Bill (2009) was released for public consultation, closing on 19 June 2009 (Department of Transport [WA], 2009a). The Western Australia Government (2009b, p. 14) is 'working towards enacting its rail safety legislation and regulation by the end of 2009'and the Western Australian Rail Safety Bill has been accorded a high legislative priority.

- In Tasmania, the legislation is 'on track' to be implemented by the end of 2009 (Tasmanian Government, 2009b, p. 15). The new act is to commence on 1 January 2010 (Department of Energy Infrastructure and Resources [Tas], 2009). The Tasmanian Government (2009b, p. 15) has reported that new regulations have been delayed pending implementation of the model rail safety bill in all jurisdictions.

- In the Northern Territory, legislation is scheduled to be introduced in the October 2009 Legislative Assembly sittings and approval for priority for drafting of associated regulations is being sought (Northern Territory Government, 2009, p. 15). The Northern Territory Government (2009, p. 15) has reported that 'limitations on resource capacity' may pose a risk to the achievement of the 2009–10 milestone.

The Commonwealth Government (2009b, p. 25) has identified parliamentary processes in the jurisdictions still to pass the model legislation, and variations to the model legislation, as risks to the implementation of the reform.

The council is concerned that slow progress to date in introducing the legislation poses a risk to the achievement of the 2009–10 milestone, particularly as some jurisdictions have already signalled that resource limitations may impact upon their ability to implement the required legislation and regulations.

National rail safety regulator remained uncertain

As the council (2009b, p. 36) has previously noted, the national rail safety regulator proposal remained uncertain and, in any case, a long-term reform. The remaining National Reform Agenda reforms are important and are consistent with the national rail safety regulator proposal and so should continue to be implemented. The council reiterates its recommendation that new timeframes for these milestones be agreed.

Chapter 10: Consumer law

Key points

Progress assessment

It is the COAG Reform Council's assessment that the milestones for an intergovernmental agreement on the national consumer policy framework and the establishment of a working group to arrange development of the Australian Consumer Law were completed on time.

10.1 Output and milestones

Table 10.1 reproduces the output and milestones in the implementation plan for deregulation priority 8—consumer policy framework.

Table 10.1: Consumer law—output and milestones

Output				
8. Consumer policy framework: A new national consumer policy framework, which includes a national generic consumer law (the Australian Consumer Law (ACL) which applies in all Australian jurisdictions), enhanced consumer law enforcement and more efficient consumer policy development and decision-making processes.				
Milestones				
2008–09	2009–10	2010–11	2011–12	2012–13
All jurisdictions: establish senior officials working group in Nov 2008 to arrange development of the ACL	Commonwealth: Commence drafting of the ACL, including consultation with States and Territories by end 2009	Commonwealth: enact principal legislation for the ACL, including agreed provisions on product safety (see item 9) by end 2010		
All jurisdictions: agree IGA on the national policy framework (incorporating the national product safety framework – see item 9) by end June 2009	Commonwealth: undertake public consultation on final draft of the ACL and administrative arrangements Apr–Jun 2010	All jurisdictions: enact application Acts for the ACL, including agreed provisions on product safety (see item 9) by end 2010		

Commonwealth:	All jurisdictions:
complete RIS for the ACL by June 2010	commence the ACL by end 2010

Source: (COAG, 2009p, p. 5)

The original implementation plan agreed by COAG on 29 November 2008 had a 2010–11 milestone for the completion of a regulatory impact statement for the Australian Consumer Law by June 2010 (COAG, 2009o, p. 5).

The revised implementation plan agreed by COAG on 2 July 2009, as reproduced above, includes this milestone in the 2009–10 reporting period with the same deadline of June 2010 (COAG, 2009p, p. 5).

Consumer policy framework is listed at clause 34(a) of the *National Partnership Agreement to Deliver a Seamless National Economy* (COAG, 2009n, pp. 9–10). In effect, this means that this reform must be implemented for a jurisdiction to remain eligible for its full reward payment.

10.2 The proposed reform

The reform

The aim of this reform is to create a national consumer policy regime for consumers and a single generic national consumer law—the Australian Consumer Law—for business. The reform will also provide stronger enforcement powers for Australia's consumer law regulators and more efficient, national, consumer policy development and decision-making processes.

The new consumer policy regime will also include a new national product safety regime, which is the subject of a separate reform stream under the *National Partnership Agreement to Deliver a Seamless National Economy,* dealt with in Chapter 11 of this report.

On 2 July 2009, COAG signed the *Intergovernmental Agreement for the Australian Consumer Law* to give effect to the implementation plan for this reform. The agreement's objective is:

> to improve consumer wellbeing through consumer empowerment and protection, to foster effective competition and to enable the confident participation of consumers in markets in which both consumers and suppliers trade fairly (COAG, 2009k, p. 3).

Background

Australia's current consumer policy framework is based on shared responsibility between the Commonwealth and State and Territory governments and consists of policy-making, regulatory and non-regulatory activities (Costello, 2006). In practice, the current regimes involve a combination of self-regulatory, co-regulatory, regulatory and enforcement approaches aimed at assisting consumers to meet the challenges they face in the market for consumer goods and services (Treasury [Cwlth], 2009a, p. 3).

The principal legislative provisions within the framework are those contained in Parts IVA, V, VA and VC of the *Trade Practices Act 1974* (Cwlth) and equivalent provisions in State and Territory fair trading laws. There is also a range of other industry-specific legislation,

administered by the Australian Competition and Consumer Commission or State and Territory fair trading agencies (Productivity Commission, 2008d, p. 81).

National level policy in the consumer and fair trading space is primarily driven by the Ministerial Council on Consumer Affairs and its supporting bodies. Its membership consists of the Commonwealth, State and Territory governments, and the New Zealand Government (Costello, 2006, p. 2).

The former Commonwealth Treasurer, the Hon Peter Costello MP, announced on 11 December 2006 that the Productivity Commission would undertake an inquiry into Australia's consumer policy framework and released its terms of reference (Costello, 2006). The Productivity Commission was asked to examine:

- ways to improve the consumer policy framework to assist and empower consumers, including those who are disadvantaged or vulnerable, to meet the information and other challenges posed by an increasing variety of more complex products and transaction methods
- any barriers to, and ways to improve, the harmonisation and coordination of consumer policy and its development and administration across jurisdictions in Australia
- any areas of consumer regulation that are unlikely to provide net benefits to Australia and which could be revised or repealed
- the scope for avoiding regulatory duplication and inconsistency by reducing reliance on industry-specific consumer regulation and making greater use of general consumer regulation
- the extent to which more effective use could be made of self-regulation, co-regulation, principles-based regulation, consumer education and consumer information to resolve consumer issues
- ways in which the consumer policy framework may be improved to facilitate greater economic integration between Australia and New Zealand and less restricted international trade (Costello, 2006).

On 30 April 2008, the Productivity Commission's *Review of Australia's Consumer Policy Framework* report was released, which recommended:

- creating a single national generic consumer law, based on the *Trade Practices Act 1974* (Cwlth), to apply in all States and Territories
- identifying unnecessary or costly consumer regulation that only applies in a few States and Territories, or to one industry, and either removing it or, if justified, introducing nationally consistent rules

- transferring regulation of credit providers and finance brokers to the Commonwealth Government, with the Australian Securities and Investments Commission as the regulator[17]
- introducing provisions to deal with unfair contract terms in consumer contracts in the new national laws
- taking a national approach to product safety laws and enforcement
- new redress and enforcement powers for consumer regulators, including provision for:
  - civil pecuniary penalties (including recovery of profits from an unlawful activity)
  - banning orders
  - substantiation notices for questionable claims made to consumers
  - infringement notices for minor breaches of the law (Productivity Commission, 2008d, p. 12).

On 2 October 2008, COAG (2008j, p. 2) agreed to a new consumer policy framework—with a single generic consumer law based on the *Trade Practices Act 1974 (Cwlth)*—drawing on the Productivity Commission's recommendations and best practice in State and Territory consumer laws.

10.3 Progress report and assessment

The following actions have been taken by governments regarding the 2008–09 milestones for deregulation priority 8.

Milestone 1: All jurisdictions: Establish senior officials working group in Nov 2008 to arrange development of the ACL

Progress report

The Australian Consumer Law Steering Group was established by the Standing Committee of Officials on Consumer Affairs in November 2008 to develop a generic consumer law (Commonwealth Government, 2009b, p. 27; New South Wales Government, 2009c). Based on this work, a discussion paper on the new consumer law was released by the then Assistant Treasurer, the Hon Chris Bowen MP, on 17 February 2009 for comment by 17 March 2009 (Treasury [Cwlth], 2009a). On 8 May 2009, the Ministerial Council on Consumer Affairs (2009) noted the work of the Standing Committee of Officials on Consumer Affairs in developing the Australian consumer law.

Progress assessment

It is the COAG Reform Council's assessment that this milestone was completed on time.

[17] This is one of the subjects of the consumer credit reforms under the *National Partnership Agreement for a Seamless National Economy,* deregulation priorities 11, 12, 13 and 27 (see chapter 13).

Milestone 2: All jurisdictions: Agree IGA on the national policy framework (incorporating the national product safety framework – see item 9) by end June 2009

Progress report

On 8 May 2009, the Ministerial Council on Consumer Affairs endorsed the text of an intergovernmental agreement for the Australian consumer law. The ministers agreed that the law would introduce a single regime of national consumer protections and provide a single law to assist the development of a seamless national economy. Ministers also noted that consumer law regulators would be given new powers to enforce consumer laws in a nationally consistent way (Ministerial Council on Consumer Affairs, 2009).

The *Intergovernmental Agreement for the Australian Consumer Law* was made by COAG on 2 July 2009. The agreement sets out the contents and means of implementation of the Australian Consumer Law, processes for its alteration, and administrative and enforcement arrangements under the Law (including the respective responsibilities of the Australian Competition and Consumer Commission, Australian Securities and Investments Commission and State and Territory offices of fair trading). COAG also agreed to an evaluation of the proposed intergovernmental agreement for the Australian consumer law, twelve months after it comes into operation (Commonwealth Government, 2009b, p. 28). The agreement also incorporates the new national product safety framework (COAG, 2009k).

Progress assessment

It is the COAG Reform Council's assessment that this milestone was completed on time.

The council's preliminary view is that the agreed objective of an Australian Consumer Law and its six supporting operational objectives are consistent with the intergovernmental agreement (COAG, 2009k, p. 3) and the recommendations of the Productivity Commission (2008d, p. 65).

Table 10.2 provides the council's assessment of progress on the milestones in this reform.

Table 10.2: Consumer law—progress assessment by milestone

Milestone	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
1									
2									

Table 10.3 provides the council's overall assessment of progress on this reform.

Table 10.3: Consumer law—overall progress assessment

	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Overall assessment									

10.4 Risk assessment

Implementation of this reform is proceeding smoothly and the council has not identified any significant risks to progress on future milestones or to the successful completion of the reform.

As at 30 September 2009, it seems likely that the 2009–10 milestones will be met. There should be sufficient time to: commence drafting the national law; consult with the States and Territories by the end of 2009; and undertake public consultation on a final draft of the national law and administrative arrangements by June 2010.

The first of two bills to be introduced in the Commonwealth Parliament to implement the Australian Consumer Law—the Trade Practices Amendment (Australian Consumer Law) Bill 2009—was introduced into the House of Representatives on 24 June 2009. It was referred to the Senate Economics Legislation Committee on 25 June 2009 and the committee released its report on 7 September 2009 (Parliament of Australia, 2009i). A second Bill is required and is expected to be introduced in early 2010.

The committee recommended that the Senate pass the bill and recommended that the Australian Competition and Consumer Commission and the Australian Securities and Investments Commission issue guidelines to accompany the bill (Senate Economics Legislation Committee, 2009b, pp. 67–72).

However, the committee also noted a risk to the timely implementation of the reform, citing submissions which expressed concern over the proposed start date for the unfair contracts terms provisions (Senate Economics Legislation Committee, 2009b, p. 69). Submissions to the committee also expressed some concern over the treatment of unfair contract terms provisions, including in regard to the effect of this treatment on certainty for businesses that use these standard form contracts, the costs involved in the enforcement of contract terms, and the treatment of the onus of proof (Senate Economics Legislation Committee, 2009b, p. 16).

The committee reported a mixed reaction to the bill's omission of business-to-business contracts from the unfair contract terms provisions (Senate Economics Legislation Committee, 2009b, p. 27). The committee's view was that these concerns are overstated (Senate Economics Legislation Committee, 2009b, p. 67).

Chapter 11: Product safety

Key points

Progress assessment

It is the COAG Reform Council's assessment that:

- an intergovernmental agreement on product safety was completed on time
- the milestone for the development of drafting instructions for the Australian Consumer Law was only partially completed within the reporting period, on the basis that they were not agreed by the ministerial council by 30 September 2009.

Risk assessment

The COAG Reform Council considers that the risks identified in chapter 10 on the consumer law framework are applicable to product safety as the reforms are travelling in tandem.

11.1 Output and milestones

Table 11.1 reproduces the output and milestones in the implementation plan for deregulation priority 9—product safety regime.

Table 11.1: Product safety—output and milestones

Output				
9. Product safety regime: A consistent national product safety regime				
Milestones				
2008–09	2009–10	2010–11	2011–12	2012–13
All jurisdictions: develop IGA text relevant to product safety and application legislation provisions for consideration by Ministerial Council on Consumer Affairs (MCCA) by June 2009		Commonwealth: enact principal legislation for the ACL (see item 8), including agreed provisions on product safety by end 2010		
		All jurisdictions: introduce application Acts (see item 8), which include agreed		
All jurisdictions:				

agree to IGA text (see item 8), including text relating to product safety by end June 2009 Commonwealth: develop drafting instructions for the ACL for consideration by MCCA by first half of 2009	provisions on product safety by end 2010 All jurisdictions: commence enacted product safety provisions by end 2010

Source: (COAG, 2009p, p. 6)

Product safety regulation is listed at clause 34(a) of the *National Partnership Agreement to Deliver a Seamless National Economy* (COAG, 2009n, pp. 9–10). In effect, this means that this reform must be implemented for a jurisdiction to remain eligible for its full reward payment.

11.2 The proposed reform

The reform

The aim of this reform is to complement the new consumer policy framework with a national product safety regime, covering safety standards, product bans and withdrawals, and enforcement. The consumer policy framework is the subject of a separate reform stream under the *National Partnership Agreement to Deliver a Seamless National Economy* and chapter 10 of this report.

Background

The background to this reform is substantially covered by Chapter 10 for the national consumer policy framework.

Of specific relevance to this reform, the Productivity Commission released its *Review of the Australian Consumer Product Safety System* on 16 January 2006. The review found significant scope to improve the efficiency, effectiveness and responsiveness of regulation of product safety in Australia. The commission's key recommendations were:

- to have one national law—the *Trade Practices Act 1974* (Cwlth)—and one national regulator—the Australian Competition and Consumer Commission—based on a referral of power from the States and Territories
- to require that permanent product bans and mandatory safety standards should only be made and adopted on a national basis
- a range of legal and administrative reforms, including reviewing product recall guidelines

- a number of recommendations to improve hazard identification, risk assessment and the provision of information to consumers and businesses (Productivity Commission, 2006c, pp. xli–xlix).

On 23 May 2008, the Ministerial Council on Consumer Affairs (2008, p. 2) agreed to reform product safety arrangements so that:

- the Commonwealth Government will assume responsibility for permanent product safety bans and mandatory safety standards
- the States and Territories will retain the ability to issue interim product safety bans for 60 days, with the capacity for two extensions of the interim bans of 30 days each (the second extension is to be granted at the discretion of the responsible Commonwealth minister)
- the Australian Competition and Consumer Commission and State and Territory fair trading offices will share product safety enforcement responsibilities
- a jurisdiction may submit a request for a permanent product safety ban to the Australian Competition and Consumer Commission, which will be required to communicate its assessment of such a request to the Commonwealth minister and the ministerial council.

11.3 Progress report and assessment

The following actions have been taken by governments regarding the 2008–09 milestones for deregulation priority 9.

Milestone 1: All jurisdictions: develop IGA text relevant to product safety and application legislation provisions for consideration by Ministerial Council on Consumer Affairs (MCCA) by June 2009

Progress report

As noted in Chapter 10, on 8 May 2009, the Ministerial Council on Consumer Affairs (2009) agreed to the text of an intergovernmental agreement for an Australian consumer law, including specific details of a national product safety regime, for recommendation to COAG.

Progress assessment

It is the COAG Reform Council's assessment that this milestone was completed on time.

Milestone 2: All jurisdictions: agree to IGA text (see item 8), including text relating to product safety by end June 2009

Progress report

As noted in Chapter 10, the *Intergovernmental Agreement for the Australian Consumer Law* was made by COAG on 2 July 2009. The agreement sets out the contents and means of implementation of the Australian Consumer Law, including specific details on the operation of a new national product safety framework (COAG, 2009k).

Progress assessment

It is the COAG Reform Council's assessment that this milestone was completed on time.

Milestone 3: Commonwealth: develop drafting instructions for the ACL for consideration by MCCA by first half of 2009

Progress report

The Commonwealth Government (2009b, p. 29; 2009d, p. 10) reported that drafting instructions have been agreed at official level and that the Ministerial Council on Consumer Affairs considered progress and high level policy directions forming the basis of the legislation on 8 May 2009. It also reported that detailed drafting instructions were agreed by officials and provided to the Office of Parliamentary Counsel in March and July 2009 (Commonwealth Government, 2009d, p. 10).

On 8 May 2009, the Ministerial Council on Consumer Affairs (2009) noted that:

> the preparation of legislation to introduce the new national scheme is well advanced and it is anticipated that legislation will be ready for introduction into the Australian Parliament by early 2010.

However, the Victorian (2009b, p. 19), Queensland (2009a, p. 18) and Western Australian (2009b, p. 16) governments reported that the drafting instructions had not been agreed by the ministerial council. This was expected to occur by the end of 2009 (Victorian Government, 2009b, p. 19; Western Australian Government, 2009b, p. 16).

Progress assessment

It is the COAG Reform Council's assessment that this milestone was only partially completed within the reporting period. However, this is not a significant risk to the achievement of the output for this reform given reports from jurisdictions that the drafting instructions were close to finalisation and that there remained a significant period of time—until the end of 2010—for the Commonwealth to enact the legislation under the implementation plan milestones.

Table 11.2 provides the council's assessment of progress on the milestones in this reform.

Table 11.2: Product safety—progress assessment by milestone

Milestone	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
1									
2									
3									

Table 11.3 provides the council's overall assessment of progress on this reform. The overall assessment takes into account the fact that two substantive milestones were completed on time and that the partial completion of the third milestone should not affect overall progress of the reform.

Table 11.3: Product safety—overall progress assessment

	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Overall assessment									

11.4 Risk assessment

This reform travels in tandem with the consumer policy framework—the subject of Chapter 10—and so the risks identified in Chapter 10 may also impact on this reform. As with the consumer policy framework, implementation of this reform is proceeding smoothly and the council has not identified any significant risks to progress on future milestones or to the successful completion of the reform.

The Victorian Government (2009b, p. 17) noted that differences between the new Australian Consumer Law and the *Trade Practices Act 1974* (Cwlth) may delay final agreement on the content of the new law, and that this was being managed by Commonwealth, State and Territory governments through the Australian Consumer Law Steering Committee.

Chapter 12: Trustee corporations

Key points

Progress assessment

It is the COAG Reform Council's assessment that the three milestones for this reform were completed within the reporting period.

Risk assessment

There is a risk that some jurisdictions will not meet the 2009–10 milestone to complete all related transitional arrangements and enact repealing legislation by mid-late 2009.

12.1 Output and milestones

Table 12.1 reproduces the output and milestones from the implementation plan for deregulation priority 10—national regulation of trustee corporations.

Table 12.1: Trustee corporations—output and milestones

Output
10. National regulation of trustee corporations: The implementation of a national regulation for the licensing and supervision of trustee corporations to enhance the effectiveness of supervision and reduce the regulatory burden on business.

Milestones				
2008–09	2009–10	2010–11	2011–12	2012–13
Commonwealth: develop national framework for regulation of trustee corporations by Apr 2009	All jurisdictions: complete all related transitional arrangements and enact repealing legislation by mid-late 2009			
Commonwealth: prepare drafting instructions for national trustee corporations legislation by early 2009	All jurisdictions: full implementation of national regulation by the Commonwealth from late 2009, including any further necessary transitional arrangements from			
Commonwealth: introduce				

legislation by May 2009	mid 2009

Source: (COAG, 2009p, pp. 6–7)

Regulation of trustee companies is listed at clause 34(a) of the *National Partnership Agreement to Deliver a Seamless National Economy* (COAG, 2009n, pp. 9–10). In effect, this means that this reform must be implemented for a jurisdiction to remain eligible for its full reward payment.

12.2 The proposed reform

The reform

The aim of this reform is to enhance the effectiveness of supervision of trustee companies and reduce the regulatory burden on those businesses. The reform is to be achieved through a single, national system for the licensing and supervision of trustee corporations administered by the Australian Securities and Investments Commission.

A 'trustee' administers financial assets on behalf of another person through a 'trust', which is the legal instrument that sets out the beneficiaries of the assets and how the assets are to be administered. A 'trustee corporation' is a trustee that is a company rather than a natural person. Such companies are licensed under State and Territory government trustee company laws for the purpose of administering personal trustee and estate administration services (Treasury [Cwlth], 2008, p. 15).

Each State and Territory maintains legislation for the licensing and regulation of trustee companies. A trustee company is required to be licensed in each State and Territory in which they operate. This reform will replace State and Territory laws with a national law covering:

- the authorisation and licensing of trustee companies
- fees and disclosure obligations to regulators
- publishing and provision of company accounts to regulators
- duties of officers or employees including their voting powers
- procedures for the disposal of assets and liabilities.

The national law will define traditional[18] trustee company services as financial services under Chapter 7 of the *Corporations Act 2001* (Cwlth) meaning that trustee companies will be required to hold an Australian financial services licence. A national consumer protection and disclosure regime will also be set up under the *Corporations Act 2001* (Cwlth) and the *Australian Securities and Investments Commission Act 2001* (Cwlth) (Bowen, 2009d).

[18] Traditional activities are generally known by the industry as the part of a business dealing with personal trusts and the provision of estate administration services. The clients of trustee corporations engaged in traditional activities include testators and grantors as well as the beneficiaries of the funds held on trust (Treasury [Cwlth], 2008).

One effect of the changes will be that trustee companies will be required to introduce internal and external dispute resolution mechanisms and fees will have to be fully disclosed to the public on the internet. The fees that trustee companies may charge certain clients will also be regulated (Bowen, 2009d).

Background

More than 100 years ago, trustee company laws were introduced to permit corporations to enter the market to provide an alternative to trustees who were natural persons and alleviate a shortage of trustees. Prior to passage of these laws, only a natural person could undertake the role of trustee when acting as an executor or administrator appointed in a will (Treasury [Cwlth], 2008, p. 16).

The market for personal trust and estate administration services has changed significantly since trustee company laws were originally introduced. Trustee corporations have diversified their business and now provide a range of financial services, including acting as a trustee for superannuation funds and issuers of debentures. There are approximately 11 licensed trustee corporations in Australia with over $450 billion in assets under management (Treasury [Cwlth], 2008, p. 1 & 18).

Around the same time that laws for trustee corporations were originally made, government controlled public trustees were created and there is now a public trustee operating in each jurisdiction (Commonwealth Treasury, 2008, p. 16).

In August 1994, the Standing Committee of Attorneys-General issued a discussion paper on uniform trustee company legislation, which favoured prudential regulation of trustees (Treasury [Cwlth], 2009g, p. 8).

In March 1997, the Financial System Inquiry (Wallis Inquiry) recommended uniform regulation of trustee companies. However, the Commonwealth and the States and Territories subsequently agreed that the Commonwealth would not assume responsibility for trustee companies when it assumed responsibility for regulating financial institutions (Treasury [Cwlth], 2009g, p. 8).

In 2001, the Standing Committee of Attorneys-General released a Model Trustee Corporations Bill, which was intended to form the basis of a uniform scheme by being enacted in each of the States. A discussion paper was released with the bill. The bill did not proceed to become law (Treasury [Cwlth], 2009g, p. 8).

In July 2007, the Standing Committee of Attorneys-General agreed to form a working group to develop nationally consistent regulation of trustee corporations, either through a national scheme or mutual recognition, and to report back at its next meeting with a regulation impact statement detailing options for reform (Treasury [Cwlth], 2009g, p. 8).

On 26 March 2008, COAG (2008h, p. 1) agreed that the Commonwealth would assume responsibility for the regulation of trustee corporations. This would require the passage of Commonwealth legislation and the repeal of State and Territory trustee company laws.

A *Financial Services and Credit Reform* Green Paper was released by the Commonwealth Treasury (2008) in June 2008 for consultation on reform of a range of financial services, including mortgage broking, margin lending, non-deposit lending institutions and other consumer credit. These matters are the subject of deregulation priorities 11, 12, 13 and 27 respectively, which are covered in Chapter 13 of this report.

The Green Paper considered two options for Commonwealth regulation of trustee corporations:

- a consumer protection approach: focused on clearly defined licensing standards with controls and enforcement powers for the Australian Securities and Investments Commission
- a stricter, and more interventionist, prudential regulation approach: focused on specific requirements for the management of trustee corporations, such as capital requirements and adequacy, risk management systems and suitability requirements for senior officers and directors of the companies, regulated by the Australian Prudential Regulation Authority (Treasury [Cwlth], 2008, pp. 23–24).

On 2 October 2008, COAG (2008j, p. 2) agreed a two-phased approach to reform of financial services and consumer credit, with the phase one comprising the transfer of responsibility to the Commonwealth for trustee corporations and key credit regulation in the first half of 2009. Phase two will cover the remaining areas of consumer credit including those applying to credit cards, store credit, personal loans and investment and small business lending and was to be completed in the first half of 2010.

12.3 Progress report and assessment

The following actions have been taken by governments regarding the 2008–09 milestones for deregulation priority 10.

Milestone 1: Commonwealth: Develop national framework for regulation of trustee corporations by Apr 2009

Progress report

The June 2008 Commonwealth Treasury (2008, pp. 23–24) discussion paper *Financial Services and Credit Reform: Improving, Simplifying and Standardising Financial Services and Credit Regulation* canvassed the options of prudential regulation of trustee corporations or consumer-focused regulation by the Australian Securities and Investment Commission. On 7 May 2009, the Minister for Superannuation and Corporate Law, Senator the Hon Nick Sherry, released the Corporations Legislation Amendment (Financial Services Modernisation) Bill 2009 (Treasury [Cwlth], 2009b).

This bill, which will bring about Commonwealth regulation of trustee companies, takes a consumer-protection approach to trustee regulation. In releasing the bill, Senator Sherry stated that:

> The new regime, which is focused on entity-level regulation of trustee companies' traditional services, will provide authority under Commonwealth law for trustee companies to perform these traditional functions, deem such services to be "financial services" and require them to hold an Australian Financial Services Licence when selling such services (Sherry, 2009a).

Progress assessment

It is the COAG Reform Council's assessment that this milestone was completed late but within the reporting period.

This assessment is made on the basis that the exposure draft release of the Corporations Legislation Amendment (Financial Services Modernisation) Bill 2009 in May 2009 represents the earliest evidence of a decision on the framework for regulation of trustee corporations. This

is consistent with the Commonwealth Government's (2009b, p. 31) report to the council that the framework was finalised in May 2009.

Milestone 2: Commonwealth: Prepare drafting instructions for national trustee corporations legislation by early 2009

Progress report

The Commonwealth Government (2009b, p. 31) reported that drafting instructions for the national trustee legislation were developed from 4 March 2009 and the exposure draft bill was released on 6 May 2009. As noted below, the legislation for the national regulation of trustee companies was introduced into the Commonwealth Parliament on 25 June 2009 (Bowen, 2009d).

Progress assessment

It is the COAG Reform Council's assessment that this milestone was completed within the reporting period.

Milestone 3: Commonwealth: Introduce legislation by May 2009

Progress report

The Corporations Legislation Amendment (Financial Services Modernisation) Bill 2009 was introduced into the House of Representatives and referred to the Senate Economics Legislation Committee on 25 June 2009 (Bowen, 2009d). The bill passed the House of Representatives on 15 September 2009 (Parliament of Australia, 2009a).

The Senate Economics Legislation Committee (2009a, p. 46) found that there is a considerable regulatory burden on trustee corporations as a result of inconsistent authorisation and reporting requirements across different jurisdictions. The committee (2009a, p. 46) also noted concerns from the Trustee Corporations Association of Australia about how the new regime would work in practice and the likelihood of any efficiency gain.

The committee (2009a, p. 55) recommended that the Corporations Legislation Amendment (Financial Services Modernisation) Bill 2009 be passed. The Bill had not passed the Senate at 30 September 2009 (Parliament of Australia, 2009a).

Progress assessment

It is the COAG Reform Council's assessment that this milestone was completed late but within the reporting period.

Table 12.2 provides the council's assessment of jurisdictions' progress against the milestones for this reform.

Table 12.2: Trustee corporations—progress assessment by milestone

Milestone	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
1									
2									
3									

Table 12.3 provides the council's overall assessment of progress on this reform.

Table 12.3: Trustee corporations—overall progress assessment

	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Overall assessment									

12.4 Risk assessment

Possible legislative delays

Implementation of this reform is proceeding smoothly, albeit slightly behind schedule with the introduction of legislation into the Commonwealth parliament coming one month later than required under the implementation plan. Given that the full implementation of this reform is required by the end of 2009, there is, as at 30 September 2009, the potential for this minor delay to affect the reform's timely completion.

A number of jurisdictions have reported that they expect delays in meeting the 2009–10 milestone to 'complete all related transitional arrangements and enact repealing legislation by mid-late 2009' (Queensland Government, 2009a, p. 19; South Australian Government, 2009a, p. 16; Tasmanian Government, 2009b, p. 19). The South Australian Government (2009a) reported that the timing of its general election in March 2010 may disrupt its parliamentary schedule for achieving this milestone. The council notes that there are also general elections scheduled in 2010 in Victoria (November) and Tasmania (March)[19] (Bartlett, 2009; Lundie, 2009).

In addition, the South Australian Government (2009a) reported that it understands that there are a number of issues that need to be resolved by the Commonwealth Government before its law is finalised, including the application of Commonwealth legislation to trusts and common funds, the jurisdiction of State and Territory courts to review fees and other transitional matters. The Queensland Government (2009b, p. 2) reported that the Commonwealth is still finalising the detail of its legislative package. The South Australian Government (2009a) reported that it cannot finalise its transitional arrangements until these Commonwealth issues are resolved. The Queensland Government (2009b, p. 2) reported that the delay in finalising the regulations has had 'implications for the drafting of State consequential amendments'.

The Commonwealth Government (2009b, p. 31) also raised the risk of jurisdictions not enacting relevant legislation. The Commonwealth Government (2009c, p. 10) reported that because of likely delays, 'COAG's approval will be sought to change the deadline for implementation by all jurisdictions to 1 May 2010.'

[19] Strictly speaking, the Tasmanian election can occur up to 22 May 2010. However, the Tasmanian Premier, the Hon David Bartlett MP, stated, in a speech delivered to senior Tasmanian public servants that the election will occur on 20 March 2010.

Chapter 13: Consumer credit

Key points

Progress assessment

It is the COAG Reform Council's assessment that the milestone to develop a national framework for regulation of consumer credit was completed on time for stage one of the reforms.

However, it is the council's assessment that the three milestones requiring the Commonwealth and the States and Territories to progress legislation to enable the Commonwealth scheme were only partially completed.

Risk assessment

Risks to this reform are the legislative delays and unresolved issues about the nature of the referral of powers and the framework for regulating consumer credit.

13.1 Outputs and milestones

Table 13.1 reproduces the outputs and milestones in the implementation plan for deregulation priorities 11, 12, 13 and 27. These four reform streams are dealt with collectively because the four outputs are part of an integrated package of consumer credit reforms, largely sharing the same milestones.

Table 13.1: Consumer credit—outputs and milestones

Output
11. National regulation of mortgage broking: To provide an effective and national approach to consumer protection regulation for mortgage broking.
12. National regulation of margin lending: To provide an effective and national approach to consumer protection regulation for margin lending.
13. National regulation of non-deposit lending institutions: To provide an effective and national approach to consumer protection regulation for non-deposit taking institutions.
27. A national system for remaining areas of consumer credit: A more efficient approach to regulation of financial services, not captured by the early action areas in the mortgage credit and advice, margin lending and non-deposit taking institutions above.

Milestones				
2008–09	2009–10	2010–11	2011–12	2012–13
Commonwealth: develop a national framework for the regulation of consumer credit by	All jurisdictions: complete arrangements for national regulation by the Commonwealth	States and Territories: repeal all relevant legislation in line with phase two (relating to the		

Apr 2009 States and Territories: pass referral of powers legislation by May 2009 Commonwealth: introduce legislation by May 2009 States and Territories: repeal all relevant legislation in line with phase one (relating to the Uniform Consumer Credit Code and key credit regulation) of the implementation plan by mid 2009	from July 2009. Arrangements include a two-year transition period for industry to comply with a comprehensive licensing scheme for mortgage brokers, advisers and providers	remaining regulation of consumer credit including pay-day lending, credit cards, store credit, and other small business lending) of the implementation plan by mid-late 2010

Source: (COAG, 2009p, pp. 7–8, 19)

Regulation of mortgage broking, margin lending, non-deposit taking institutions and the remaining areas of consumer credit are listed at clause 34(a) of the *National Partnership Agreement to Deliver a Seamless National Economy* (COAG, 2009n, pp. 9–10). In effect, this means that these reforms must be implemented for a jurisdiction to remain eligible for its full reward payment.

13.2 The proposed reform

The reform

The aim of these reforms is to create an effective and national approach to consumer protection regulation of mortgage broking, margin lending, lending by non-deposit taking institutions and the provision of other types of consumer credit, including credit cards and small business loans.

Mortgage Broking

In June 2008, the Commonwealth Treasury (2008, pp. 9–10) released a *Green Paper on Financial Services and Credit Reform*, which noted that the conduct and advice of some mortgage brokers had been unsatisfactory. The Green Paper identified problems in the sector including lending beyond a borrower's capacity to pay and unscrupulous behaviour by a small number of mortgage brokers (Treasury [Cwlth], 2008, p. 34).

For instance, brokers' recommendations may be skewed toward products that give them higher commissions and which are not the most appropriate loan for the client (for example because of higher costs or inability to afford the repayments over time). Brokers may also misrepresent

applicants' financial details so they qualify for larger loans that give brokers higher commissions.

The Green Paper also noted that it is difficult to address these shortcomings because regulation and licensing are not uniform and to a large extent do not cover mortgage brokers. The paper recommended a single national regulatory regime covering both mortgages and mortgage brokers as an efficient response to the concerns identified (Treasury [Cwlth], 2008, pp. 9–10).

Margin Lending

Margin lending is borrowing money to invest in shares and other financial products, using existing assets as security (Australian Securities and Invesments Commission, 2009b).

Margin lending as a discrete product is mostly unregulated. The *Uniform Consumer Credit Code* applied by State and Territory legislation does not cover margin loans on the basis that credit provided for investment purposes is not covered by the code (Australian Securities and Invesments Commission, 2009b). The *Corporations Act 2001* (Cwlth) excludes regulation of credit. However, margin loans may be regulated in some ways depending on the type of lender (Treasury [Cwlth], 2008, p. 29).

For example, where a margin loan is obtained as part of a financial plan it is considered by the Australian Securities and Investments Commission to be an 'investment vehicle', which may then be regulated under the *Corporations Act 2001* (Cwlth) (Treasury [Cwlth], 2008, p. 34). In this case, misleading and deceptive conduct in relation to margin lending is regulated under the *Australian Securities and Investment Commission Act 2001* (Cwlth) (Treasury [Cwlth], 2008, p. 34).

The Australian Bankers' Association *Code of Banking Practice* applies to margin lending so that if the lender is a member of the association there is an obligation to give consideration to a customer's ability to repay the loan and to provide both an internal and external dispute resolution scheme (Treasury [Cwlth], 2008, p. 34).

Non-deposit lending institutions

A non-deposit lending institution is a financial institution which provides credit products but does not take deposits to fund its lending or a proportion of its lending. They are also commonly referred to as non-bank lenders or non-deposit taking institutions (Treasury [Cwlth], 2008, p. 2).

These institutions are currently regulated by the States and Territories under the *Uniform Consumer Credit Code*. The non-deposit lending sector has significantly expanded its market share since the early 1990s, largely funded by the availability of mortgage-backed securities. The *Green Paper on Financial Services and Credit Reform* argued that this has resulted in lower cost finance for consumers. However, non-deposit lenders have been disproportionately affected by difficulties in obtaining funds in recent times and the Green Paper noted that this may see banks regain market share as a result of being able to rely on deposits—consumer savings—rather than having to rely on investment capital (Treasury [Cwlth], 2008, p. 2).

Remaining areas of consumer credit

The *Uniform Consumer Credit Code* currently covers a range of other financial services, including pay-day lending (for example, by pawnbrokers), credit cards, store credit and personal loans (Treasury [Cwlth], 2008, p. 47). Regulation of these products will also be included in the national regulation of consumer credit (COAG, 2008j, p. 2).

Background

In September 2007, following an inquiry into home lending practices, the House of Representatives Economics, Finance and Public Administration Committee (2007, p. 10) recommended that the Commonwealth take over consumer credit regulation. Also, in its *Review of Australia's Consumer Policy Framework*, the Productivity Commission (2008d, p. 107) recommended that the Commonwealth take over consumer protection regulation of credit with enforcement by the Australian Securities and Investments Commission.

On 26 March 2008, COAG (2008d, pp. 12–13) agreed in principle that the Commonwealth would assume responsibility for regulation of mortgage credit and advice, including non-bank lenders and mortgage brokers, as well as margin loans. A *Financial Services and Credit Reform* Green Paper was released by the Commonwealth Treasury in June 2008 for consultation on possible reforms and national regulation of trustee corporations, a separate reform under deregulation priority 10, which is the subject of Chapter 12 of this report.

On 3 July 2008, COAG (2008k, p. 3) agreed that the Commonwealth Government would assume responsibility for regulating the consumer credit products covered by these four reform streams.

On 2 October 2008, COAG (2008j, p. 2) agreed a two-phased approach to reform of financial services and consumer credit with:

- phase one being the transfer of responsibility for regulating trustee corporations, mortgage broking, margin lending and non-deposit lending from the States and Territories to the Commonwealth in the first half of 2009
- phase two being the transfer of responsibility for regulation of the remaining areas of consumer credit to be completed in the first half of 2010.

The Commonwealth Government (2009c, p. 13) reported that phase one would:

- largely replace the existing State and Territory *Uniform Consumer Credit Code* with the *National Credit Code*, covering all forms of consumer credit and extending it to cover residential investment properties
- introduce a national licensing regime for providers of consumer credit and credit-related services (principally brokers and intermediaries) and requiring licensees to observe a number of specific responsible lending practices, including that the credit must not be unsuitable for the consumers' needs and that they have the capacity to repay without substantial hardship
- introduce a three-tiered dispute resolution framework, including opt-in small claims court procedures
- extend the powers of the Australian Securities and Investments Commission to be the sole regulator with enhanced enforcement powers
- regulate trustee corporations and margin lending.

The Commonwealth Government (2009c, p. 13) reported that phase two would cover:

- changes to specific conduct obligations to stem unfavourable lending practices, reviewing credit card limit extension offers, examining the State approaches to interest rate caps; and other fringe lending issues as they arise
- reform of mandatory comparison rates and default notices, enhancements to the regulation and tailored disclosure of reverse mortgages
- consideration of the need to regulate the provision of credit for small businesses and investment loans (other than margin loans and credit for residential investment properties covered in phase one) and examination of remaining State and Territory reform projects.

13.3 Progress report and assessment

Notwithstanding that the implementation plan indicates that the four deregulation priorities share the same milestones, for the purposes of this assessment, the COAG Reform Council is taking the view that it is COAG's clear intent that the phase two elements covered by deregulation priority 27 are to be implemented on a later timetable and that there are therefore no milestones to be met in 2008–09. COAG may wish to consider stipulating specific milestones for stream 27 in the next edition of the implementation plan. The remainder of this progress assessment therefore deals primarily with deregulation priorities 11, 12 and 13 (progress in relation to stream 27 is reported where relevant).

Milestone 1: Commonwealth: Develop a national framework for the regulation of consumer credit by Apr 2009

Progress report

On 27 April 2009, the then Commonwealth Minister for Superannuation and Corporate Law, Senator the Hon Nick Sherry (2009c, p. 2), released a series of exposure drafts comprising the framework for national regulation of consumer credit. The framework is made up of a number of Bills:

- the National Consumer Credit Protection Bill 2009, which establishes the new national regime, including licensing and conduct requirements and a National Credit Code (largely replicating the *Uniform Consumer Credit Code*)
- the National Consumer Credit Protection (Fees) Bill 2009
- the National Consumer Credit Protection (Transitional and Consequential Provision) Bill 2009
- the Corporations Legislation Amendment (Financial Services Modernisation) Bill 2009, which, among other things, will bring 'margin lending' into the national consumer credit regime by defining it as a financial product under the *Corporations Act 2001* (Parliament of Australia, 2009e).

This legislative package was introduced into Parliament on 25 June 2009 to implement the first stage of national regulation of consumer credit covering mortgage broking, margin lending and lending by non-deposit taking institutions (Sherry, 2009c, p. 2).

The key aspects of the new national regime are:

- a license requirement for anyone who provides credit or who suggests credit to consumers or acts as a broker of financial products
- responsible lending requirements for licensees such that they may not provide or recommend a loan to a consumer that is 'unsuitable' for the consumer's needs or which the consumer lacks the ability to repay
- new consumer protections and remedies, dispute resolution mechanisms and enforcement powers for the Australian Securities and Investments Commission
- regulation of consumer credit contracts
- reduced red tape for businesses in the credit industry (Sherry, 2009c, p. 2).

The Commonwealth Government (2009b, p. 33) reported that the national framework for the regulation of consumer credit was completed in May 2009.

Governments have not yet agreed on the final form of the stage two reforms. Substantial issues that remain to be resolved include the extent and nature of the referral of powers from the States for the remaining areas of consumer credit, and the inclusion or otherwise of an interest rate cap requirement (Queensland Government, 2009a, pp. 20–21; South Australian Government, 2009a, pp. 17–18; Tasmanian Government, 2009b, pp. 20–21; Victorian Government, 2009b, pp. 22–23; Western Australian Government, 2009b, p. 18).

Progress assessment

It is the COAG Reform Council's assessment that this milestone was completed on time for stage one of the reforms—covering mortgage broking, margin lending and the regulation of non-deposit lending institutions—deregulation priorities 11, 12 and 13.

Milestone 2: States and Territories: Pass referral of powers legislation by May 2009

Milestone 3: Commonwealth: Introduce legislation by May 2009

Milestone 4: States and Territories: Repeal all relevant legislation in line with phase one (relating to the Uniform Consumer Credit Code and key credit regulation) of the implementation plan by mid 2009

These three milestones are assessed collectively because there is a clear nexus between (and a shared responsibility for) the introduction and passage of Commonwealth legislation and State referral legislation. Repeal of State and Territory legislation can only occur once the Commonwealth's legislated scheme is in place.

Progress report (Milestone 2)

New South Wales

The New South Wales Government (2009c) reported that it is awaiting the finalisation of Commonwealth legislation prior to introducing its referral legislation.

Victoria

The Victorian Government (2009b, p. 22) reported that a referral bill is being drafted and that it intends to pass the legislation by the end of 2009.

Queensland

The Queensland Government (2009a, p. 20) reported that it intends to introduce referral legislation in October 2009. It further reported that there was mutual agreement between the Commonwealth and the States and Territories to extend the timeframe for the enactment of referral legislation by six months to 1 April 2010 (Queensland Government, 2009a).

Western Australia

The Western Australian Government (2009b, p. 18) reported that its legislation was delayed due to States being unable to agree with the Commonwealth Government on a model referral bill by 30 June 2009.

South Australia

The South Australian Government (2009a, pp. 17–18) reported that there is an agreement between governments to defer the deadline for this milestone to April 2010 and that there is disagreement between the Commonwealth and the States of Victoria, Western Australia and South Australia about the extent of the referral power. South Australia (2009a, pp. 17–18) also reported that passage of its referral bill will not likely occur before the South Australian general election to be held in March 2010.

Tasmania

The Tasmanian Government (2009b, pp. 20–21) reported that it was close to introducing referral legislation and expected to pass the legislation by the end of 2009.

Australian Capital Territory

The Australian Capital Territory Government is not required to pass referral legislation as the legislative package will apply in the Territories as a law of the Commonwealth (Parliament of Australia, 2009e).

Northern Territory

The Northern Territory Government is not required to pass referral legislation as the legislative package will apply in the Territories as a law of the Commonwealth (Parliament of Australia, 2009e).

Progress report (Milestone 3)

The package of Commonwealth legislation identified above (under milestone 1) covering stage one reforms was introduced into the House of Representatives and referred to the Senate Economics Legislation Committee on 25 June 2009 (Sherry, 2009c, p. 2). The bills passed the House of Representatives on 20 August 2009 (Parliament of Australia, 2009d).

The Senate Committee reported on 7 September 2009 and recommended passage of the legislative package subject to a number of amendments. These amendments included deferring the commencement of elements of the national regime that were to commence on 1 January 2010 to instead commence on 1 July 2010 (Senate Economics Legislation Committee, 2009a, p. 6).

On 17 September 2009, the Commonwealth Minister for Financial Services, Superannuation and Corporate Law, the Hon Chris Bowen MP (2009c), announced that the Commonwealth Government had accepted the recommendations of the Senate Economics Legislation Committee, including deferring the commencement of the new national regime to 1 July 2010.

If this new commencement date is met, it will be one year later than the deadline set in the 2009–10 milestone for Commonwealth regulation of consumer credit to commence.

Progress report (Milestone 4)

New South Wales

The New South Wales Government (2009c) reported that repeal of its legislation will be done in stages in response to the Commonwealth's commencement of parts of its legislation.

Victoria

Victoria (2009b, p. 22) reported that repeal will occur in line with the referral of powers legislation.

Queensland

The Queensland Government (2009a, p. 20) reported that repeal of relevant legislation is dependent on the Commonwealth's legislative timing.

Western Australia

The Western Australian Government (2009b, p. 18) reported that the States and Territories could not legislate in the absence of agreement with the Commonwealth on a model referral bill.

South Australia

The South Australian Government (2009a, pp. 17–18) reported that repeal legislation cannot be enacted until the Commonwealth's legislation is finalised.

Tasmania

The Tasmanian Government (2009b, pp. 20–21) reported that it was close to introducing its legislation and expected to pass it by the end of 2009.

Australian Capital Territory

The Australian Capital Territory Government (2009b, p. 19) reported that relevant legislation will be repealed under the Justice and Community Safety Legislation Amendment Bill 2009 (No. 3) (ACT). This Bill is expected to be introduced shortly after 30 September 2009. The repeal of legislation will be in stages in line with commencement of Commonwealth legislation (Australian Capital Territory Government, 2009a).

Northern Territory

The Northern Territory Government (2009, p. 19) has not yet introduced legislation but reported that it plans to do so in November 2009 with a view to passage in the February 2010 sittings.

Progress assessment (Milestone 2, 3 and 4)

Taken together, it is the COAG Reform Council's assessment that there has been some progress against these three milestones but that they had not been fully completed by 30 September 2009.

It is generally the case that legislative processes for the referral of powers to the Commonwealth occur in the following sequence:

- the Commonwealth introduces its legislation
- at least one State introduces and passes its referral legislation
- the Commonwealth passes its legislation (Australasian Parliamentary Counsel's Committee, 2008, pp. 1–4).

The Commonwealth legislation covering phase one of the reforms was introduced into the Commonwealth Parliament on 25 June 2009 and, as at 30 September 2009, remained to be passed by the parliament. The States did not introduce referral legislation within the reporting period. The States and Territories (consequently) did not introduce repeal legislation within the reporting period.

On the basis of this collective assessment, progress for all jurisdictions across milestones 2, 3 and 4 is rated as 'amber' in accordance with the assessment schema used in this report.

Table 13.2 provides the council's assessment of progress on the milestones for deregulation priorities 11, 12 and 13.

Table 13.2: Consumer credit stage one—progress assessment by milestone

Milestone	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
1									
2									
3									
4									

Table 13.3 provides the council's overall assessment of progress on deregulation priorities 11, 12 and 13. Greater weight has been given to the substantive action required by all governments under milestones 2, 3 and 4.

Table 13.3: Consumer credit stage one—overall progress assessment

	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Overall assessment									

13.4 Risk assessment

Legislative delays

There have been delays in the passage of legislation as reported in Section 13.3. A delay in the commencement of the scheme from 1 January 2010 to 1 July 2010 has been announced by the Commonwealth Government, in response to the recommendations of the Senate Economics Legislation Committee. In part, this delay was announced to allow for further consultation with industry stakeholders on the reforms and a greater period of transition for the industry to the new arrangements (Bowen, 2009c).

As at 30 September 2009, this proposed new timeframe had not been formally considered by COAG. If the new timeframe for the commencement of stage one of the national consumer credit regime by 1 July 2010 is agreed by COAG, it would be one year later than the deadline in the 2009–10 milestone in the implementation plan for this to occur.

Nature of referral

Reports from some jurisdictions also suggest that there appear to be some policy matters that need to be settled between the Commonwealth and States on the nature and extent of the referral of powers and the framework for regulating consumer credit.

Chapter 14: Development assessment

Key points

Progress assessment

There are no 2008–09 milestones for development assessment.

Risk assessment

The key risks to this reform are:

- the poor history of national efforts to harmonise development assessment processes, most recently shown by the deferral of the requirement for the ministerial council to develop options for expediting reform for COAG's consideration from early 2009 to late 2009
- the lack of clarity and specificity in the implementation plan's milestones, and the lack of milestones for development assessment reform beyond the requirement to agree proposals by the end of 2009.

14.1 Output and milestones

Table 14.1 reproduces the output and milestones from the implementation plan for deregulation priority 14—development assessment.

Table 14.1: Development assessment—output and milestones

Output				
14. Development assessment: Improved development assessment processes which will provide greater certainty and efficiency in the development and construction sector.				
Milestones				
2008–09	2009–10	2010–11	2011–12	2012–13
	States and Territories: agree an implementation program and agreed benchmarks against which progress can be assessed based on COAG decisions by end			

July 2009	
All jurisdictions: COAG to agree through BRCWG, LGPMC proposals for expediting development assessment reform by late 2009, including: (a) Roll out of electronic DA processing nationally – [by June 2009] (b) A system of national performance monitoring – [by July 2009] (c) Accelerated use of 'code assessment' (d) Establish a set of supporting national planning system principles - [by June 2009] (e) Assessment of benefits accruing from DA reforms – [by Aug 2009]	

Source: (COAG, 2009p, pp. 9–10)

The original implementation plan agreed by COAG on 29 November 2008 included a 2008–09 milestone for all jurisdictions to agree recommendations from the Local Government and Planning Ministers' Council on proposals for expediting development assessment reform by early 2009 (COAG, 2009o, p. 10).

The revised implementation plan agreed by COAG on 2 July 2009, as reproduced above, contains no milestones for 2008–09.

However, a new milestone was included for 2009–10 for all jurisdictions to agree to proposals for expediting development assessment reform by late 2009. The proposals to be agreed by COAG will be based on five specific projects (discussed below) already being done under the auspices of the Local Government and Planning Ministers' Council (COAG, 2009f, p. 8).

14.2 The proposed reform

The reform

The aim of this reform is to reduce the burden and cost of development approval processes across Australia. This goal is to be pursued through a series of reforms designed to both modernise and harmonise development assessment processes in all States and Territories. COAG (2009f, p. 8) has stated that reform in this area is important for promoting private sector activity in the context of the global recession. However, no specific reforms have yet been agreed by COAG.

On 8 May 2009, the Local Government and Planning Ministers' Council (2009) agreed to five projects aimed at improving development assessment processes. On 2 July 2009, COAG (2009f, pp. 8 & 14–15) agreed that further work be done on the five specific projects and that the Local Government and Planning Ministers' Council report to COAG by the end of 2009 with proposals to expedite reform in this area.

Electronic development assessment processing: Victoria

This project will develop options and funding proposals for implementing electronic development assessment processing in all jurisdictions. The work will build upon the Housing Affordability Fund projects which seek to enable the interchange of development assessment information between different systems in a consistent way.

On 2 July 2009, COAG (2009f, p. 14) noted that a draft report on this project is due in mid 2009. This corresponds with the 'June 2009' date listed for this project in the implementation plan.

However, the Commonwealth Government (2009b, p. 35) reported that the draft report was due to the Local Government and Planning Ministers' Council in August 2009.

National performance monitoring: South Australia

This project is to develop a common set of national performance measures to assess the 'health' of development assessment processes for annual publication. The first report, to be published by June 2010, will cover the 2008–09 year and provide information on the number, type and length of development assessment processes in all States and Territories.

On 2 July 2009, COAG (2009f, p. 8) noted the timing of the first report and agreed a revised implementation plan, which lists the date 'July 2009' against this project. It is unclear from the implementation plan what was to be achieved by that date given the overall deadline for proposals to COAG.

However, on 8 May 2009, the Local Government and Planning Ministers' Council (2009) provided some guidance in noting that:

> A tender process has been commenced with the evaluation currently underway. It is expected that the successful tenderer will commence work by mid-late May 2009 with the first milestone reached at the end of July 2009.

The Commonwealth Government (2009b, p. 35) reported that a draft set of performance measures is due to the Local Government and Planning Ministers' Council by 31 December 2009.

Code assessment: New South Wales

This project will develop a national internet-based template for residential development assessment. The template will use common language and measures and will be aimed at expediting development assessment processing and approval times. The project is designed to assist in developing State and Territory based code assessment and increase the proportion of code-assessment development applications. The implementation plan does not list a date against this project (COAG, 2009f, p. 14).

However, on 8 May 2009, the Local Government and Planning Ministers' Council (2009) indicated this was a two-stage project with delivery dates in June and September 2009.

National planning system: Queensland

This project will review 'leading practice' approaches to development assessment to generate a set of principles to guide a national planning approach. At its 2 July 2009 meeting, COAG (2009f, p. 14) agreed that the 'work will be led by an expert panel with its findings widely disseminated to government, industry and other key stakeholders for consultation'. The implementation plan lists the date 'June 2009' against this project although it is unclear what was to be achieved by that date given the overall deadline for proposals to COAG.

However, on 8 May 2009, the Local Government and Planning Ministers' Council (2009) indicated that the panel would be finalised by late May 2009 and that a workshop would be held in June 2009. The Commonwealth Government (2009b, p. 36) reported that the Local Government and Planning Ministers' Council is due to receive a final report on the national planning system by November 2009.

Benefits of development assessment reforms: Australian Capital Territory

This project will include a 'literature review' of development assessment reform options, and prepare a draft framework and model for assessing the benefits of the four streams of work identified above (Commonwealth Government, 2009b, p. 36). A report was expected to be finalised in late August 2009, which corresponds with the 'August 2009' date listed in the implementation plan against this project.

The Local Government and Planning Ministers' Council was due to meet on 9 October 2009 to discuss the five projects listed above and discuss its report to COAG, through the Business Regulation and Competition Working Group (BRCWG), which is due in December 2009, in accordance with the implementation plan's milestone (Commonwealth Government, 2009b, p. 36).

Background

Expediting development assessment reform has been a goal of COAG since at least 2006.

On 10 February 2006, COAG requested the Local Government and Planning Ministers' Council to undertake a range of measures designed to improve development assessment processes. COAG requested that the Local Government and Planning Ministers' Council:

> (a) Recommend and implement strategies to encourage each jurisdiction to-
>
> > (i) systematically review its local government development assessment legislation, policies and objectives to ensure that they remain relevant, effective, efficiently administered, and consistent across the jurisdiction, and

(ii) ensure that referrals are limited only to agencies with a statutory role relevant to the application and that referral agencies specify their requirements in advance and comply with clear response times;

(b) facilitate trials of electronic processing of development applications and adoption through Electronic Development Assessment; and

(c) report back to COAG on progress and recommended options for streamlining legislation by end 2006 (COAG, 2006c, p. 6).

In the April 2007, *COAG National Reform Agenda: COAG Regulatory Reform Plan*, COAG (2007a) stated that it remained committed to streamlining and harmonising development assessment across jurisdictions. COAG also noted the work commenced by the Local Government and Planning Ministers' Council set out in its report on Development Assessment Reform and requested that it 'continue its work towards implementing key elements of the Development Assessment Forums' Leading Practice Model (COAG, 2007a, pp. 6–7). The 'Leading Practice Model' was published by the Development Assessment Forum in 2005 and provides a 'blueprint' of ten practices that jurisdictions' could implement to achieve simpler, more efficient development assessment processes (Development Assessment Forum, 2005).

On 26 March 2008, COAG (2008h, p. 17) stated that development assessment was one of the 'five remaining COAG hotspots' and noted that significant progress was needed to accelerate reform in these 'hotspots'. At this meeting COAG welcomed the commitment by the Commonwealth to provide $30 million from the Housing Affordability Fund for the roll out of electronic development application processing in local government. COAG (2008h, pp. 14–15) requested that the Local Government and Planning Ministers' Council make the implementation of this work a priority.

The BRCWG reported on development assessment reform at COAG's meeting of 3 July 2008. COAG (2008f) noted the Local Government and Planning Ministers' Council progress on streamlining development assessment processes. It also requested that the ministerial council report back to COAG in October 2008, through the BRCWG, on further progress and on the following work:

- an agreement by all jurisdictions on common performance measurement criteria for development assessment
- consultation with the Housing Working Group and further progress on the work to achieve a 'maximum uptake' of electronic development assessment processes (COAG, 2008f).

14.3 Progress report and assessment

There are no 2008–09 milestones for deregulation priority 14 against which the COAG Reform Council can report on or assess progress.

14.4 Risk assessment

The COAG Reform Council has identified four areas of risk to the achievement of development assessment reform:

- the history of national efforts to harmonise development assessment
- the lack of clarity as to the timing of 2009–10 milestones for this reform

- the lack of future milestones for reforms emanating from the work required under the 2009–10 milestones

- the number of separate reforms that have an impact on aspects of the planning process, which are being pursued concurrently with development assessment reform

Poor history of national efforts to harmonise development assessment processes

COAG has requested that the Local Government and Planning Ministers' Council expedite development assessment reform on several occasions since 2006. While some reforms have been advanced within individual jurisdictions, as at 30 September 2009, COAG had yet to receive any tangible proposals from the ministerial council on reform proposals to be implemented nationally aimed at greater harmonisation of systems across Australia. This apparent lack of progress is further evidenced by the most recent deferral of the requirement that the ministerial council develop options for expediting reform for COAG's consideration from early 2009 to late 2009.

That said, the fact that COAG has, in extending the deadline, specified more detailed requirements—for the ministerial council to report on the five specific development assessment reform projects—may lead to substantive proposals for reform being brought forward for COAG's consideration by the end of 2009.

Unclear milestones

A further risk to the overall objective of this reform stream is the lack of clarity and specificity in the current milestones. The first potential source of confusion in the implementation plan arises from the first 2009–10 milestone requiring the State and Territories to agree an implementation program and benchmarks by the end of July 2009. This appears to be inconsistent with the second milestone, which specifies a 'late 2009' deadline for COAG to agree proposals based on the five projects.

Second, the timeframes for the projects listed in the second 2009–10 milestone are confusing. The current implementation plan states that COAG is to agree on proposals for development assessment reform by late 2009, but also lists earlier dates in parentheses next to four of the five projects that are to be included as options in the report to COAG.

COAG may wish to consider clearer milestones in the next edition of the implementation plan.

Future milestones needed

The implementation plan does not identify any milestones for development assessment reform beyond the requirement to agree to proposals by the end of 2009; nor does it indicate that further milestones will be developed. If significant reforms are envisaged that require further work by the States and Territories, including legislative and regulatory amendments, further milestones would appear to be necessary to the achievement of development assessment reform under the National Partnership.

Other related reforms

The Western Australian Government (2009b, p. 19) reported its concern that a number of separate reforms that have an impact on aspects of the planning process are being pursued concurrently with little coordination. Western Australia specifically cites:

- the BRCWG's work on retail competition in planning
- the development of a national construction code
- the national electronic conveyancing system
- funding for development assessment under the Housing Affordability Fund
- the Cities Infrastructure and Planning Taskforce.

Chapter 15: Construction code

Key points

Progress assessment

It is the COAG Reform Council's assessment that:

- the milestone for finalising a regulatory impact statement by April 2009 was not completed within the reporting period
- the remaining National Reform Agenda milestones regarding variation reduction and streamlining local government processes are ongoing milestones where there has been some progress, but further efforts are required.

Risk assessment

The COAG Reform Council considers that there are potential risks to the implementation plan milestones that:

- governments will not achieve the 2009–10 milestone to agree on governance and funding of the national construction code by June 2010
- the complexity and extent of the work involved in incorporating building and plumbing regulations into a national construction code will affect one or more governments' progress with the reform.

15.1 Output and milestones

Table 15.1 reproduces the output and milestones from the implementation plan for deregulation priority 15—national construction code (NCC).

Table 15.1: Construction code—output and milestones

Output				
15. National construction code (NCC): A nationally-consistent approach to on-site building and plumbing regulation.				
Milestones				
2008–09	2009–10	2010–11	2011–12	2012–13
Commonwealth: finalise RIS by Apr 2009	All jurisdictions: Agree on governance and funding by June 2010	All jurisdictions: Australian Building Codes Board (ABCB) or its replacement body to consolidate building and plumbing regulations into NCC by Dec 2010 All jurisdictions: ABCB or its replacement body to release NCC by May 2011 All jurisdictions: agree new IGA, governance and funding arrangements by June 2011	All jurisdictions: Complete legislative amendments and all related transitional arrangements by Jan 2012 All jurisdictions: new funding arrangements commence by Jan 2012	States and Territories: NCC referenced Oct 2012 (subject to individual transition arrangements) Ongoing milestones to be identified and agreed as project progresses

Source: (COAG, 2009p, pp. 10–11)

The revised implementation plan agreed by COAG on 2 July 2009, as reproduced above, amended the content and timing of the milestones set out in the original implementation plan agreed by COAG on 29 November 2008. The 2008–09 milestone for the Commonwealth to finalise the regulatory impact statement by April 2009 was not amended.

However, the original implementation plan included another 2008–09 milestone for all jurisdictions to 'agree on governance and funding by June 2009'. The revised implementation plan moved this 2008–09 milestone to the 2009–10 reporting period and extended its deadline

to June 2010. All subsequent milestones have also been extended by 12 months and moved into the next reporting period.

National Reform Agenda milestones[20]

In addition to the implementation plan's milestones, there are two outstanding National Reform Agenda milestones assessed in this report. These milestones are:

- all jurisdictions: all variations from the Building Code of Australia to be eliminated or validated by the end of 2011.
- all jurisdictions: delineation and streamlining of local government processes that impact on building regulation (ongoing).

15.2 The proposed reform

The reform

The aim of this reform is to establish a nationally consistent approach to building and plumbing regulation by developing a national construction code which consolidates building and plumbing regulation into one code to be applied across Australia. A new intergovernmental agreement will be made for the national construction code and will replace the current *Intergovernmental Agreement for the Australian Building Codes Board* (Building Ministers' Forum, 2006).

The current *Intergovernmental Agreement of the Australian Building Codes Board* (Building Ministers' Forum, 2006) includes six commitments. Broadly, these six commitments are:

- the removal of State-based variations to the Building Code of Australia
- reduced reliance on regulations
- improved impact assessment processes
- a review of the Building Code of Australia against COAG principles
- reduced local government intervention in building regulation
- annual reporting to building ministers (COAG, 2007e, p. 2).

Building regulation reform, essentially covering the above six commitments, was referred to the COAG Reform Council by COAG on 13 April 2007 for monitoring and annual reporting on its implementation (COAG, 2007e, p. 3; COAG Reform Council, 2008).

[20] These milestones are not to be considered as part of the COAG Reform Council's advice as to the achievement of milestones for the purposes of the Commonwealth Government's decisions regarding the making of reward payments under Clause 32 of the *National Partnership Agreement to Deliver a Seamless National Economy* (COAG, 2009p, p. 8).

Background

In 1994, the Australian Building Codes Board was formed through an intergovernmental agreement signed by Commonwealth, State and Territory ministers responsible for building regulatory matters, and was reaffirmed in the current *Intergovernmental Agreement for the Australian Building Codes Board* in 2006 (Australian Building Codes Board, 2009b; Building Ministers' Forum, 2006). The Australian Buildings Codes Board (2007, p. 3) is responsible for producing, maintaining and amending the Building Code of Australia and developing effective regulatory systems for the design and construction of buildings.

The Building Code of Australia covers buildings and other structures and contains standards for matters including building structure, fire resistance, access, services and equipment, and energy efficiency (Australian Building Codes Board, 2009a). The Building Code of Australia is adopted as law by State and Territory governments (Productivity Commission, 2004c, p. 16). The States and Territories remain able to make building and construction related laws separately from the Building Code of Australia, some of which are included in schedules of State or Territory variations to the Building Code of Australia (Productivity Commission, 2004c, p. 16).

The State and Territory governments are also responsible for regulating plumbing services. State and Territory plumbing regulations include jurisdiction-specific plumbing codes, a range of different Australian Standards and water by-laws (Productivity Commission, 2004c, p. 132). In addition, the Australian Standard series AS/NZS 3500 Plumbing Codes cover technical requirements for installations and standards for plumbing and plumbing related materials. These plumbing code standards are referenced in all State and Territory jurisdictions (Productivity Commission, 2004c, p. 132).

In 2004, the National Plumbing Regulators Forum—comprising representatives of organisations that are responsible for licensing and registration of plumbers in all States and Territories and New Zealand—was formed to develop a Plumbing Code of Australia and to assist in the development of consistent, national approaches to plumbing regulation (National Plumbing Regulators Forum, 2009a). The Plumbing Code of Australia was finalised in 2004 and sets out performance based technical provisions for the 'design, construction, installation, replacement, repair, alteration and maintenance of plumbing and drainage installations' (Commonwealth Government, 2009c, p. 25; National Plumbing Regulators Forum, 2009b).

Like the Building Code of Australia, the Plumbing Code of Australia only has legal force if it is adopted in full (or part) by the States and Territories (Productivity Commission, 2004c, p. 132). The Plumbing Code of Australia has been adopted, subject to variations, in some jurisdictions.[21]

COAG (2009r, pp. 7–8) has noted that there is some duplication by and inconsistency between building and plumbing regulations, particularly for non-residential construction.

[21] The Plumbing Code of Australia has been adopted, subject to variations in:

- Victoria, through the Victoria Plumbing Regulations 2008 (Office of the Chief Parliamentary Counsel [Vic], 2008a)
- Queensland, through the *Queensland Plumbing and Wastewater Code*, which adopts the Objectives, Functional Statement and Verification Methods of the Plumbing Code of Australia (Department of Infrastructure and Planning [Qld], 2009)
- Tasmania, through the *Tasmanian Plumbing Code 2006* (Department of Justice [Tas], 2006).

It has not yet been adopted in New South Wales, however the *NSW Code of Practice: Plumbing and Drainage* includes in principle support for the introduction of performance codes (Committee on Uniformity of Plumbing and Drainage Regulations in NSW, 2006). The New South Wales Government (2009c) reported that it has endorsed the findings of the *Reforming arrangements for regulating plumbing and drainage in New South Wales* review report June 2009, which will result in the adoption of the Plumbing Code of Australia by mid 2010.

There has been a long history of calls for greater consistency in construction regulation in Australia, including by:

- the Interstate Standing Committee on Uniform Building Regulation, established in 1965
- the Microeconomic Reform: Building Regulation: Building Regulation Review Taskforce Final Report, released in 1991
- the *On-site Plumbing Regulatory Framework*, released by the then Commonwealth Department of Industry, Science and Research in 2000
- the *Review of the Australian Building Codes Board* in 2000 (National Plumbing Regulators Forum, 2002; Productivity Commission, 2004c, pp. 18–19).

In November 2004, the Productivity Commission (2004c) released its research report *Reform of Building Regulation*. The commission concluded that progress had been made in bringing a national approach to building regulation and in changing the Building Code of Australia to a set of performance based requirements, but reform was far from complete. The commission made a number of recommendations including that the Commonwealth and State and Territory governments actively reform building regulation and make a new intergovernmental agreement to achieve this aim (Productivity Commission, 2004c, p. xx). A new intergovernmental agreement, covering the six commitments described above, was signed by all governments on 26 April 2006 (Building Ministers' Forum, 2006).

On 19 September 2007, the House of Representatives Standing Committee on Environment and Heritage (2007) released *Managing the Flow*, which looked at the regulation of plumbing product quality. The committee made a number of recommendations including that COAG explore options for a national body responsible for the coordination and cohesion of regulation of plumbing product quality, such as mandatory schemes, relevant standards and application across jurisdictions (House of Representatives Standing Committee on Environment and Heritage, 2007).

On 26 March 2008, COAG (2008d, p. 16) asked the Business Regulation and Competition Working Group (BRCWG) to investigate the merits of a national construction code and to report back to COAG by July 2008.

On 3 July 2008 COAG (2008f, p. 3) agreed to the development of a national construction code on building, plumbing, electrical and telecommunications standards. COAG asked the BRCWG to report back to COAG by October 2008 on this proposal and to produce a plan to implement a national construction code by December 2008.

As a result of COAG's focus on reform of building regulation, building ministers agreed to bring forward the review of the *Intergovernmental Agreement for the Australian Building Codes Board* (Carr, 2008).

In its 2009 *Report to the Council of Australia Governments on Implementation of the National Reform Agenda*, the COAG Reform Council stated that it considered that good progress had been made since its last report on specific building regulation reform tasks agreed by COAG.

The council recommended that COAG:

1. notes that reform is being implemented within the BCA as agreed but that it may not be achieving the objective of a more nationally consistent system of building regulation due to regulation being pursued outside the BCA

2. agrees that the development, consideration and implementation of proposals to deal with such regulation should remain a priority for governments (COAG Reform Council, 2009b, p. 48).

On 30 April 2009 COAG supported the council's recommendations and noted that:

> reviews are currently being undertaken into the review of the Intergovernmental Agreement (IGA) on the Australian Building Codes Board and in-principle COAG commitment to a National Construction Code. The outcome of these reviews will need to be considered by the Building Ministers' Forum, taking account of the need to deliver national consistency as a matter of priority. Additionally, COAG's imminent finalisation of measures associated with the National Strategy for Energy Efficiency should provide a more consistent approach to energy efficiency provisions which may need to be incorporated into the BCA (COAG, 2009d, p. 3).

At that same meeting, COAG (2009g, p. 10) released a consultation regulatory impact statement on a national construction code.

On 2 July 2009, COAG (2009e, p. 2) agreed to defer the finalisation of a new intergovernmental agreement for a national construction code by 12 months 'in order to allow the Building Ministers Forum to adopt a phased implementation strategy for a number of COAG initiatives'. COAG (2009e, p. 2) stated that the revised timeframe 'will allow the integration of energy efficiency measures agreed separately by COAG to be introduced into the National Construction Code.'

15.3 Progress report and assessment

The following actions have been taken regarding the 2008–09 milestone for deregulation priority 15.

Milestone 1: Commonwealth: finalise RIS by Apr 2009

Progress report

A consultation regulation impact statement was released by COAG (2009r) on 30 April 2009 for public comment by 23 June 2009. The regulatory impact statement notes that the proposal most endorsed by stakeholders is for the development of a national construction code that:

- brings together building and plumbing standards (as a first step, with possible later expansion to electrical and telecommunications standards)

- is developed in a performance-based style like the Building Code of Australia

- is supported by an intergovernmental agreement similar to the agreement underpinning the Building Code of Australia (COAG, 2009r, p. vi).

The regulation impact statement sets out two options for a national construction code:

- the simple addition of the Plumbing Code of Australia to the Building Code of Australia as a separate volume; or
- a more substantial consolidation designed to merge the Building Code of Australia and the Plumbing Code of Australia (COAG, 2009r, p. 21).

The *Implementation Plan for a National Construction Code* released by COAG at the same time as the consultation regulation impact statement includes timeframes which do not directly align with the milestones in the implementation plan for the National Partnership. It states that a final regulation impact statement was to be completed in July 2009 (COAG, 2009h).

A final regulation impact statement was not released by 30 September 2009. The Commonwealth Government (2009b, p. 37) reported that the regulation impact statement had been finalised and will be considered by the BRCWG on 9 October 2009.

Progress assessment

It is the COAG Reform Council's assessment that this milestone was not completed within the reporting period.

The following actions have been taken by governments in relation to the remaining National Reform Agenda milestones.

Milestone 2: All jurisdictions: all variations from the BCA to be eliminated or validated by the end of 2011

Progress report

The *Australian Building Codes Board Strategic Plan 2007–2011* includes the aim to eliminate all State and Territory variations in the Building Code of Australia by 2011. The Board's Variation Reduction Strategy is a part of its current work plan to achieve this aim. The Board's May 2009 national technical summit focused on accelerating variation reduction (Australian Building Codes Board, 2009b, p. 1).

The New South Wales Government (2009b) reported that in the May 2009 edition of the Building Code of Australia eight 'complete' variations were removed. The Commonwealth Government (2009b, p. 37) reported that it is unlikely that the objective of all variations to the Building Code of Australia being eliminated or validated by the end of 2011 will be achieved.

The council notes that although there has been an overall reduction in variations in recent years, this has been offset to a degree by the creation of new variations (Australian Building Codes Board, 2009c). It is unlikely that all variations will be eliminated or validated by 2011, given that new variations are created almost as quickly as existing variations are removed. It may be necessary to consider a different approach to this task if the elimination of variations to the building code, or construction code, remains a goal of governments.

It should be noted that not all variations are counter to the goal of nationally consistent building regulation. Some have an underlying policy rationale—such as dealing with the effects of specific climates on buildings—that may be more or less applied on a jurisdictional basis.

However, there are some variations that undermine national consistency as there is no underlying policy rationale that justifies different standards of performance in different jurisdictions.

In addition, it is possible that variations may arise from the inclusion of energy efficiency standards in future editions of the Building Code of Australia because of differences in State and Territory energy efficiency standards. The National Strategy on Energy Efficiency agreed by COAG in July 2009 states that the Building Code of Australia will be the instrument by which the national strategy on energy efficiency is implemented (COAG, 2009q, p. 23).

The following actions have been taken by governments towards eliminating or removing all variations from the Building Code of Australia by the end of 2011.

New South Wales

The New South Wales Government (2009b) reported that there are 17 New South Wales variations in the Building Code of Australia—one variation was removed from BCA2009.[22] The New South Wales Government (2009b) also reported that it is anticipated that at least three further New South Wales variations will be removed by BCA2011.

Victoria

The Victorian Government (2009a) reported that there are currently 12 Victorian variations in the Building Code of Australia. The Victorian Government (2009a) reported that one variation will be removed in BCA2010.

The Victorian Government has also reported that some variations exist because of jurisdictional differences in other laws, such as those applying to early childhood centres, rather than because of different construction standards.

Queensland

The Queensland Government (2009b, p. 3) reported that three Queensland variations have been removed from BCA2009, which relate to energy efficiency, sound transmission and windows in cyclonic areas. The Queensland Government (2009b, p. 3) reported that four Queensland variations remain in the Building Code of Australia, and these four remaining variations—which relate to swimming pool safety, termite risk management, timber and fall prevention—are more difficult to eliminate. The Queensland Government (2009b, p. 3) reported that it 'will continue to progress reduction of these remaining variations where opportunities arise.'

Western Australia

The Western Australian Government has not reported on the number of variations it has removed from BCA2010, or its plans for variation removal in future editions of the BCA.

South Australia

The South Australian Government (2009b, p. 7) reported that the removal of the majority of South Australian variations—approximately 23—is dependent on the completion of national projects.

[22] This is a version number for the Building Code of Australia. The Code is updated and current from May each year. The Code which is current as of May 2009 is referred to as *BCA2009* and the code which is released in 2010 will be referred to as *BCA2010* (2009b, p. 3).

The South Australian Government (2009b, p. 7) has also reported that a number of variations will be removed in BCA2010 in accordance with COAG's National Strategy for Energy Efficiency.

Tasmania

The Tasmanian Government (2009a, p. 3) reported that five 'minor parts of variations' of Tasmanian-specific variations were removed from BCA2009. The Tasmanian Government (2009a, p. 3) also reported that one Tasmanian variation will be removed in BCA2010.

The Australian Capital Territory

The Australian Capital Territory Government has not reported on the number of variations it has removed from BCA2010, or its plans for variation removal in future editions of the BCA.

Northern Territory

The Northern Territory Government (2009) reported that one Territory-specific variation will be removed from BCA2010, and several other Territory specific variations will be modified.

Progress assessment

This National Reform Agenda milestone is not due to be completed until the end of 2011. As there are no milestones prior to the 2011 completion date, the COAG Reform Council has not assessed governments against this milestone.

Milestone 3: All jurisdictions: delineation and streamlining of local government processes that impact on building regulation (ongoing)

Progress report

A Building/Planning Delineation Joint Working Group was established by the Australian Building Codes Board in 2007 to consider delineation and streamlining of local government processes. The joint working group includes the Australian Building Codes Board, government representatives, the Energy Efficiency Working Group,[23] the Australian Local Government Association and industry representatives (Australian Building Codes Board, 2008a, p. 2; Australian Building Codes Board, 2009b, p. 1).

The joint-working group has considered the issues arising from building regulation occurring outside the Building Code of Australia. These may be regulatory requirements of local, State, Territory or Commonwealth government legislation that are in addition to Building Code of Australia requirements and the variations to the code.

The joint working group commissioned a pilot study that found that local government building regulations could add up to 14 per cent to the cost of building a house (Australian Building Codes Board, 2008b). These findings were published in the Australian Building Codes Board (2008b) report on the *Impacts on Housing Affordability: Local Government Regulatory Measures that Exceed the Requirements of the Building Code of Australia: Results of Preliminary Analysis*.

The Commonwealth Government (2009b, p. 37) reported that the Commonwealth Minister for Innovation, Industry, Science and Research (in his capacity as Chair of the Building Ministers' Forum) was finalising a paper entitled 'Principles for Managing Local Government Interventions'. The Commonwealth Government (2009b, p. 37) reported that the Building

[23] This is the Australian Building Codes Board's specific project group on energy efficiency.

Ministers' Forum supported the draft paper at its meeting on 21 May 2009 and that the finalised paper will be provided to the Local Government and Planning Ministers' Council for its consideration.

The other work that is currently underway aimed at delineating and streamlining local government processes is the 'gateway project' which was developed by the Australian Building Codes Board and the Local Government and Planning Ministerial Council (Commonwealth Government, 2009c, p. 26). This 'gateway project' is based on the Victorian model of local planning regulation, where local government decisions that affect matters covered by the Building Code of Australia are required to receive ministerial approval prior to being applied (Department of the Premier and Cabinet [Vic], 2009). The Commonwealth Government (2009b, p. 37) and the South Australian Government (2009a, p. 19) reported that the Building Ministers' Forum gave in-principle support for the 'gateway' model in 2008.

Progress assessment

This National Reform Agenda milestone does not include any specific timeframes for completion. Consequently, the council has not assessed jurisdictions against this milestone. However, the council notes that there has been some progress against this milestone. The council will continue to monitor developments with initiatives such as the proposals set out in the 'Principles for Managing Local Government Interventions' paper and the 'gateway model', as discussed in the progress report on this milestone.

Table 15.2 provides the council's overall assessment of progress on this reform.

Table 15.2: Construction code—overall progress assessment

Milestone	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Overall assessment									

15.4 Risk assessment

Delays finalising the regulation impact statement

As noted above, the final regulation impact statement was not released by 30 September 2009.

At this stage, the council's view is that the delay in releasing the final regulation impact statement is not a significant risk for the implementation of future milestones or the overall reform. It is likely that the regulation impact statement will be released soon, in accordance with the Commonwealth Government's (2009b, p. 37) report that it will be considered by the BRCWG on 9 October 2009. Also, the work on achieving the two core reforms in this stream, of developing a national construction code and a new intergovernmental agreement, is being done concurrently with the work on the regulation impact statement.

Possible delays settling funding

Governments have reported several risks associated with future milestones and the output for this reform of establishing a national construction code.

The first risk relates to the 2009–10 milestone for all jurisdictions to 'agree on governance and funding by June 2010.' The council notes that there is a need for jurisdictions to resolve the funding arrangements for both the Australian Building Codes Board's work on the development of the national construction code and its ongoing role administering the Building Code of Australia.

At the July 2009 meeting of the Australian Building Codes Board, the Commonwealth Government presented a paper setting out future funding options for the national construction code and the Building Code of Australia (Queensland Government, 2009a, p. 24; South Australian Government, 2009a, p. 20). The Queensland (2009a, p. 24) and Australian Capital Territory (2009b, p. 21) governments reported that the Australian Building Codes Board will present its preferred funding options at the Building Ministers' Forum meeting in November 2009.

Complexity of the task of unifying plumbing and building regulation

The second risk identified by a number of jurisdictions concerns the complexity and extent of work involved in incorporating building and plumbing regulations into one national construction code (Australian Capital Territory Government, 2009b, pp. 21–22; Commonwealth Government, 2009b, p. 38; Victorian Government, 2009b, p. 25). The council will continue to monitor jurisdictions' progress in respect to mitigating this risk.

National Reform Agenda milestones

As set out in the council's 2008 and 2009 reports to COAG on the National Reform Agenda, there continues to be risks associated with achieving the two remaining National Reform Agenda milestones. The Australian Building Codes Board's variation reduction strategy has achieved reductions in the number of variations in the current edition of the Building Code of Australia; however, there remain a number of State and Territory specific variations in the Code.

The Commonwealth Government (2009b, p. 37) reported that the variation reduction strategy is likely to be reconsidered when jurisdictions reconsider and agree a new intergovernmental agreement for the Australian Building Codes Board.

The second milestone to delineate and streamline local government processes that impact on building regulation does not include a timeframe, which makes it difficult for the council to undertake a risk assessment. The new intergovernmental agreement may provide the council with more direction on more specific milestones for assessing the pace and extent of this reform.

Chapter 16: Chemicals and plastics

Key points

Progress assessment

It is the COAG Reform Council's assessment that the milestone for COAG to consider a new governance structure to oversee regulatory reform and to agree a proposed interim response to the Productivity Commission's recommendations was completed on time.

However, the milestone requiring ministerial councils to report to COAG with implementation plans in response to the Productivity Commission's recommendations was not completed by 30 September 2009.

Risk assessment

Implementation of this reform has been patchy and successful completion within the life of the National Partnership remains uncertain. The council is particularly concerned that:

- the 'early harvest' reforms were not yet substantially implemented despite the milestone being moved to December 2009 and it remains unclear whether all these reforms will be completed on time
- the Standing Committee on Chemicals, a crucial part of bringing momentum to stalled reforms, had not yet met and details of its work program were unavailable
- the delay in presenting implementation plans poses a risk to the completion of the 2009–10 milestone for COAG to agree to these implementation plans.

16.1 Output and milestones

Table 16.1 reproduces the output and milestones from the implementation plan for deregulation priority 16—regulation of chemicals and plastics.

Table 16.1: Chemicals and plastics—output and milestones

Output				
16. Reduction in the compliance burden in the regulation of chemicals and plastics, while maintaining appropriate OH&S, public health and environmental protections.				
Milestones				
2008–09	2009–10	2010–11	2011–12	2012–13
All jurisdictions: COAG to consider new governance structure to oversee regulatory reform and to agree a proposed interim response to the recommendations of the Productivity Commission's Research Report at its Nov 2008 meeting All jurisdictions: Ministerial councils to report to COAG through the BRCWG, on responses and implementation plans to Productivity Commission recommendations	All jurisdictions: complete remaining early harvest reforms in accordance with the timetable agreed by COAG on 2 July 2009 All jurisdictions: COAG to agree on implementation plans developed by relevant ministerial councils for the relevant Productivity Commission recommendations All jurisdictions: BRCWG to report to COAG on progress in implementing reforms	All jurisdictions: BRCWG to report to COAG on progress in implementing reforms	All jurisdictions: BRCWG to report to COAG on progress in implementing reforms	

Source: (COAG, 2009p, p. 11)

The original implementation plan, agreed by COAG (2009o, pp. 11–12) on 29 November 2008, had a 2008–09 milestone for the completion of the 18 'early harvest' reforms in the first half of 2009, with one of the reforms to be implemented by December 2009.

The revised implementation plan agreed by COAG on 2 July 2009, as reproduced above, moved that milestone into the 2009–10 reporting year. Under the revised plan, all the 'early harvest' reforms are to be implemented by December 2009 with the exception of reforms six and 13.

These two reforms relate to the management protocols for high risk agricultural and veterinary chemicals and regulation of aerial application of agricultural chemicals. They will now be part of the broader proposal to establish a new national regulatory framework for agricultural and veterinary chemicals (COAG, 2009e, p. 2).

16.2 The proposed reform

The reform

The aim of this reform is to reduce the compliance burden in the regulation of chemicals and plastics[24] through greater national coordination and oversight, while maintaining appropriate occupational health and safety, public health and environmental protections.

This is primarily to be achieved by implementing a response by governments to recommendations of the Productivity Commission's (2008b) research report *Chemicals and Plastics Regulation* released in July 2008. The key findings of the commission were that:

- in most areas of chemicals and plastics regulation, improvements to efficiency and effectiveness could be made through national uniformity
- national uniformity could be enhanced by addressing four key failures in current arrangements through a four-level governance framework comprising:
  - policy development and oversight, which should be addressed through an officer-level standing committee on chemicals that works across all ministerial councils involved in chemicals and plastics regulation
  - assessment of chemical hazards and risks, which should involve science-based assessment of hazards and risks as a separate function to the setting of risk management standards
  - risk management standards setting, which should be done by expert agencies operating under the auspices of the ministerial councils—but separately from administration and enforcement—and accompanied by a range of reforms to specific areas of chemicals and plastics regulation
  - administration and enforcement, which can be jurisdiction specific but should be based on adoption of national standards (Productivity Commission, 2008b, pp. xxiv–liv).

Background

The use of chemicals and plastics in Australia is widespread and covers a variety of applications from large scale agriculture and industry down to households and individuals. As such, the chemicals and plastics industry plays an integral part in the Australian economy. In 2005–06,

[24] According to the Productivity Commission (2008b, p. 5), chemicals and plastics are defined as 'gasses (industrial, organic and inorganic), chemicals (industrial, organic and inorganic), polymers (including tyres, some packaging, foam, adhesive and paint), fertilisers, pesticides, cleaning compounds, toiletries, cosmetics, photographic chemicals, explosives and rubber products'.

the chemicals and plastics industry accounted for around nine per cent of manufacturing input in Australia and 0.9 per cent of gross domestic product (Productivity Commission, 2008b, p. 1).

Despite their importance to the economy and general living standards, the use of some chemicals and plastics can pose risks to health, security and the environment (Productivity Commission, 2008b, p. 1). The management of these risks has in the past been undertaken by the States and Territories, each of which has its own arrangements for regulation, administration, policy development and enforcement (Regulation Taskforce, 2006, p. 62).

These arrangements are often complex given the many different areas of public policy that regulation of chemicals and plastics cuts across. For example, it was estimated in 1998 that the sector was governed by 144 pieces of Commonwealth, State and Territory legislation (Regulation Taskforce, 2006, p. 62). The arrangements for the regulation of chemicals and plastics have proven flexible but have also resulted in unnecessary burdens on business through 'inconsistencies, overlaps and duplication' (Productivity Commission, 2009e, p. 14).

At a national level, the Productivity Commission (2009e, p. 11) identified that:

> Elements of chemicals and plastics regulation are overseen by a number of Ministerial Councils:
>
> - The Australian Health Ministers' Conference oversees the poisons scheduling regime.
> - The Workplace Relations Ministers' Council oversees the national occupational health and safety regulatory system.
> - The Australian Transport Council oversees regulations relating to the transport of dangerous goods.
> - The Primary Industries Ministerial Council oversees the regulation of agricultural and veterinary chemicals and products.
> - The Environment Protection and Heritage Council oversees national environmental regulations, including chemicals in the environment.
> - The Ministerial Council on Consumer Affairs oversees the product safety regulatory system.

The regulation of chemicals and plastics in Australia was identified as a key area for future action by the Taskforce for Reducing Regulatory Burdens on Business (2006, p. 169) as part of its investigation into reducing the costs to business of excess government regulation. In its final report, delivered in January 2006, the taskforce (2006, pp. 62–72) raised concerns about:

- the volume and complexity of existing regulation in the chemicals and plastics sector
- duplication and inconsistency between the Commonwealth, State and Territory regulatory regimes and across the supply-chain
- regulatory delays and high compliance costs
- inadequate recognition of international standards and approval processes
- prescriptive regulation of chemicals and plastics labelling.

The Regulation Taskforce (2006, p. 67) made nine recommendations to improve the regulation of chemicals and plastics including that COAG 'establish a high-level taskforce to develop an

integrated, national chemicals policy' and that an independent public review of regulation in the industry be undertaken.

On 10 February 2006, COAG (2006c, p. 6) identified chemicals and plastics as a regulatory 'hotspot' and agreed to establish a ministerial taskforce, comprising one nominated minister from each jurisdiction, to develop measures 'to achieve a streamlined and harmonised system of national chemicals and plastics regulation'.

On 27 July 2007, terms of reference were issued to the Productivity Commission to review arrangements for the regulation of chemicals and plastics in Australia to inform the work of the ministerial taskforce (Productivity Commission, 2008b, p. iv). In response, the commission produced the report discussed above.

On 26 March 2008, COAG (2008d, pp. 16–17) agreed to accelerate reforms on five regulatory 'hotspots', including chemicals and plastics regulation and asked the Ministerial Taskforce on Chemicals and Plastics regulation to report COAG by October 2008 on proposed responses to the recommendations of the Productivity Commission report.

On 3 July 2008, COAG (2008g) agreed to 18 'early harvest' reforms (these reforms were of a high priority to COAG for early implementation and had been recommended by the ministerial taskforce) and noted it would consider further proposals from the taskforce at its October 2008 meeting.

On 2 October 2008, COAG (2008j, p. 7) noted the final Productivity Commission report and directed:

- the ministerial taskforce to develop a governance structure for regulatory oversight in chemicals and plastics for COAG's consideration by November 2008
- relevant ministerial councils to report to COAG through the Business Regulation and Competition Working Group (BRCWG) by November 2008 on responses to and implementation plans for the commission's recommendations.

On 29 November 2008, COAG (2008c; 2008i, p. 10; 2008l) recognised the need for 'greater coordination and oversight in chemicals and plastics regulation' and:

- agreed a new governance framework for chemicals and plastics regulation (more detail is provided in the progress report on this item)
- agreed an interim response to the recommendations of the Productivity Commission report
- received a status report on implementation of the 18 'early harvest' reforms and requested a further status report to be considered at its first meeting in 2009 (COAG, 2009c).

16.3 Progress report and assessment

The following actions have been taken by governments regarding the 2008–09 milestones for deregulation priority 16.

Milestone 1: All jurisdictions: COAG to consider new governance structure to oversee regulatory reform and to agree a proposed interim response to the recommendations of the Productivity Commission's Research Report at its Nov 2008 meeting

Progress report

On 29 November 2008, COAG (2008i, p. 10) agreed to a new governance structure for chemicals and plastics reform involving:

- a new Standing Committee on Chemicals to coordinate policy, oversee the institutional and regulatory arrangements and make recommendations to ministerial councils—to be supported by an executive unit located in a Commonwealth agency
- continuation of the roles of existing ministerial councils for policy development within their respective areas of responsibilities, underpinned by intergovernmental agreements
- risk-management decision making and standard setting to be undertaken within the policy frameworks of the existing ministerial councils
- the assessment of hazards and risks of chemicals to human health, occupational health and safety and the environment to be undertaken on a cooperative national basis
- the administration of agreed standards and monitoring of their impact
- jurisdiction-specific functions to be undertaken by State and Territory agencies, or where agreed by the States and Territories, delegated to other bodies such as national regulators (COAG, 2008l).

COAG further agreed to an interim response to the recommendations of the Productivity Commission's research report on *Chemicals and Plastics Regulation* (COAG, 2008c), with further reforms to be considered in 2009 (COAG, 2008i, p. 10).

Progress assessment

It is the COAG Reform Council's assessment that this milestone was completed on time.

Milestone 2: All jurisdictions: Ministerial councils to report to COAG through the BRCWG, on responses and implementation plans to Productivity Commission recommendations

Progress report

The New South Wales Government (2009b) reported that the implementation plan from the Environment Protection and Heritage Council—responding to Productivity Commission recommendations 9.1, 9.2 and 9.3—was submitted to the BRCWG on 21 October 2008.

There is no evidence in COAG communiqués throughout 2009[25] that the other ministerial councils reported to COAG on responses to the Productivity Commission's recommendations or provided implementation plans in support of such responses.

However, the Queensland Government (2009a, p. 25) reported that six implementation plans have been agreed by ministerial councils, with the final implementation plan—from the

[25] Up to the COAG meeting of 2 July 2009.

Australian Health Ministers' Conference—awaiting the agreement of the Queensland Government. The Queensland Government further advised that its approval of the final plan was imminent at 23 September 2009. This assessment of the status of the ministerial council implementation plans was confirmed by other governments (Commonwealth Government, 2009b, p. 40; Northern Territory Government, 2009, p. 23; South Australian Government, 2009a, p. 21).

The Commonwealth Government (2009b, p. 40) has reported that the implementation plans are scheduled to be presented to COAG at its December 2009 meeting.

Progress assessment

It is the COAG Reform Council's assessment that this milestone was not completed within the reporting period.

Although one implementation plan has been submitted to the BRCWG and a number of jurisdictions have reported that six of the seven implementation plans have been completed—including Queensland, which reported that it is the last jurisdiction to approve the seventh—there is no evidence to show that the BRCWG has submitted these plans to COAG for consideration.

Table 16.2 provides the council's assessment of progress on the milestones in this reform.

Table 16.2: Chemicals and plastics—progress assessment by milestone

Milestone	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
1									
2									

Table 16.3 provides the council's overall assessment of progress on this reform. Greater weight has been given to the more substantive action required under milestone 2.

Table 16.3: Chemicals and plastics—overall progress assessment

	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Overall assessment									

16.4 Risk assessment

Implementation of this reform has been patchy and the council is concerned that progress toward the successful completion of the reform within the life of the National Partnership remains uncertain as governance arrangements had not started and implementation plans setting out what is to be achieved had not been presented to COAG (as at 30 September 2009).

'Early harvest' reforms not yet implemented

Under the revised implementation plan of 2 July 2009, the milestone for the 'early harvest' reforms was moved from the 2008–09 reporting year to the 2009–10 reporting year, with the completion of all but two of the 'early harvest' reforms due by December 2009.

The Victorian Government (2009b, pp. 27–28) reported with respect to the 'early harvest' reforms relating to agricultural and veterinary chemical products, that:

- consideration and development of a proposed alternative model has been significantly delayed with little progress during this period due to a lack of resource commitment at a Commonwealth level
- the proposed timeframe is ambitious and lengthy delays have exacerbated this problem
- as a result of the delays, industry stakeholders have expressed concerns about the shortened timeframes, the potential for alternative models to not be fully considered and consulted on, and therefore they are strongly advocating for an extension in time at both a State and national level.

The Victorian Government (2009b, p. 27) reported, with respect to recommendations relating to environment protection, that:

- funding has yet to be identified for later stages
- the Commonwealth, States and Territories disagree on the legislative basis under which the standard-settings body (recommendation 9.2) will operate
- the exact legislative changes required are not yet apparent.

The implementation of the 'early harvest' reforms appears to be moving slowly and given the issues with some of the reforms raised above, it is not clear—even with the extended deadline and separate arrangements for reforms 6 and 13—that all of these reforms will be completed on time.

This is a discouraging state of affairs given the reforms were identified as 'early harvest' reforms by COAG on the basis of being a high priority for quick implementation.

New governance structure was not implemented

Some progress was made in 2008–09 toward the implementation of new governance arrangements, with COAG's agreement on the establishment of the Standing Committee on Chemicals. However, substantial implementation of COAG's decision has not occurred.

The Victorian Government (2009b) has reported that a draft Memorandum of Understanding to establish the Standing Committee on Chemicals was circulated to States and Territories via the Ministerial Taskforce on Chemicals' Senior Officials Working Group in early September 2009. The Victorian Government (2009b) further reported that a senior official from the Commonwealth Department of Innovation, Industry, Science and Research will chair the committee, with membership comprising representation from six other Commonwealth departments and one representative from each of five relevant ministerial councils.

Details of when the standing committee will meet, and the committee's work program were not available.

The operation of the standing committee is crucial to bring momentum to these long-stalled reforms. The Northern Territory Government (2009, p. 23) reported that the delay in establishing the standing committee may slow some of the reform momentum in the short term.

Further delay in the standing committee meeting poses potential risks to the implementation of the reform as a whole. In this regard, COAG may wish to consider including in the next edition of the implementation plan more specific milestones for outcomes from the work of the standing committee.

The Commonwealth Government (2009d, p. 15) reported that a memorandum of understanding for the new governance arrangements will be considered by COAG on 7 December 2009. This would be a positive development that may help to bring these reforms back on track.

Implementation plans were not presented

The delay in ministerial councils reporting to COAG with implementation plans has made it difficult to accurately assess how advanced jurisdictions are in responding to and implementing the recommendations of the Productivity Commission. This is a relatively straightforward milestone and it is disappointing that it was not met, especially given COAG's agreement to an interim response to the recommendations of the Productivity Commission in November 2008.

The Commonwealth Government (2009b, p. 40) reported that 'there is a risk that formal agreement by ministerial councils to relevant implementation plans will not be received in time for COAG agreement by the end of 2009'.

This represents a risk to the achievement of the 2009–10 milestone for COAG to agree to implementation plans put forward by ministerial councils, albeit only a small risk given that the implementation plan provides until 30 June 2010 for agreement to be reached. It is hoped that the implementation plans will be provided to COAG before this report is released.

Inappropriate milestones

The implementation plan includes three milestones for 2009–10 to 2011–12 stating that the 'BRCWG [is] to report to COAG on progress in implementing the reforms'. This specification of milestones is incompatible with the COAG Reform Council's role to report to COAG on the progress of governments under the National Partnership.

Unambitious milestones

The remaining future milestones for this reform are unambitious. There is no firm commitment beyond COAG agreeing to implementation plans by 30 June 2010. Without firm milestones, it is likely that further delays will occur, especially if performance to date in reforming regulation of chemicals and plastics is any guide. COAG may wish to consider adding more specific milestones to this reform stream in the next edition of the implementation plan.

Chapter 17: Business names

Key points

Progress assessment

It is the COAG Reform Council's assessment that:

- the milestone for the identification of legislation to be repealed or amended on enactment of the Commonwealth Business Names legislation was completed within the reporting period
- the milestone to make an intergovernmental agreement and/or memorandum of understanding was partially completed on the basis that COAG made a Heads of Agreement to deliver a memorandum of understanding but that no memorandum was agreed by 30 September 2009.

Risk assessment

The COAG Reform Council considers that:

- there is a risk that the lack of a firm timeframe for the completion of a memorandum of understanding on collaboration by governments on the Business Online Services Project may lead to future delays
- technical implementation risks cited by a number of jurisdictions may also hamper the realisation of a single national system for business names registration.

17.1 Output and milestones

Table 17.1 reproduces the output and milestones in the implementation plan for deregulation priority 17—registering business names.

Table 17.1: Business names—output and milestones

Output				
17. Registering business names: A national system for registering business names.				
Milestones				
2008–09	2009–10	2010–11	2011–12	2012–13
All jurisdictions: identify legislation to be repealed/amended with enactment of Commonwealth Business Names legislation (likely 2010) by March 2009. All jurisdictions: agree an IGA and/or MOU on business names registration and related online services by June 2009.	Commonwealth: commence delivery of online service components by Dec 2009. Commonwealth: undertake system user testing by Jan–March 2010. States and Territories: finalise draft referral of powers and associated legislation by June 2010. Commonwealth: finalise Business Names legislation by June 2010.	States and Territories: repeal/amend legislation and refer powers by Sept 2010. Commonwealth: introduce referral of powers acceptance and national Business Names legislation to Parliament by Sept 2010. Commonwealth: release online services system by Sept 2010. All jurisdictions: integrate licensing data by Dec 2010. Commonwealth: enact Business Names legislation and complete all related transitional arrangements by early 2011. States and Territories: enact repeals and amendments and		

	complete all related transitional arrangements by early 2011. Commonwealth: operate new national business names registration system by end March 2011.

Source: (COAG, 2009p, pp. 12–13)

Registering business names is listed at clause 34(a) of the *National Partnership Agreement to Deliver a Seamless National Economy* (COAG, 2009n, pp. 9–10). In effect, this means that this reform must be implemented for a jurisdiction to remain eligible for its full reward payment.

17.2 The proposed reform

The reform

The aim of this reform is to simplify business name registration by setting up a single, national system for business names registration. COAG (2008j, p. 7) agreed that the system will allow businesses to register for business names and Australian Business Numbers[26] in one transaction and have access to other information and transactions with government.

Background

A business name is the name or title under which a person or other legal entity trades. Registered business names serve as a means of identifying the owners of a business (IP Australia, 2009).

Each State and Territory maintains a business names register on which businesses that are sole traders, partnerships or trusts and do not trade under their own entity name, must register their name if they are to trade in the relevant State or Territory (Department of Innovation, Industry, Science and Research [Cwlth], 2009b).

Companies registered with the Australian Securities and Investments Commission can conduct business throughout Australia without registering their business name in individual States and Territories (Australian Securities and Investments Commission, 2009a). However, such companies are required to register a business name if they intend to trade under a name other than the registered company name (IP Australia, 2009).

Businesses trading in more than one jurisdiction must register their business name separately in each jurisdiction (Department of Innovation, Industry, Science and Research [Cwlth], 2009b).

[26] The Australian Business Number (ABN) is single identifier for all business dealings with the Australian Taxation Office and for dealings with other government departments and agencies (Australian Taxation Office, 2009).

Business names registers are not linked with other business licensing procedures such as Australian Business Numbers and do not confer any proprietary rights (Department of Innovation, Industry, Science and Research [Cwlth], 2009b).

Approximately 600 000 Australian Business Numbers and 250 000 business names are registered each year, making them the most common registrations required when starting a business (Department of Innovation, Industry, Science and Research [Cwlth], 2009a).

In April 2006, the *Report of the Taskforce on Reducing Regulatory Burdens on Business* recommended that the Commonwealth should work with the States and Territories to streamline licensing registration procedures for business names, Australian Business Numbers, and other related procedures, and report back to COAG (Regulation Taskforce, 2006, p. 143).

Submissions to the Regulation Taskforce highlighted the burden on business of current business licensing arrangements, including registration by various means (online, over the counter or by mail) and misunderstandings over intellectual property rights conferred by trademarks and business names (Regulation Taskforce, 2006, pp. 142–143).

On 13 April 2007, COAG (2007e, p. 2) agreed to a process to develop a single online registration system for business names and Australian Business Numbers, including a trademark searching facility.

On 23 May 2008, the Small Business Ministerial Council (2008, p. 2) endorsed a model for development of a seamless, single, online registration system for business names and Australian Business Numbers, including a trademark search facility. On 3 July 2008, COAG (2008k, p. 3) approved the establishment of a national registration system, including the facilities endorsed by the Small Business Ministerial Council, and business information services and other innovations like automatic form filling, which are being implemented under deregulation priority 19: standard business reporting, and are the subject of Chapter 19 of this report.

Existing business names registers held by States and Territories will be transferred to the Australian Securities and Investments Commission for inclusion in the national register of business names (COAG, 2009j).

17.3 Progress report and assessment

The following actions have been taken by governments regarding the 2008–09 milestones for deregulation priority 17.

Milestone 1: All jurisdictions: identify legislation to be repealed/amended with enactment of Commonwealth Business Names legislation (likely 2010) by March 2009.

Progress report

Jurisdictions provided the Commonwealth with a list of legislation to be repealed or amended on enactment of the Commonwealth business names legislation on 3 June 2009. The Commonwealth Government (2009b) provided a copy of this list to the council.

Commonwealth

The Commonwealth Government (2009b) has reported that 226 separate pieces of legislation including 32 at the Commonwealth level will likely be affected by the business names

legislation but does not differentiate between legislation that will be repealed and that which requires only amendments.

New South Wales

The New South Wales Government (2009a) has reported to the council on its affected legislation, indicating that 46 pieces of legislation would require repeal or amendment.

Victoria

The Victorian Government (2009b) has reported to the council on its affected legislation, indicating that the *Business Names Act 1962* (Vic) would need to be repealed and that 29 other laws may require amendment. Victoria also reported that the Business Names Regulations 2003 (Vic) would need to be repealed and that seven other regulations may require amendment.

Queensland

The Queensland Government (2009a) reported that the *Business Names Act 1962* (Qld) and the Business Names Regulation 1998 (Qld) would be repealed and that consequential amendments would be made to approximately 30 other pieces of legislation.

Western Australia

The Commonwealth Government (2009b) reported that 22 pieces of legislation would require repeal or amendment in Western Australia.

South Australia

The Commonwealth Government (2009b) reported that 17 pieces of legislation would require repeal or amendment in South Australia.

Tasmania

The Tasmanian Government (2009b) reported that the *Business Names Act 1962* (Tas) would be repealed and that consequential amendments would be made to 21 other pieces of legislation.

Australian Capital Territory

The Australian Capital Territory Government (2009a, p. 4) reported that the *Business Names Act 1963* (ACT) and related regulation would be repealed and that consequential amendments would be made to six other pieces of legislation.

Northern Territory

The Northern Territory Government (2009) reported that it provided the Commonwealth with a list of affected legislation including the repeal of the *Business Names Act 2007* (NT) and a list of consequential amendments to some 20 further laws.

Progress assessment

It is the COAG Reform Council's assessment that this milestone was completed within the reporting period.

Milestone 2: All jurisdictions: agree an IGA and/or MOU on business names registration and related online services by June 2009.

Progress report

On 2 July 2009, COAG (2009j) made the *Intergovernmental Agreement for Business Names Agreement* which commenced on 1 September 2009. The Agreement provides:

- that its purpose is to endorse a national business names registration scheme that will allow businesses to register once, irrespective of the number of jurisdictions they will trade in
- that the Commonwealth will enact a national business names law, based in part on referrals from the States,[27] and the Australian Securities and Investments Commission will have sole responsibility for its administration
- a role for the Ministerial Council for Corporations in approving the national law and any substantive amendments to it and a process for States and Territories to seek amendments to the national law
- requirements for the making of State referrals, including provisions relating to the potential amendment or termination of the referrals
- for funding of the national business registration system by means of fees set on a cost-recovery basis, with a requirement that the Commonwealth seek to ensure that any new fee for national business names registration will not be higher than the lowest fee currently paid in any State or Territory
- for data sharing and information access between the Commission and Commonwealth, State and Territory law enforcement, licensing, fair trading and other relevant agencies (COAG, 2009j).

The *Business Names Agreement* also lists the services that will be provided by the national register, including:

- business name registration over the internet and at business registration points in the Australian Investments and Securities Commission's service centres in capital cities and at appropriate agents
- printable forms for business registration at these various locations that may be lodged with the Commission
- a telephone support system, an online facility for searching the register, and an extract service on commercial terms (COAG, 2009j).

COAG (2009b) also agreed on 2 July 2009 to the *Business Online Services Heads of Agreement* which provides:

- for greater collaboration between Commonwealth, State and Territory governments on the Business Online Services Project and that more detailed terms and conditions for this

[27] The Australian Capital Territory and the Northern Territory operate under Commonwealth self-government legislation and are not required to make referrals to the Commonwealth for this reform (COAG, 2009j).

collaboration will be contained in a memorandum of understanding to be signed by the heads of relevant government agencies

- that the goals of the project are to improve:
  - Australian productivity by reducing the regulatory burden on businesses
  - business knowledge and certainty
  - the efficiency of the delivery of government services to businesses
- that the Commonwealth will provide the infrastructure for the project and all parties will be responsible for providing accurate and quality information that will be available through the Business Online Services Project and to cooperate to provide high quality customer service to users
- governance, dispute resolution, review and termination arrangements for the *Heads of Agreement* (COAG, 2009b).

Progress assessment

It is the COAG Reform Council's assessment that this milestone was partially completed within the reporting period. COAG made an intergovernmental agreement as required and also made the *Business Online Services Heads of Agreement*. The *Heads of Agreement* foreshadows a memorandum of understanding which was not completed within the reporting period. The memorandum of understanding remains to be completed; however, the council does not consider that this will significantly impede the completion of future milestones for this reform.

Table 17.2 provides the council's assessment of progress on the milestones in this reform.

Table 17.2: Business names—progress assessment by milestone

Milestone	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
1									
2									

Table 17.3 provides the council's overall assessment of progress on this reform. The overall assessment takes into account completion of the first milestone and the completion of the more significant component of the second milestone for this reform (signing of the intergovernmental agreement).

Table 17.3: Business names—overall progress assessment

	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Overall assessment									

17.4 Risk assessment

The council notes that a memorandum of understanding on collaboration by governments on the Business Online Services Project has not been agreed and that the *Heads of Agreement*, made by COAG on 2 July 2009, provides no firm timeframe for its completion. The Victorian Government (2009b, p. 30) reported concerns regarding work planning and the future timetable for this reform and cited a lack of agreement on the scope and key design features of the Business Online Services project. A number of governments have reported specific technical risks to the implementation of this project. These represent potential risks to the overall timetable for this reform.

The Commonwealth Government (2009c, p. 30) reported that significant risk management procedures, governance structures, consultative channels and project management procedures are in place to manage the risk that technical implementation matters may hamper the reform's progression and that all relevant Commonwealth, State and Territory agencies involved actively manage and routinely reassess these risks and review planning documents (Commonwealth Government, 2009c, p. 30).

The council will closely follow progress toward future milestones in the 2009–10 reporting period for any evidence of delays resulting from the lack of a memorandum of understanding.

Chapter 18: Personal property securities

Key points

Progress assessment

It is the COAG Reform Council's assessment that the two milestones requiring the Commonwealth and the States and Territories to introduce the legislation to enable the Commonwealth scheme were only partially completed.

Risk assessment

The COAG Reform Council considers that legislative delays are the key risk to this reform, particularly given that general elections are to be held in South Australia and Tasmania in March 2010 and in Victoria in November 2010.

18.1 Output and milestones

Table 18.1 reproduces the output and milestones in the implementation plan for deregulation priority 18—personal property securities.

Table 18.1: Personal property securities—output and milestones

Output				
18. Personal property securities (PPS): Establishment of a national personal property securities system using Commonwealth legislation.				
Milestones				
2008–09	2009–10	2010–11	2011–12	2012–13
All jurisdictions: IGA agreed at COAG in Oct 2008 Commonwealth: Contractor engaged to design, build and integrate the PPS register by Nov 2008 Commonwealth: introduce PPS Bill to Parliament by mid 2009 States and	All jurisdictions: legislation enacted by Oct 2009 All jurisdictions: complete migration of data from State and Territory registers and all related transitional arrangements by May 2010	All jurisdictions: national personal property securities system commences by May 2011		

Territories: introduction of referring legislation and consequential amendments by mid 2009	

Source: (COAG, 2009p, pp. 13–14)

The original implementation plan agreed by COAG (2009o, p. 15) on 29 November 2008 had a 2009–10 milestone for the system to commence by May 2010.

The revised implementation plan agreed by COAG on 2 July 2009, as reproduced above, defers this milestone to the 2010–11 reporting period with a deadline of May 2011.

Personal property securities is listed at clause 34(a) of the *National Partnership Agreement to Deliver a Seamless National Economy* (COAG, 2009n, pp. 9–10). In effect, this means that this reform must be implemented for a jurisdiction to remain eligible for its full reward payment.

18.2 The proposed reform

The reform

The aim of this reform is to harmonise and reduce the complexity of personal property securities laws in Australia, and make them more consistent with arrangements in overseas jurisdictions to:

- reduce uncertainty for those creating, dealing with and enforcing secured lending arrangements
- improve the efficiency of and increase competition among providers of secured finance
- make it easier for businesses to secure finance against a range of property classes, and in doing so assist them to grow (McClelland, 2009, pp. 6961–6962).

Changes to the laws will be accompanied by the creation of a national personal property securities register, that will be searchable online, providing a single source of information on securities held against personal property (McClelland, 2009, p. 6962).

Under the *Personal Property Securities Law Agreement 2008*, agreed by COAG on 2 October 2008, the Commonwealth will pass a national personal property securities law supported by a text-based referral[28] from the States (COAG, 2008o, p. 3). This national law will replace more than 70 Commonwealth, State and Territory laws (McClelland, 2009, p. 6960).

[28] In broad terms, two types of referrals are made under section 51(xxxvii) of the Australian Constitution:

- text-based referrals—which are the referral to the text of a specific law of the Commonwealth by a State parliament
- matter referrals—a broader referral of a particular issue to the Commonwealth by a State parliament (French, 2003).

Background

Personal property is any property other than land, including tangible and intangible goods such as cars, machinery, livestock, financial instruments, accounts and intellectual property. A security is an interest in private property that is used to secure a payment or other obligation (Attorney-General's Department [Cwlth], 2009f).

In April 2006, the Standing Committee of Attorneys-General released an options paper on reforms to personal property securities laws in Australia. The paper found that:

- there were significant compliance and transaction costs resulting from the need to comply with different arrangements in each jurisdiction
- there were different levels of protection provided to securities over different types of property, meaning that credit providers were discouraged from accepting some classes of property as security, which limited the capacity of businesses to expand using debt
- there was no register of securities against personal property that was comparable to the registers of securities against land (Standing Committee of Attorneys-General, 2006b, pp. 9–10).

On 6 July 2006, the Commonwealth Attorney-General's Department released *The Costs and Benefits of Personal Property Securities (PPS) Reform*, which found:

- a 'patchwork of inconsistent laws' was leading to the deficiencies of incomplete coverage of personal property classes, overlapping coverage of some securities, legal and economic barriers to operation in multiple jurisdictions and differential treatment of securities
- key benefits of reform would be the potential to expand the pool of collateral for debt-financed business expansion, substantial reductions in transaction costs and reduced legal disputes and associated costs
- there would be a likely, but unquantified, net benefit from reforms to bring about a uniform national system for personal property securities and a single register of securities
- no groups stood to lose, in net terms, as a result of the reform (Access Economics, 2006).

Also in July 2006, the Standing Committee of Attorneys-General agreed to develop proposals for reform of the laws on personal property securities in consultation with stakeholders and formed a working group of State and Territory officials to produce three discussion papers on aspects of the reforms (Attorney-General's Department [Cwlth], 2006; Standing Committee of Attorneys-General, 2006b; 2007a; 2007b).

On 13 April 2007, COAG (COAG, 2007e, p. 2) agreed in principle to a national system for registering personal property securities, to be administered by the Commonwealth, by 2009, subject to further consideration of financial arrangements.

In July 2007, the Standing Committee of Attorneys-General (2007c) requested officials to provide it with a proposed intergovernmental agreement to consider and forward to COAG by the end of that year. In March 2008, the Attorneys-General (2008) endorsed a draft agreement to

provide to COAG and noted that final endorsement would be subject to agreement to the text of a personal property securities bill and referral legislation by the States.

On 2 October 2008, COAG signed the *Personal Property Securities Law Agreement 2008*, which contained:

- agreement by the Commonwealth, States and Territories to establish a national system for the registration of personal property securities
- the structure and content of the legislative scheme—a Commonwealth law supported by a text-based referral from the States—to support the national system
- procedures for the amendment of the law
- principles of access to information for State and Territory ministers and agencies
- mechanisms for withdrawing from the agreement, including that the agreement continues with remaining parties if any State or Territory withdraws (COAG, 2008o).

18.3 Progress report and assessment

The following actions have been taken by governments regarding the 2008–09 milestones for deregulation priority 18.

Milestone 1: All jurisdictions: IGA agreed at COAG in Oct 2008

Progress report

This milestone is a statement of fact. The *Personal Property Securities Law Agreement 2008* was signed by COAG on 2 October 2008 (COAG, 2008o).

Progress assessment

Noting that this milestone is a statement of fact, it is the COAG Reform Council's assessment that it was completed on time.

Milestone 2: Commonwealth: Contractor engaged to design, build and integrate the PPS register by Nov 2008

Progress report

The *PPS Reform Newsletter* of November 2008 announced that KAZ Group PL had been selected to design, build and integrate the personal property securities register (Attorney-General's Department [Cwlth], 2008).

Progress assessment

It is the COAG Reform Council's assessment that this milestone was completed on time.

Milestone 3: Commonwealth: Introduce PPS Bill to Parliament by mid 2009

Milestone 4: States and Territories: Introduction of referring legislation and consequential amendments by mid 2009

These two milestones are assessed collectively because there is a clear nexus between (and a shared responsibility for) the introduction and passage of Commonwealth legislation and State and Territory referral and consequential amendments legislation.

Progress report (Milestone 3)

The Personal Property Securities Bill 2009 (Cwlth) was introduced into the House of Representatives on 24 June 2009. The Bill was referred to the Senate Legal and Constitutional Affairs Committee on 25 June 2009 (Parliament of Australia, 2009f).

The Senate Legal and Constitutional Affairs Committee (2009, p. 20) released its report on the Bill on 20 August 2009. The report recommended that the Bill be passed, subject to a commitment from the government to:

- thoroughly consider all concerns raised in submissions to the inquiry and any further concerns brought to the government's attention by 30 September 2009
- make public its response to the concerns and provide as much information as possible regarding policy deliberations and choices
- include a consequential amendments Bill—to be considered cognate with the Personal Property Securities Bill 2009—to make all necessary changes resulting from consideration of these concerns.

The Commonwealth Government was considering its response to the report and had invited comment on the Bill by 30 September 2009, in line with the recommendation of the Senate Committee (Attorney-General's Department [Cwlth], 2009g, p. 1).

The Commonwealth Government is also required to introduce consequential amendments to other legislation to support the personal property securities law and system. However, it had not introduced such legislation by 30 September 2009 and there is no milestone in the implementation plan for it to do so.

Progress report (Milestone 4)

New South Wales

Referral legislation: The *Personal Property Securities (Commonwealth Powers) Act 2009* (NSW) was passed by both houses of the New South Wales Parliament on 17 June 2009 and received assent on 19 June 2009 (Parliament of New South Wales, 2009). The Act commenced on assent other than section 6 (2), (3) and (4), which were to commence by proclamation and were subject to relevant amendments to the Commonwealth law taking place (Parliamentary Counsel's Office [NSW], 2009b).

The three uncommenced clauses respectively provide for referral to the Commonwealth of personal property securities matters concerning:

- personal property other than fixtures and water rights
- fixtures
- transferable water rights (Parliamentary Counsel's Office [NSW], 2009b).

Allowing for separate commencement of provisions relating to these three classes of personal property is consistent with the provisions of clause 3.2 of the Personal Property Securities Law Agreement 2008, which provides that the Commonwealth law will not apply to fixtures and

water rights from commencement but may be applied with the consent of the relevant State or Territory (COAG, 2008o, p. 3).

Consequential amendments: The New South Wales Government (2009c) reported that consequential amendments were scheduled to be introduced in the Spring 2009 sittings.

Victoria

Referral legislation: The Personal Property Securities (Commonwealth Powers) Bill 2009 was introduced into the Victorian Legislative Assembly on 11 August 2009. The Bill passed that House on 17 September 2009 and was yet to be considered by the Legislative Council as at 30 September 2009. As introduced, the Bill contained the same commencement provisions as the New South Wales Act detailed above (Office of the Chief Parliamentary Counsel [Vic], 2009a).

Consequential amendments: The Victorian Government (2009b, p. 32) reported that its consequential amendments were being developed but could not be finalised and introduced until after the Commonwealth's consequential amendments were completed. Victoria further reported that it was its intention to introduce the legislation in early 2010.

Queensland

Referral legislation: The Personal Property Securities (Commonwealth Powers) Bill 2009 was introduced into the Queensland Legislative Assembly on 1 September 2009 and was passed on 17 September 2009 (Queensland Parliament, 2009, p. 2432). The Act received assent on 22 September 2009. It contains the same commencement provisions as the New South Wales Act detailed above (Office of the Queensland Parliamentary Counsel, 2009a).

Consequential amendments: The Queensland Government (2009b, p. 4) reported that drafting of its consequential amendments bill had commenced and that it was expected to be ready for introduction in early 2010.

Western Australia

As at 30 September 2009, no legislation regarding personal property securities had been introduced into either house of the Western Australian Parliament. The Western Australian Government (2009b, p. 25) reported that the legislation and consequential amendments were being prepared and that the Business Regulation and Competition Working Group (BRCWG) was reviewing the timelines for this milestone.

South Australia

Referral legislation: The Personal Property Securities (Commonwealth Powers) Bill 2009 was introduced into the South Australian House of Assembly on 9 September 2009 and was passed on 24 September 2009 (Parliament of South Australia, 2009). As at 30 September 2009, the Bill had not been considered by the Legislative Council (Legislative Council [SA], 2009). The Bill contained the same commencement provisions as the New South Wales Act detailed above.

Consequential amendments: The South Australian Government (2009a, pp. 23–24) reported that its consequential amendments were unlikely to be enacted by 2010. It also noted that the final milestone for the system to commence was deferred twelve months from May 2010 to May 2011 but the interim milestones were not adjusted and that the BRCWG was reviewing the interim milestones for this reform (South Australian Government, 2009a, p. 24).

Tasmania

As at 30 September 2009, no legislation regarding personal property securities had been introduced into either house of the Tasmanian Parliament. The Tasmanian Government (2009b, p. 29) reported that it would be in a position to introduce the legislation when the Commonwealth's final legislation was known.

Australian Capital Territory

Referral legislation: Recital 3 of the *Personal Property Securities Law Agreement 2008* provides that the Australian Capital Territory operates under Commonwealth self-government legislation and is not required to pass referral legislation (COAG, 2008o, p. 1).

Consequential amendments: The Australian Capital Territory Government (2009b, p. 25) reported that its consequential legislation was scheduled for October/November 2009.

Northern Territory

Referral legislation: Recital 3 of the *Personal Property Securities Law Agreement 2008* provides that the Northern Territory operates under Commonwealth self-government legislation and is not required to pass referral legislation (COAG, 2008o, p. 1).

Consequential amendments: The Northern Territory Government (2009, p. 25) reported that drafting instructions for its consequential legislation were being prepared but that a bill could not be introduced until the Commonwealth had finalised its legislation and regulations. As at 30 September 2009, the earliest date for introduction was November 2009.

Progress assessment

Taken together, it is the COAG Reform Council's assessment that there has been some progress against these two milestones but that they had not been fully completed by 30 September 2009.

As set out in Chapter 13, it is generally the case that legislative processes for the referral of powers to the Commonwealth occur in a sequenced fashion. In this case, there have been delays in the introduction of consequential legislation by the Commonwealth. The States and Territories consequently did not introduce their consequential amendments within the reporting period.

On the basis of this collective assessment, progress for all jurisdictions on milestones 3 and 4 is rated as 'amber' in accordance with the assessment schema used in this report.

Table 18.2 provides the council's assessment of progress on the milestones in this reform.

Table 18.2: Personal property securities—progress assessment by milestone

Milestone	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
1									
2									
3									
4									

Table 18.3 provides the council's overall assessment of progress on this reform. Greater weight has been given to the substantive action required by all governments under milestones 3 and 4.

Table 18.3: Personal property securities—overall progress assessment

	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Overall assessment									

18.4 Risk assessment

As of 30 September 2009, potential delays with the Commonwealth's legislation and actual delays with Western Australia's and Tasmania's legislation were the key risks to this reform.

The Commonwealth Government was considering a response to the report of the Senate Legal and Constitutional Affairs Committee, which in effect recommended additional consultation and the drafting of further legislation to amend the Personal Property Securities Bill 2009 as a condition of the Bill's passage. This had the potential to cause delays beyond the October 2009 deadline in the 2009–10 reporting period for all jurisdictions to have enacted legislation.

Similarly, as at 30 September 2009, Western Australia and Tasmania had not introduced referral legislation and no government—Commonwealth, State or Territory—had introduced consequential amendments into parliament.

In the case of Tasmania, passage of the legislation in 2009 could be crucial given potential disruptions to its parliamentary schedules resulting from a general election to be held in March 2010 (Lundie, 2009).[29] Victoria and South Australia also face general elections in 2010 that may become relevant if there is further delay in the legislative processes for this reform.

It is noted that the BRCWG was considering revising the interim milestones for this reform in line with the twelve month deferral of the final milestone for the personal property securities system to commence from May 2010 to May 2011.

[29] Strictly speaking, the Tasmanian election can occur up to 22 May 2010. However, the Tasmanian Premier, the Hon David Bartlett MP, stated, in a speech delivered to senior Tasmanian public servants, that the election will occur on 20 March 2010.

Chapter 19: Business reporting

Key points

Progress assessment

It is the COAG Reform Council's assessment that two of the three Commonwealth milestones under this reform were completed on time. The milestone for the release of a full production version of the tax file number declaration was not completed during the reporting period although this is not expected to cause other aspects of the project to slip behind schedule.

19.1 Output and milestones

Table 19.1 reproduces the output and milestones in the implementation plan for deregulation priority 19—standard business reporting.

Table 19.1: Business reporting—output and milestones

Output				
19. Standard business reporting (SBR): Simplified business-to-government reporting by July 2010, including the creation of a single online facility. It will streamline government financial reporting requirements for business.				
Milestones				
2008–09	2009–10	2010–11	2011–12	2012–13
Commonwealth: release limited Tax File Number (TFN) Declaration Pilot by 31 January 2009 Commonwealth: release full production version of the TFN Declaration by 30 June 2009 Commonwealth: release third version of the SBR Reporting Taxonomy (Taxonomy Cycle	Commonwealth: release fourth version of the SBR Reporting Taxonomy by 30 Sept 2009 All jurisdictions: open all transactions and interactions in SBR scope to the public in preparation for 1 July 2010 start date by 31 March 2010 Commonwealth: release fifth	All jurisdictions: fully implement the SBR program from 1 July 2010 (with take-up by business escalating over the subsequent three years)		

3) with input from States and Territories by 31 March 2009	version of the SBR Reporting Taxonomy by 30 June 2010

Source: (COAG, 2009p, p. 14)

Standard business reporting is listed at clause 34(a) of the *National Partnership Agreement to Deliver a Seamless National Economy* (COAG, 2009n, pp. 9–10). In effect, this means that this reform must be implemented for a jurisdiction to remain eligible for its full reward payment.

19.2 The proposed reform

The reform

The aim of this reform is to reduce the reporting burden on business by streamlining and standardising government financial reporting requirements.

This objective is being pursued through a collaboration of the Commonwealth Treasury, the Australian Taxation Office, the Australian Securities and Investments Commission, the Australian Prudential Regulation Authority, the Australian Bureau of Statistics and all State and Territory revenue offices. These agencies will adopt common definitions for financial reporting and enable electronic 'pre-filling' of forms and notifications, direct from commonly used financial and accounting software[30] (Treasury [Cwlth], 2009f).

It is estimated that, once fully implemented, this reform will save business around $800 million each year in reporting costs (COAG, 2008k, p. 2). The New Zealand Government recently announced that it too will develop a standard business reporting program (Treasury [Cwlth], 2009e).

Under the program, a series of standard reporting definitions for key terms—collectively forming a 'taxonomy'—will be used across all the agencies involved for financial information required from businesses. These standard definitions can then be included by software developers in business accounting, financial and record keeping software (COAG, 2008k, p. 2).

A new online reporting channel for businesses, which will have a single secure sign-on facility, will also be developed consistent with these definitions and the requirements of participating agencies (COAG, 2008k, p. 2)

An additional benefit of the reforms is that obsolete reporting requirements will be deleted in the process of developing the reporting definitions and systems (Treasury [Cwlth], 2009c). The single sign-on facility for businesses will also be made available to all other government agencies, including those of State, Territory and local governments (Treasury [Cwlth], 2009f).

[30] The Standard Business Reporting System is to use eXtensible Business Reporting Language which is the emerging format for sharing financial information in a computerised form and is planned to be implemented in the United States, Japan, the United Kingdom, the Netherlands, China, Singapore, India, South Africa and New Zealand (Treasury [Cwlth], 2009e).

Background

The *Report of the Taskforce on Reducing Regulatory Burdens on Business* (2006, p. 142) recommended that the Commonwealth develop and adopt a business reporting standard, based on the Netherlands model (see Box 19.1) and work done by the Australian Taxation Office (Regulation Taskforce, 2006, p. 142).

On 19 June 2008, COAG (2008b) made an *Intergovernmental Agreement on Standard Business Reporting Arrangements for Payroll Tax*. The agreement was designed to simplify and reduce the burden of business-to-government reporting in respect of payroll tax. On 3 July 2008, COAG (2008k, p. 2) agreed to the Standard Business Reporting program, with the Commonwealth committing $243 million over four years to its implementation.

Box 19.1: Business reporting—the Netherlands model

A business reporting standards project was recently undertaken in the Netherlands which was able to reduce around 200 000 data items that government requested from business to less than 4000 items (covering all agencies at all levels of government). At the end of the first quarter of 2006, administrative burdens had been reduced by 12–13 per cent or €2 billion (Productivity Commission, 2006b, p. 150). The data model is also used by ministers in the Netherlands Cabinet to discuss the introduction of new or changed policy that involves reporting obligations to enable the impact on business to be quantified.

Source: (Regulation Taskforce, 2006, p. 142)

19.3 Progress report and assessment

The following actions have been taken by governments regarding the 2008–09 milestones for deregulation priority 19.

Milestone 1: Commonwealth: Release limited Tax File Number (TFN) Declaration Pilot by 31 January 2009

Progress report

The Standard Business Reporting website noted that the tax file number declaration pilot involving six software developers began in February 2009 (Treasury [Cwlth], 2009d). The *Session 2 SBR Update* of May 2009 reported successful piloting with selected software developers (Treasury [Cwth], 2009h, pp. 3–4).

Progress assessment

It is the COAG Reform Council's assessment that this milestone was completed on time.

Milestone 2: Commonwealth: Release full production version of the TFN Declaration by 30 June 2009

Progress report

The full production version of the tax file number declaration was not released by 30 June 2009. The Commonwealth Government (2009b, p. 46) reported that the release had been deferred until 1 July 2010, together with the full standard business reporting system, due to a lack of demand for an interim measure from business and software developers and the need to contain costs.

The full production version of the tax file number declaration is the component of the system that will enable tax file number transactions with the Australian Taxation Office, once business or accounting software has been developed to support it. The purpose of early release was to enable software developers to incorporate its functions in the 2010 releases of their software (Treasury [Cwlth], 2009i).

Progress assessment

It is the COAG Reform Council's assessment that this milestone was not completed during the reporting period.

Milestone 3: Commonwealth: Release third version of the SBR Reporting Taxonomy (Taxonomy Cycle 3) with input from States and Territories by 31 March 2009

Progress report

The third version of the standard business reporting taxonomy was released in March 2009 and covers information in forms from the Australian Taxation Office, Australian Securities and Investments Commission, Australian Prudential Regulation Authority, Australian Bureau of Statistics and all State and Territory revenue offices (Treasury [Cwlth], 2009d).

Progress assessment

It is the COAG Reform Council's assessment that this milestone was completed on time.

Table 19.2 provides the council's assessment of progress on the milestones in this reform.

Table 19.2: Business reporting—progress assessment by milestone

Milestone	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
1									
2									
3									

Table 19.3 provides the council's overall assessment of progress on this reform. The overall assessment takes into account the completion on time of two of the three milestones and that the incomplete milestone should not affect progress on later milestones or the reform generally.

Table 19.3: Business reporting—overall progress assessment

	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Overall assessment									

19.4 Risk assessment

This is primarily a technical reform and a number of risks were raised by jurisdictions that related to competing demands for the technical resources required to achieve the reform's objectives. The technology to be adopted is relatively new and untested and this has resulted in a longer than expected development timeframe and shortened timelines for subsequent phases. The Queensland and Northern Territory governments also cited potential budget risks to their successful completion of the reform (Northern Territory Government, 2009, pp. 26–27; Queensland Government, 2009a, p. 30). The delayed release of the full production version of the tax file number declaration is not expected to cause other aspects of the project to slip behind schedule.

The future milestones published on the Standard Business Reporting website provide greater detail than the milestones specified in the implementation plan. The website indicated that software developers were to begin software testing in October 2009. The Standard Business Reporting financial reporting components were then expected to be ready for production in April 2010 (Treasury [Cwlth], 2009d).

This work program remains realistic despite the risks identified and remains consistent with the National Partnership implementation plan completion date for this reform of 1 July 2010.

Chapter 20: Food

Key points

Progress assessment

It is the COAG Reform Council's assessment that the single 2008–09 milestone for this reform was not completed.

Risk Assessment

The COAG Reform Council considers that the risks to this reform are:

- the lack of progress with the independent review of food regulation established in January 2007, which may contain useful proposals for reform
- the slow movement toward the substantive outputs of this reform—with even the tentative 2008–09 milestone to 'develop a proposal for the development of options and costs' for improving the consistency of monitoring and enforcement being missed
- delays in establishing the review of food labelling law and policy reducing both the likelihood of its completion on time and the time available for governments to implement any agreed reforms within the life of the National Partnership
- unclear governance arrangements potentially causing further delays and resulting in the overall reform of food regulation lacking direction.

20.1 Output and milestones

Table 20.1 reproduces the output and milestones in the implementation plan for deregulation priority 20—food regulation.

Table 20.1: Food—output and milestones

Output				
20. Food Regulation: Reform of legislation, governance arrangements, uniform enforcement and setting or modifying food standards.				
Milestones				
2008–09	2009–10	2010–11	2011–12	2012–13
All jurisdictions: in early 2009, develop a proposal for the development of options and costs to improve national consistency in monitoring and enforcement, and a proposal to reform voting arrangements of the Ministerial Council	All jurisdictions: through Ministerial Council undertake a comprehensive review of food labelling law and policy, with progress report to COAG by July 2009 All jurisdictions: consider and agree to preferred implementation model by July 2009	All jurisdictions: finalise food labelling review with report to COAG by July 2010 All jurisdictions: develop and finalise legislation and fully implement agreed reforms by Dec 2010		

Source: (COAG, 2009p, p. 15)

20.2 The proposed reform

The reform

The specific reforms to be delivered under this deregulation priority remain to be determined through the process set out in the implementation plan milestones reproduced above.

Background

Each year Australians consume over 20 billion meals, with less than 0.02 per cent of these meals resulting in illness (Food Standards Australia New Zealand, 1999). While the risk of illness remains low, unsafe food can have significant consequences for individuals, households, business and the economy more broadly. It has been estimated that the total cost of food-borne illness in Australia is over $1.24 billion per year (Applied Economics, 2006, p. vii).

Although strong market incentives—including the loss of reputation, supply chain partners and customers caused by an incident—exist for businesses to produce food that is safe, regulation remains in place to provide:

- for accurate food information to be given to consumers (such as expiry dates and nutritional content)
- for promotion of good practices to new and existing businesses
- restrictions and penalties for misleading and deceptive conduct relating to food
- mechanisms to address the potential impacts on third parties of a business' food practices (Victorian Competition & Efficiency Commission, 2007b, p. xxvi).

The primary objective of the food safety regulation is therefore to:

> protect the health and wellbeing of the community from food-based risks, and to prevent misleading and deceptive conduct relating to the sale of food (Productivity Commission, 2009i, p. 18).

The number of industries subject to food regulation covers every aspect of the food production cycle, from farms and fishing boats to distributors, wholesalers and retailers in both domestic and international markets.

There is no specific constitutional power that gives the Commonwealth authority to regulate domestic food supply (Regulation Taskforce, 2006, p. 57). It has therefore been the responsibility of the States and Territories to implement and enforce food standards, with each jurisdiction establishing its own food regulation system. A wide range of regulatory approaches have been employed by jurisdictions including:

> mandatory, and sometimes prescriptive, regulations through a variety of co-regulatory and quasi-regulatory arrangements to voluntary industry driven schemes and total deregulation. Indeed, within a single agency this full spectrum of alternative approaches is sometimes used (Food Regulation Review Committee, 1998, p. 11).

In March 1997, the then Prime Minister, the Hon John Howard MP, announced the intention of the governments of Australia to undertake a review of food regulation with the objectives of reducing the regulatory burden on business and improving the clarity and certainty of regulatory arrangements (Food Regulation Review Committee, 1998, p. 10). The Food Regulation Review Committee (1998, p. 12), which conducted the review, noted that over 150 laws and associated regulations control food in Australia. These laws and regulations were developed, administered and enforced by numerous Commonwealth departments and statutory agencies, over 40 State and Territory departments and agencies and over 700 local governments.

The committee (1998, p. 14) found that Australia's food regulation system was 'complex, fragmented, inconsistent and wasteful'. The committee (1998, pp. 17–24) made 27 recommendations including that all jurisdictions work together to develop an integrated and coordinated food regulatory system with greater communication, monitoring and enforcement.

On 3 November 2000, COAG (2000, pp. 3–4) signed the *Intergovernmental Agreement on Food Regulation* to deliver a 'more streamlined, efficient and nationally focused food regulatory system for Australia.' The new system would maintain close links between Australia and New

Zealand and involve government, industry and consumers in the development of food standards. The agreement:

- provided for the establishment of Food Standards Australia New Zealand as an independent statutory agency to develop food standards for both nations (section 8)
- established the Australia and New Zealand Food Regulation Ministerial Council, with responsibility for the development, implementation and enforcement of domestic food regulation and standards and the promotion of harmonised food standards (section 3).
- provided for annual reporting to COAG on progress in implementing the agreement (section 35).

On 6 December 2002, COAG (2002b, p. 8) amended the Food Regulation Agreement 2000. The intergovernmental Food Regulation Agreement 2000 (as amended in 2002) ensured consistency with the *Food Standards Australia New Zealand Act 1991* (Cwlth) and the Joint Food Standards Treaty with New Zealand. Under the COAG food regulation agreements, the States and Territories agreed to a Model Food Act that would serve as the basis for the respective legislation that would be adopted in each jurisdiction (Productivity Commission, 2009i, p. 20).

The adoption of the Model Food Act was examined by the Taskforce for Reducing Regulatory Burdens on Business (2006, pp. 57–62) as part of its investigation into reducing the costs to business of excess government regulation. Despite the intergovernmental agreements, the Taskforce (2006, p. 58) found that significant inconsistencies existed in laws across jurisdictions and in implementing and enforcing standards. The Taskforce (2006, p. 58) further found that some States and Territories had adopted only the core provisions of the Model Food Act and retained their own laws, which sometimes overlapped with national laws.

These inconsistencies and duplication created uncertainty for businesses operating across multiple jurisdictions and disadvantaged those businesses operating in jurisdictions that interpreted standards more strictly. The Taskforce (2006, p. 58) made seven recommendations to improve the regulation of food in Australia including that the Commonwealth commission an independent public review to examine the progress in reforming Australia's food regulatory framework.

In January 2007, the then Commonwealth Minister for Agriculture, Fisheries and Forestry, the Hon Peter McGauran MP, and the Parliamentary Secretary for Health and Ageing, the Hon Christopher Pyne MP, (2007) announced an independent review—the Bethwaite Review—to examine ways to streamline Australia's food regulations and make them more nationally consistent. Although submissions were received, a final report of the review, which was due in January 2008, has not been publicly released.

In its draft report, *Annual Review of Regulatory Burdens on Business: Manufacturing and Distributive Trade*, the Productivity Commission considered that the:

> Australian Government, through the relevant agencies, should publicly announce the proposed responses to the submissions to the Bethwaite Review, including any proposed reforms and their timing (Productivity Commission, 2008a, p. 23).

In the absence of final report of the Bethwaite Review, the Productivity Commission (2008a, p. 24) proposed a number of reforms to improve national consistency of food regulation including 'changes to the legislative framework, adjustments to the enforcement arrangements and strengthening of the implementation processes'.

The Commonwealth Government (2009a, p. 2) noted that responses to the Productivity Commission proposals that require national cooperation are being dealt with by COAG.

On 28 September 2008, the then Parliamentary Secretary to the Minister for Health and Ageing, Senator the Hon Jan McLucas (2008), referred the submissions made to the Bethwaite Review to the COAG Business Regulation and Competition Working Group (BRCWG).

On 26 March 2008, COAG (2008d, pp. 18–19) included further harmonisation of food regulation in its list of 27 areas for accelerated regulatory reform and asked the BRCWG to report to the July 2008 COAG meeting on options for reform.

On 3 July 2008, COAG (2008f) agreed to:

> accelerate development and implementation of reforms to reduce the regulatory burden on businesses and not-for-profit organisations in relation to food regulation, without compromising public health, in the following areas:
>
> - consistency in legislation;
> - governance arrangements;
> - uniform enforcement; and
> - setting or modifying food standards.

COAG (2008f) also asked the BRCWG to work closely with the Australia and New Zealand Food Regulation Ministerial Council to ensure appropriate coordination of the reform activities. At the same meeting, COAG agreed to a revised *Food Regulation Agreement.*

On 24 October 2008, the BRCWG agreed that the Productivity Commission should study the business burden of food safety regulation (Productivity Commission, 2009i, p. 6).

On 29 November 2008, COAG (2008e, p. 1; 2008i, p. 10) agreed to consider:

- reform of the voting arrangements of the ministerial council
- options to improve national consistency in monitoring and enforcement of food standards
- options to improve food labelling law and policy in early 2009 and a report on progress on this item to COAG by July 2009.

20.3 Progress report and assessment

The following actions have been taken by governments regarding the 2008–09 milestone for deregulation priority 20.

Milestone 1: All jurisdictions: in early 2009, develop a proposal for the development of options and costs to improve national consistency in monitoring and enforcement, and a proposal to reform voting arrangements of the Ministerial Council

Progress report

This milestone has two aspects to it:

1. options for improving national consistency in monitoring and enforcement

2. a proposal for reform of the voting arrangements for the Australia and New Zealand Food Regulation Ministerial Council.

Improving national consistency

The Queensland Government (2009a, p. 31) reported that:

> on 31 July 2009, the Business Regulation and Competition Working Group considered seven major recommendations to reform the national food regulatory system aimed at improving the consistency in monitoring and enforcement.

The Tasmanian Government (2009b, p. 32) reported that the paper considered by the Business Regulation and Competition Working Group set out:

> a number of reform proposals about inter alia further changing the voting arrangements for ANZFRMC (except in relation to review of food standards as above); developing a new national legislative framework and amending Food Standards Act to that FSANZ will provide interpretive ruling on food standards which bind all jurisdictions.

The Tasmanian (2009b, p. 32) and Australian Capital Territory (2009a, p. 5) governments further reported that there have been significant concerns from jurisdictions regarding the proposed design and implementation of the reforms.

The Commonwealth Government (2009b, p. 48) reported that there is:

> no formal agreement as yet to the form and scope of reforms required to address improved national consistency in monitoring and enforcement, greater consistency in interpretation of food standards.

The Queensland Government (2009a, p. 31) reported that the proposal in relation to the reform of the food regulation system will be discussed at the October 2009 meeting of the Business Regulation and Competition Working Group (BRCWG).

The Commonwealth Government (2009b, p. 48) further reported that:

> COAG agreed on 2 July 2009, that the BRCWG will report to COAG in late 2009 on implementation of a national approach to food regulation which is consistent with the principles of national consistency of approach; prompt decision-making and removal of unnecessary duplication between regulatory agencies.

Voting arrangements

On 2 July 2009, COAG (2009e, p. 16) agreed new voting arrangements for the Australia and New Zealand Food Regulation Ministerial Council for requests for reviews of draft food standards, such that all decisions that are unable to be agreed by consensus are carried by majority vote. COAG also agreed to improve transparency of decision making by making

decisions and associated supporting evidence public in instances where the Ministerial Council requests a review of a Food Standards Australia New Zealand draft standard.

The Victorian Government (2009b, p. 35) has reported that the changes to voting arrangements 'cannot be implemented until the COAG Food Regulation Agreement and the Treaty with New Zealand are amended'. Several jurisdictions have indicated that this will not occur until May 2010. The Commonwealth Government (2009b, p. 48) has reported that enhanced arrangements for voting in the Ministerial Council on matters other than requests for reviews of draft food standards are still to be determined.

Progress Assessment

It is the COAG Reform Council's assessment that this milestone was not completed within the reporting period.

While the requirement to 'develop a proposal to reform voting arrangements' has been completed—albeit late—and the voting arrangements themselves have been agreed, there is no clear evidence that options for improving national consistency in monitoring and enforcement have been developed for COAG's consideration. Moreover, reforms to the voting arrangements for issues other than reviews of draft food standards are still being developed.

Agreement to new voting arrangements is a positive development which should result in more timely and transparent decisions. However, the reform aspect of the milestone—regarding development of a proposal to develop options for improved national consistency—is tentative in nature and it is disappointing that even this preliminary item of work has not been achieved.

Table 20.2 provides the council's overall assessment of progress on this reform.

Table 20.2: Food—overall progress assessment

	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Overall assessment									

20.4 Risk assessment

Independent review of food regulation?

The independent review of food regulation established in January 2007 was set up to examine ways to streamline and improve national consistency in food regulation. A final report of the review was not released—the Commonwealth Government (2009c, p. 31) reported that the review was not completed and that no final report exists.

Nonetheless, the decision not to release the review's interim report is a curious omission given the difficulty governments have had in developing a proposal to develop options and costs for reform to improve national consistency in food regulation.

The Australian Capital Territory Government (2009a, pp. 5–6) has reported that:

> the release of the Bethwaite Review Report would assist jurisdictions in understanding the BRCWG position and the development of appropriate options/reform proposals.

COAG may wish to consider any findings of the independent review to assist in the development of proposals for reform in this area.

Substantive reform is moving slowly

While some progress has been made in 2008–09—in particular COAG's agreement to new voting arrangements for the ministerial council—the first steps toward improved consistency of monitoring and enforcement have not been taken. The lack of progress on this front is a concern as a delay in meeting this milestone has already extended beyond the deadline for the agreement on a preferred implementation model required by July 2009 under the second 2009–10 milestone in the implementation plan.

Slow progress in establishing the review of food labelling law and policy

Although the final review of the food labelling law and policy is not due until July 2010, progress in establishing the review has been slow and it now appears that the 2009–10 milestone is in danger of being missed.

The New South Wales Government (2009c) reported that:

> the tight timeframe for delivering the review and reform of food labelling law and policy creates the potential for delay against the milestones set out in the Implementation Plan for 2009–10 and 2010–11.

The Victorian Government (2009b, p. 35) reported that the review will commence in early 2010 and will take 12 months to complete.

The Australian Capital Territory Government (2009a, p. 6) has reported that:

> it will be unlikely that the review, as proposed, will be finalised by July 2010 or that reforms will be fully implemented by December 2010. This is because of the tight timeframe for completion of the review and delays in securing funds for the review, appointing a chairperson and appropriate membership of the panel, and establishing a secretariat for the review.

The late completion of the review will reduce the amount of time that jurisdictions have to respond to, and implement, its recommendations. It is disappointing that so much time is being invested in determining the structure of the review while the tangible outputs of this reform become increasingly distant.

Governance arrangements are unclear

Reports from jurisdictions indicate that the governance and administrative arrangements for this reform are unclear. The South Australian Government (2009a, p. 26) reported that:

> The interface between the Business Regulation and Competition Working Group (BRCWG) and the Food Regulation Steering Committee (FRSC) has been unclear, as has been the role of the Food Regulation Ministerial Council, leading to concerns about the decisions not adequately taking account of impacts on public health, consumers and government - particularly state and territory agencies responsible for enforcing food law and potential duplication of work already being undertaken by food regulators.

The Australian Capital Territory Government (2009a, p. 5) reported that:

> there are no clear governance arrangements for this reform. The roles of the ANZFRMC and the Food Regulation Standing Committee in the reform process have been unclear. Consequently, proposals developed by the Business Regulation and Competition Working Group (BRCWG) do

> not adequately take into account impacts on public health and State and Territory food regulatory agencies and provide for potential duplication of work already being conducted by food regulatory agencies.

The Western Australian Government (2009b, p. 31) has also reported that the 'role for the Ministerial Council is unclear as the Business Regulation and Competition Working Group keeps changing process.'

It is essential that the governance arrangements for this reform are clear to all parties. Without clear governance arrangements, there is a risk that the immediate milestones for this reform will be further delayed as parties will be unsure of their role, and the overall implementation of the reform will lack direction.

The Victorian Government (2009a) has reported that 'an enhanced governance structure will improve consultation processes and support further progress in food regulation reform.'

Unambitious milestones

The milestones for this reform are unambitious, especially when compared to other reforms in the National Partnership and within the broader COAG reform agenda. In particular, the single milestone for 2008–09 is to 'develop a proposal for the development of options and costs'—an unclear statement that provides no obvious end result to be achieved by the early 2009 deadline. In regard to the food labelling law review, the current implementation plan is silent as to how the recommendations of the review will be responded to, and implemented. Without firm milestones, it is likely that further delays will occur, especially if the long history of food regulation reform is any guide.

Chapter 21: Mine safety

Key points

Progress assessment

It is the COAG Reform Council's assessment that all the 2008–09 milestones for this reform were completed on time.

Risk assessment

As of 30 September 2009, the key risks to the achievement of this reform were:

- further delays in the settlement of drafting instructions and examples clauses for implementation of the National Mine Safety Framework
- delays that were becoming apparent with some of the 2009–10 milestones for this reform.

21.1 Output and milestones

Table 21.1 reproduces the output and milestones from the implementation plan for deregulation priority 21—national mine safety framework.

Table 21.1: Mine safety—output and milestones

Output				
21. National mine safety framework (NMSF): A nationally consistent mine safety regime.				
Milestones				
2008–09	2009–10	2010–11	2011–12	2012–13
All jurisdictions: Ministerial Council on Mineral and Petroleum Resources (MCMPR) to provide reform options to COAG in early 2009 Commonwealth: finalise first draft of NMSF Drafting Instructions and Example Clauses	Commonwealth: develop National Enforcement Implementation Guidelines by Nov 2009 Commonwealth: establish national regulators forum by late 2009 Commonwealth: development of National Mine Safety Database			

by mid 2009	by 2010	
	Commonwealth: develop national guidance material from early 2010	

Source: (COAG, 2009p, pp. 15–16)

21.2 The proposed reform

The reform

The aim of this reform is to achieve consistency in safety regulation and improved safety outcomes in the mining industry (Ferguson, 2009). This goal is being pursued through the National Mine Safety Framework, which comprises seven strategies to develop consistent approaches across jurisdictions.

The seven strategies are:

1. a nationally consistent legislative framework
2. competency support for industry and regulators
3. compliance support for duty holders
4. a nationally coordinated protocol on enforcement
5. consistent and reliable data collection and analysis
6. effective consultation mechanisms
7. a collaborative approach to research (National Mine Safety Framework Steering Group, 2008, pp. 3–4).

Background

Mine safety is currently covered by one of the following three arrangements across the States and Territories:

- mining specific safety laws and regulations—as in place in Queensland and Western Australia
- generic occupational health and safety laws supplemented by mining specific regulations—as in place in Victoria, South Australia, Tasmania and the Northern Territory
- generic occupational health and safety laws with subsidiary mining specific laws and regulations—as in place in New South Wales (National Mine Safety Framework Steering Group, 2008, p. 12).

The National Mine Safety Framework does not affect the legislative arrangements in jurisdictions. Rather, it offers high-level legislative principles for jurisdictions to implement individually (National Mine Safety Framework Steering Group, 2008, p. 12).

The National Mine Safety Framework was originally agreed by the Ministerial Council on Mineral and Petroleum Resources (2002, p. 3) in 2002.

In 2005, the ministerial council agreed to appoint a tripartite National Mine Safety Framework Steering Group comprising officials from the Commonwealth, the States and the Northern Territory as well as representatives of five industry associations, two industry unions, and the Australian Council of Trade Unions (National Mine Safety Framework Steering Group, 2008, p. 3).

In January 2006, *Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business* found that nationally consistent mine safety regulation was taking longer than expected to implement under the National Mine Safety Framework, largely due to the lack of dedicated resources for the task. The report recommended that COAG establish a high level group to oversee the next stage of reform under the National Mine Safety Framework, including the development of a single national regulatory body. The Taskforce supported the role of the National Mine Safety Framework Steering Group (Regulation Taskforce, 2006, p. 40).

On 21 June 2006, the Chair of the Ministerial Council on Mineral and Petroleum Resources wrote to the then Prime Minister advising that the National Mine Safety Framework Steering Group had been formed and that the ministerial council had agreed that consideration of a national regulatory body was premature (National Mine Safety Framework Steering Group, 2008, p. 10).

On 14 July 2006, COAG (2006e, p. 8) noted that the Commonwealth's response to Rethinking Regulation indicated it would continue to seek further cooperation from the States and Territories on implementation of the National Mine Safety Framework.

On 26 March 2008, COAG (2008h, p. 17) added the National Mine Safety Framework to its work program on regulatory hotspots. COAG (2008d, p. 19) also agreed that the Ministerial Council on Mineral and Petroleum Resources would report back by October 2008 on options for reform in mine safety regulation.

21.3 Progress report and assessment

The following actions have been taken by governments regarding the 2008–09 milestones for deregulation priority 21.

Milestone 1: All jurisdictions: Ministerial Council on Mineral and Petroleum Resources (MCMPR) to provide reform options to COAG in early 2009

Progress report

On 24 October 2008, the *National Mine Safety Framework: implementation report* was released (National Mine Safety Framework Steering Group, 2008). The implementation report was endorsed by the Ministerial Council on Mineral and Petroleum Resources on 28 October 2008 (Department of Resources, Energy and Tourism [Cwlth], 2009b).

On 30 April 2009, COAG (2009g, p. 10) endorsed the recommendations of the implementation report and its seven strategies to develop a nationally consistent occupational health and safety regime for the mining industry.

On 9 July 2009, the Ministerial Council on Mineral and Petroleum Resources committed $1.7 million from all governments in the first year to implement the National Mine Safety Framework. A further $4.7 million funding over three years would be committed if a firm and agreed work program was developed (Ministerial Council on Mineral and Petroleum Resources, 2009).

Although this is an 'all jurisdictions' milestone, there is no mine safety regulation in the Australian Capital Territory.

Progress assessment

It is the COAG Reform Council's assessment that this milestone was completed on time.

Milestone 2: Commonwealth: finalise first draft of NMSF Drafting Instructions and Example Clauses by mid 2009

Progress report

The Commonwealth Government (2009b, p. 50) reports that the first draft of the drafting instructions was finalised in May 2009.

Progress assessment

It is the COAG Reform Council's assessment that this milestone was completed on time.

Table 21.2 provides the council's assessment of progress on the milestones in this reform.

Table 21.2: Mine safety—progress assessment by milestone

Milestone	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
1									
2									

Table 21.3 provides the council's overall assessment of progress on this reform.

Table 21.3: Mine safety—overall progress assessment

	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Overall assessment									

21.4 Risk assessment

Delays agreeing drafting instructions

The key risk to this reform at 30 September 2009 was the prospect of further delays in the final settlement of drafting instructions and example clauses. There is no milestone for this to occur in the current edition of the implementation plan.

Although the first draft of these instructions and clauses was finalised in accordance with the milestone, a number of jurisdictions, including the Commonwealth, have reported that significant policy and other issues remained to be resolved before the drafting instructions and example clauses could be settled (Commonwealth Government, 2009b, p. 50; South Australian Government, 2009a, p. 27; Victorian Government, 2009b, pp. 37–38). Some of these issues are to be dealt with through the harmonisation of occupational health and safety, which is dealt with in Chapter 3 of this report (Commonwealth Government, 2009b, p. 50; South Australian Government, 2009a, p. 27; Tasmanian Government, 2009b, p. 33; Victorian Government, 2009b, pp. 37–38).

No clear actions for States and the Northern Territory

A further concern as at 30 September was the lack of any milestones for the adoption by the States and the Northern Territory of nationally consistent approaches to mine safety regulation—in line with the seven strategies of the National Mine Safety Framework and the guidance material to be developed by the Commonwealth. It is not clear how the output of a nationally consistent mine safety regime set out in the implementation plan for this reform will be achieved through the current milestones.

The South Australian Government (2009a, p. 27) reported a risk that the National Mine Safety Framework will be implemented inconsistently across jurisdictions, particularly given the range of legislative approaches governments take to mine safety. This risk is increased by the lack of clear and specific milestones in the implementation plan for States and the Northern Territory to act on.

Delays for 2009–10

At 30 September 2009, delays were beginning to affect the prospect of timely achievement of the 2009–10 milestones. The Victorian Government (2009b, pp. 37–38) reported that most implementation actions were behind by six to twelve months and that the development of the National Mine Safety Database, a 2009–10 milestone with a deadline of the end of 2010, was not likely to be developed until 2011 due to funding limitations. The Queensland Government (2009a, p. 32) indicated that the establishment of the national regulators forum, a 2009–10 milestone with a deadline of the end of 2009, is now expected to occur in mid 2010.

Chapter 22: Electronic conveyancing

Key points

Progress assessment

There are no 2008–09 milestones for electronic conveyancing.

Risk assessment

The COAG Reform Council considers that the key risk to this reform is that any delay in reaching agreement on governance arrangements and funding for an electronic conveyancing company may jeopardise stakeholder support for the reform.

22.1 Output and milestones

Table 22.1 reproduces the output and milestones in the implementation plan for deregulation priority 22—a national electronic conveyancing system.

Table 22.1: Electronic conveyancing—output and milestones

Output				
22. A National electronic conveyancing system: A single electronic system for completing real property transactions and lodging land title dealings for registrations in Australia.				
Milestones				
2008–09	2009–10	2010–11	2011–12	2012–13
	All jurisdictions: COAG to agree the form of the new legal entity for an e-conveyancing system by mid 2010 States and Territories: agree governance arrangements for a new entity by mid 2010	States and Territories: subject to States and Territories settling funding, establish new entity and appoint Board by Sept 2010 States and Territories: agree nationally uniform business processes by Sept 2010 States and Territories:	States and Territories: commence the new e-conveyancing system by end 2011	

	enact any necessary legislative changes and complete all related transitional arrangements by early 2011

Source: (COAG, 2009p, p. 16)

22.2 The proposed reform

The reform

The aim of this reform is to streamline the processes for settling property transactions through the establishment of a national electronic conveyancing system. The system will cover electronic settlement of property transactions, electronic lodgement of instruments with State and Territory land registries and the finalisation of real property duty and tax obligations. This will have significant efficiency and convenience benefits for industry participants and consumers. The National Electronic Conveyancing Office (2007b, p. 7) has estimated that the total potential saving to consumers and the economy is in the vicinity of $150 million per year.

Conveyancing is the work involved in a transaction for the transfer of land (LexisNexis Australia, 2004).

Conveyancing involves:

- parties entering into a sales contract
- parties appointing solicitors or licensed conveyancers to represent their interests and prepare documents that need to be lodged with the relevant land titles office
- providing or receiving the funds required for the sale
- settling related mortgage and taxation obligations.

Conveyancing and mortgage processes are regulated and taxed at a State and Territory level (National Electronic Conveyancing Office, 2007b, p. 6). Each State and Territory has its own land titles office or registry and separate real property laws, although the conveyancing process is similar across all jurisdictions (National Electronic Conveyancing Office, 2007a, p. 8).

In recent years, the States and Territories have introduced separate processes to allow parts of the conveyancing process to be undertaken electronically (National Electronic Conveyancing Office, 2007b, p. 6). For example, an electronic data search is undertaken to ascertain the title to the property and any encumbrances on the property.[31] Once the land and mortgage documents have been exchanged in hard copy, the application is lodged on another database and is registered with the relevant land titles office.

[31] An encumbrance is any limitation on the 'owner' having full rights of ownership over the property.

The States and Territories have introduced a number of reforms aimed at developing electronic conveyancing systems, but to date these reforms have been State and Territory based rather than national systems.

Victoria has established its own electronic settlement and lodgement system called 'Electronic Conveyancing Victoria'. The system commenced operation in November 2007 (Department of Sustainability and Environment [Vic], 2007) and on 12 May 2008 processed its first electronic settlement, transfer, mortgage and lodgement of title (Department of Sustainability and Environment [Vic], 2008). The Victorian system allows for completion and signing of land transaction instruments, the calculation and payment of duty and other fees, the financial settlement of land transactions and the lodgement of certain instruments.

On 27 April 2009, the system was upgraded so that caveats (legal documents which caution that a third party has an interest in the property) can also be lodged online (Department of Sustainability and Environment [Vic], 2009).

Other States and Territories have also developed initiatives for electronic conveyancing systems. New South Wales and South Australia both developed business models for electronic conveyancing systems in 2004. Queensland has in place a system for mortgagees to lodge instruments as scanned images. Tasmania has a system for lodging certain instruments (priority notices) electronically and Western Australia has undertaken reform of its system to move to electronic lodgement of different instruments and forms (National Electronic Conveyancing Office, 2007b, p. 7).

In 2005, the National Electronic Conveyancing System Steering Committee and the National Electronic Conveyancing Office were formed by governments and industry with the aim of developing a national approach to electronic conveyancing. The National Electronic Conveyancing System Steering Committee comprises representatives of all State and Territory revenue offices, lawyers, conveyancers, bankers, information brokers and legal stationers (National Electronic Conveyancing Office, 2009).

The National Electronic Conveyancing System Steering Committee and Office have engaged in a consultation and research process to develop a national electronic conveyancing system, and have published framework papers including a draft *National Business Model for the establishment of a National Electronic Conveyancing System* (National Electronic Conveyancing Office, 2007a). The Victorian Government (2009b) has reported that aspects of the work undertaken by the National Electronic Conveyancing System Steering Committee will inform the work now being undertaken by governments for this reform stream.

Background

On 26 March 2008, COAG (2008h, pp. 4–5) agreed to include electronic conveyancing as one of the nine new areas of the COAG regulation work program.

On 3 July 2008, COAG (2008f) agreed to a set of principles as the basis for the creation of the new electronic conveyancing system. These principles are:

a) The system is to provide an efficient and effective national platform to:

- settle property transactions electronically
- lodge instruments electronically with land registries, and

- meet associated duty and tax obligations electronically

b) This will require the establishment of an e-conveyancing entity which should be owned by all relevant jurisdictions;

c) The new e-conveyancing entity Board will be skills-based and include directors with banking, conveyancing, information technology and other relevant commercial skills, as well as directors with knowledge of State and Territory processes concerning land registries, duties and taxes; and

d) The entity is to assess the Victorian electronic conveyancing ECV and, to the extent it is suitable, use it as the basis for the underlying software for the new e-conveyancing system (COAG, 2008f, p. 6).

At its 3 July 2008 meeting, COAG also agreed to a timeline for the implementation of the new electronic conveyancing system. The timeframe was:

October 2008 – agree to form of legal entity for a new e-conveyancing system;

October 2008 – settle and sign governance agreement for a new e-conveyancing entity;

October 2008 – agree funding for a new e-conveyancing entity;

December 2008 – establish a new e-conveyancing entity and appoint Board;

March 2009 – agree nationally uniform business processes;

December 2009 – any necessary legislative changes in jurisdictions; and

March 2010 – commencement of a new e-conveyancing system (COAG, 2008f, p. 6).

The National Partnership's implementation plan provides significantly more time for governments to agree to a legal entity for the electronic conveyancing system than the timeframe agreed to at COAG's 3 July 2008 meeting.

At the 3 July 2008 meeting COAG (2008f, p. 6) further agreed that the Business Regulation and Competition Working Group (BRCWG) would oversee the implementation of the electronic conveyancing system.

On 29 November 2008, COAG (2008i, pp. 4–5) restated that it had agreed that a national electronic conveyancing system would be implemented which would establish a 'single electronic system for completing real property transactions and lodging land title dealings.'

22.3 Progress report and assessment

Progress report

There are no 2008–09 milestones for deregulation priority 22.

However, the following actions have been taken by governments toward the 2009–10 milestones.

The process for determining the form of the legal entity that will run the national electronic conveyancing system, and its governance arrangements, is being overseen by the BRCWG.

Jurisdictions have agreed that New South Wales, Victoria and Queensland will be the initial lead jurisdictions on this reform (New South Wales Government, 2009c; Queensland

Government, 2009a, p. 34). The Victorian Government (2009b) reported that the company that will operate the national electronic conveyancing system will initially be owned and funded by the New South Wales, Victorian and Queensland governments. As at 30 September 2009, these three governments were engaged in discussions on the form of legal entity and governance arrangements for an electronic conveyancing system, including representation of the three governments, the legal profession, licensed conveyancers and the major banks on the entity's board (Victorian Government, 2009a).

Progress assessment

There are no 2008–09 milestones for this reform stream against which the COAG Reform Council can assess progress.

22.4 Risk assessment

As noted above, there are no 2008–09 milestones for this reform stream. However, there is a potential risk with the progress toward the 2009–10 milestones and the timely achievement of the output of this reform: a national electronic conveyancing system.

Stakeholder support

The main risk to this reform is that jurisdictions have reported that delays in aspects of this reform may jeopardise ongoing stakeholder support for the national electronic conveyancing system. The key stakeholders are the banks, the legal profession, licensed conveyancers and all State and Territory governments (Commonwealth Government, 2009b, p. 52; New South Wales Government, 2009c; Victorian Government, 2009b, p. 39). Any delays in establishing the new entity could lead to funding problems for work on the development of a national electronic conveyancing system.

The implementation of a national electronic conveyancing system will require significant participation and cooperation by industry and governments. Any delays in achieving the 2009–10 milestones will exacerbate this identified risk.

Chapter 23: Oil and gas

Key points

Progress assessment

It is the COAG Reform Council's assessment that the milestone for a final Productivity Commission report was completed on time.

Risk assessment

The COAG Reform Council has not identified any significant risks but considers that it will be important for the next edition of the implementation plan to contain specific milestones for the implementation of any reforms agreed by COAG.

23.1 Output and milestones

Table 23.1 reproduces the output and milestones in the implementation plan for deregulation priority 23—oil and gas regulation.

Table 23.1: Oil and gas—output and milestones

Output				
23. Oil and gas regulation: Reduction in the regulatory burden on the upstream petroleum industry.				
Milestones				
2008–09	2009–10	2010–11	2011–12	2012–13
Commonwealth: Productivity Commission to complete final report by Apr 2009	All jurisdictions: COAG to agree implementation plans for proposed reforms by early 2010, following agreement by MCMPR, through BRCWG Ongoing milestones to be identified and agreed as project progresses			

Source: (COAG, 2009p, p. 17)

The original implementation plan agreed by COAG on 29 November 2008 included:

- a 2008–09 milestone for all jurisdictions to agree to an implementation plan by late 2009
- a 2009–10 milestone for COAG to consider the Productivity Commission report by the second half of 2009 (COAG, 2009o, p. 18).

The revised implementation plan agreed by COAG on 2 July 2009, as reproduced above, extended the first of these to a milestone for COAG to agree to implementation plans for proposed reforms by early 2010. The second milestone was deleted.

23.2 The proposed reform

The reform

The objective of this reform is to remove unnecessary regulatory burdens on the upstream petroleum industry.[32] The manner of achieving this reform remains to be agreed by governments. However, the Productivity Commission (2009l, p. 2) has recommended:

- the establishment of a national offshore petroleum regulator for Commonwealth offshore areas, with States and Territories able to 'opt-in' and transfer their regulatory responsibilities in State and Territory waters[33] and for interjurisdictional upstream pipelines
- greater use of statutory timelines, and improved reporting of performance, to improve transparency and accountability
- introduction of a lead agency within each State and the Northern Territory for petroleum approval processes.

The Productivity Commission (2009l, p. 34) identified three main options for an expanded national upstream petroleum regulator:

- a *national petroleum regulator* with responsibility for both onshore and offshore petroleum regulation in all jurisdictions
- a *national offshore petroleum regulator* with responsibility for resource management, pipeline and environmental regulation in all offshore areas
- a *national offshore petroleum regulator in Commonwealth waters* with responsibility for resource management, pipeline and environmental regulation in Commonwealth waters, with opt-in arrangements for States and Territories, on a bilateral basis.

The latter option was the Productivity Commission's (2009l, p. 34) preferred option.

Given the size of the upstream petroleum sector, with some individual projects requiring investment of tens of billions of dollars, the Productivity Commission (2009l, p. xx) found reducing unnecessary regulatory burdens could provide gains to the community amounting to

[32] The upstream petroleum sector includes the following activities relating to the extraction of petroleum resources: exploration and appraisal, development and construction, and production. For natural gas and liquefied petroleum gas, the definition of upstream includes processing and delivery to export terminals or to domestic gas transmission pipelines (Productivity Commission, 2009l, p. 18).
[33] This includes islands in those waters.

billions of dollars each year. These would come principally through reducing delays which increase project costs, reduce flexibility in responding to market conditions, impede the financing of projects, and defer production and revenues.

Background

In accordance with the *Offshore Constitutional Settlement*, reached at the Premiers Conference on 29 June 1979, the Commonwealth legislated to give the States and the Northern Territory:

- the same legislative responsibilities in their respective 'adjacent territorial sea'[34] as they have for waters within the boundaries of the State or Territory
- power outside the 'adjacent territorial sea' in regard to port-type facilities, underground mining activities extending from land within a State, and fisheries (Attorney-General's Department [Cwlth], 1980).

In effect, this means that responsibility for upstream petroleum activities:

- in Australia's offshore areas—that is, not within State and Territory boundaries or within the 'adjacent territorial sea'—rests with the Commonwealth Government
- in onshore waters, within the 'adjacent territorial sea'[35] and/or involving pipelines that originate within a State or Territory rests with individual State and Territory governments (Department of Resources, Energy and Tourism [Cwlth], 2008).

Under the *Offshore Constitutional Settlement*, the petroleum arrangements were limited to a territorial sea of three miles breadth, irrespective of any subsequent change to a 12 nautical mile territorial sea (which has since been adopted by Australia) (Attorney-General's Department [Cwlth], 1980, p. 7).

Upstream petroleum operations within the Commonwealth's remit are primarily governed by the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cwlth).

Within this legal framework, the Australian Government, the States and the Northern Territory jointly administer and supervise industry activities through a Joint Authority/Designated Authority arrangement (Department of Resources, Energy and Tourism [Cwlth], 2008).

Prior to the report that forms the basis of this reform stream, the Productivity Commission (2007, p. xxxvii) in its *Annual Review of Regulatory Burdens on Business: Primary Sector* found that there is a significant regulatory burden on upstream petroleum activities and recommended a comprehensive review of the onshore and offshore petroleum regulatory framework.

On 26 March 2008, COAG agreed that the Productivity Commission would examine the regulation of crude oil and natural gas projects that involve more than one jurisdiction. The Productivity Commission's mandate specifically excluded the regulation of subsequent refining,

[34] As a rough guide, this is the sea contiguous to the relevant State or Territory for a 3 mile breadth (Attorney-General's Department [Cwlth], 1980).
[35] Australia's territorial sea is up to 12 nautical miles from the territorial sea baseline (usually the low water mark). The only exception to this is the territorial sea around certain Torres Strait islands, which is only three nautical miles wide as provided for under the Torres Strait Treaty entered into with Papua New Guinea (Attorney-General's Department [Cwlth], 2009c).

distribution and wholesaling and retailing activities, coal seam methane or any other mineral resource (COAG, 2008h, p. 18).

23.3 Progress report and assessment

The following actions have been taken by governments regarding the 2008–09 milestones for deregulation priority 23.

Milestone 1: Commonwealth: Productivity Commission to complete final report by Apr 2009

Progress report

The Productivity Commission's research report *Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector* was released on 30 April 2009.

The Commonwealth Government (2009b, p. 55) reported that on 5 August 2009 the Minister for Resources and Energy, the Hon Martin Ferguson AM MP, announced the Commonwealth's intention to establish a national offshore regulator for petroleum, mining and greenhouse gas storage activities in Commonwealth offshore areas by 1 January 2012.

Progress assessment

It is the COAG Reform Council's assessment that this milestone was completed on time.

Table 23.2 provides the council's overall assessment of progress on this reform.

Table 23.2: Oil and gas—overall progress assessment

	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Overall assessment									

23.4 Risk assessment

The COAG Reform Council has not identified any significant risks for the current milestones on this reform. It will be important for the next edition of the implementation plan to contain specific milestones for the implementation of any reforms agreed by COAG.

A number of governments have reported that, in July 2009, the Ministerial Council on Mineral and Petroleum Resources formed a Petroleum Regulatory Reform Working Group to develop a response to the Productivity Commission review. The working group includes representatives of the Commonwealth, all States and the Northern Territory. According to jurisdiction reports, responses to most of the recommendations of the Productivity Commission review were agreed by the working group. However, the response to the recommendation to establish a national offshore petroleum regulator was a point of disagreement (Commonwealth Government, 2009b, p. 55; Victorian Government, 2009b, pp. 40–42; Western Australian Government, 2009b, pp. 31–32).

As at 30 September 2009, the response was expected to be considered by the ministerial council by the end of November 2009 and by COAG in March 2010 (Commonwealth Government, 2009b, p. 55; South Australian Government, 2009a, p. 29; Victorian Government, 2009b, pp. 40–42; Western Australian Government, 2009b, pp. 31–32).

Chapter 24: Maritime safety

Key points

Progress assessment

It is the COAG Reform Council's assessment that the milestone for the Australian Transport Council to agree on a preferred approach was completed on time.

It is the council's assessment that the milestone for the Australian Transport Council to report to COAG on the outcomes of the regulatory impact statement process was only partially completed by 30 September 2009. It appears that a report on these matters was delivered to COAG on 2 July 2009; however, as at 30 September 2009, no report had been publicly released following the meeting and it was consequently unclear whether key matters, such as financial implications and legislative timing, were addressed.

Risk assessment

The main risk to this reform is the lack of any milestones in the implementation plan beyond making an intergovernmental agreement by early 2010.

24.1 Output and milestones

Table 24.1 reproduces the output and milestones from the implementation plan for deregulation priority 24—maritime safety regulation.

Table 24.1: Maritime safety—output and milestones

Output				
24. Maritime safety regulation: Nationally consistent approach to regulation of State/Territory and Commonwealth legislation in relation to some vessels and operators.				
Milestones				
2008–09	2009–10	2010–11	2011–12	2012–13
All jurisdictions: Australian Transport Council (ATC) agreed preferred approach in Nov 2008	All jurisdictions: COAG to agree IGA early 2010			
All jurisdictions: ATC to report to COAG in the first half of 2009 on the				

outcomes of the Regulatory Impact Statement (RIS) process, including financial implications and proposed way forward (including timing of IGA and legislation)

Source: (COAG, 2009p, pp. 17–18)

The original implementation plan agreed by COAG (2009o, pp. 18–19) on 29 November 2008 had a 2008–09 milestone for the signing of the intergovernmental agreement in 2009.

The revised implementation plan, agreed by COAG on 2 July 2009, as reproduced above, has deferred this milestone to 2009–2010 with a deadline of early 2010.

24.2 The proposed reform

The reform

The aim of this reform is to improve safety and reduce costs and regulatory burdens on affected transport businesses as well as reduce the costs of exports and trade. This will be achieved by making the Australian Maritime Safety Authority the national safety regulator for commercial shipping in Australian waters (COAG, 2009f, p. 8).

The details of the reform and the work program for implementing it are yet to be fully developed. However, on 22 May 2009, the Australian Transport Council agreed to report to COAG no later than the middle of 2010 on the resolution of key issues, such as implementation and ongoing costs, governance and financial arrangements. The Australian Transport Council (2009b, pp. 1–2) further proposed that a National Partnership Agreement be created to support full implementation of the reform by 2013.

At this stage, the key action for governments in the milestones is to make an intergovernmental agreement for this reform by early 2010. Governments have also indicated that the reform will be delivered under a National Partnership agreement to be signed by May 2010 (Commonwealth of Australia, 2009c, p. 42; Queensland Government, 2009a, p. 36).

Background

As discussed in Chapter 23, the *Offshore Constitutional Settlement* led to the Commonwealth legislating to give the States and the Northern Territory:

- the same legislative responsibilities in their respective 'adjacent territorial sea' as they have for waters within the boundaries of the State or Territory
- power outside the 'adjacent territorial sea' in regard to port-type facilities, underground mining activities extending from land within a State, and fisheries (Attorney-General's Department [Cwlth], 1980, pp. 6–7).

In effect, this means that the Commonwealth, the States and the Northern Territory share responsibility for maritime safety as follows:

- the States and Territories are responsible for ship safety for domestic vessels, including trading ships on intrastate voyages, fishing vessels, pleasure craft and vessels on inland waterways

- the Commonwealth is responsible for the regulation of trading ships engaged in interstate or international trade, fishing vessels engaged in overseas voyages, offshore industry mobile units (such as drilling vessels), other offshore industrial vessels (mainly supply ships), ships belonging to Commonwealth Government departments and authorities and ships that do not fall within the authority of a State or the Northern Territory (Commonwealth of Australia, 2009c, p. 18).

As a result of this arrangement, there are eight different maritime safety regimes applying to commercial vessels in Australian waters administered by eight different authorities (one each in the Commonwealth, each State and the Northern Territory) (Commonwealth of Australia, 2009c, pp. 28–29). National safety standards were contained within the *Uniform Shipping Laws Code*, which was originally agreed in 1979. The *Uniform Shipping Laws Code* was revised and updated in 1997 and became the *National Standard for Commercial Vessels* (Commonwealth of Australia, 2009c, p. 19).

At the same time, the National Maritime Safety Committee—comprising the head of each jurisdiction's maritime safety agency—was formed under the *National Maritime Safety Regulatory Regime Inter-Governmental Agreement*. The committee's mission is to improve marine safety in Australia by facilitating improved cooperation and coordination on marine safety within the Australian federation (National Marine Safety Committee, 2009). Since the making of the *National Maritime Safety Regulatory Regime Inter-Governmental Agreement* in 1997, governments have made continuing efforts toward greater regulatory consistency through, for example, mutual recognition schemes (Commonwealth of Australia, 2009c, p. 39).

The *National Standard for Commercial Vessels* requires separate legislation in each jurisdiction to have the force of law. In practice, through local adaptation of the initial legislation and amendment over time to account for local issues, the *National Standard for Commercial Vessels* is not uniformly or consistently applied in all jurisdictions, creating inconsistent administrative procedures, incompatible incident notification requirements, variations in risk profiling, compliance and monitoring, and associated costs for industry (Commonwealth of Australia, 2009c, pp. 28–29).

On 26 March 2008, COAG (2008d, pp. 20–21) agreed to 27 deregulation priorities, including maritime safety, and asked the Australian Transport Council to consider and report back on implementation of a single national approach to maritime safety regulation for commercial vessels.

On 25 July 2008, Australian Transport Ministers agreed that, subject to regulatory impact assessment, they:

- support a national approach to maritime safety regulation

- are 'inclined towards broadening the application of the *Commonwealth Navigation Act 1912* (Cwlth) to apply to all commercial vessels' (Australian Transport Ministers, 2008, p. 2).

Although the reform is yet to be fully developed, two areas of potential future State and Territory activity appear likely to be retained such that:

- the model for a national regulator will likely allow for State and Northern Territory agencies to deliver regulatory services under contracts with the national regulator as agreed by ministers

- the States and Territories will continue to regulate waterways, including harbours, ports and recreational vessels, and investigate maritime incidents (Commonwealth of Australia, 2009c, pp. 17, 54).

Irrespective of the model agreed for this reform, the States and Territories will retain the following roles: navigation in ports, fishing and other licenses, and environment protection measures outside the *Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972* (Commonwealth of Australia, 2009c, p. 100).

24.3 Progress report and assessment

The following actions have been taken by governments regarding the 2008–09 milestones for deregulation priority 24.

Milestone 1: All jurisdictions: Australian Transport Council (ATC) agreed preferred approach in Nov 2008

Progress report

This milestone is a statement of fact.

This agreement followed from a consultation regulatory impact statement released in September 2008 canvassing the options of no change to current arrangements; individual jurisdictions applying an agreed national approach; or a single national regulator (Concept Economics, 2008, pp. 15–19).

On 7 November 2008, the Australian Transport Council agreed to:

- prepare a regulatory impact statement on a single, national system for maritime safety regulation

- report to COAG in the first half of 2009 on the outcomes of the regulatory impact statement, including financial implications and proposed ways forward (Australian Transport Council, 2008b, p. 2).

Progress assessment

Noting that it is a statement of fact, it is the COAG Reform Council's assessment that this milestone was completed on time.

Milestone 2: All jurisdictions: ATC to report to COAG in the first half of 2009 on the outcomes of the Regulatory Impact Statement process, including financial implications and proposed way forward (including timing of IGA and legislation)

Progress report

A second consultation regulatory impact statement was released in April 2009 incorporating consideration of the views of stakeholders for a further round of public comments (Commonwealth of Australia, 2009c, p. 14).

On 22 May 2009, the Australian Transport Council (2009b, pp. 1–2) endorsed the final regulatory impact statement and agreed to recommend to COAG that the Australian Maritime Safety Authority become the sole national regulator of 'all commercial vessels operating in Australian waters'. The communiqué issued by this meeting noted:

- that Victorian agreement to this approach was limited to interstate maritime safety
- that many issues of principle and detail needed to be resolved prior to implementing this reform, including how implementation and ongoing costs for the system would be met, which the Australian Transport Council would report to COAG on by the middle of 2010
- that the reforms would be implemented through a National Partnership agreement.

The final regulatory impact statement that informed this decision had not been released by 30 September 2009.

On 2 July 2009, COAG (2009f, p. 8) agreed to implement national regulation of maritime safety and stated that '[t]hese reforms will mean that the Australian Maritime Safety Authority will become the national safety regulator for all commercial shipping in Australian waters.' As noted above, COAG also altered the milestone for the signing of an intergovernmental agreement for this reform from December 2009 to early 2010.

Although this is an 'all jurisdictions' milestone, the Australian Capital Territory Government (2009b, p. 43) is not involved in maritime regulation.

Progress assessment

It is the COAG Reform Council's assessment that this milestone was partially completed within the reporting period.

On the basis of COAG's agreement on 2 July 2009 to the recommendation of the Australian Transport Council that the Australian Maritime Safety Authority become the sole regulator of commercial vessels in Australian waters, this milestone was achieved in the broad sense that the report to COAG appeared to have occurred. However, as of 30 September 2009, no report to COAG on this matter had been publicly released. The regulation impact statement that informed the decisions of the Australian Transport Council and COAG had also not been released.

Without these documents, it is not known whether COAG's agreement was based on such a report and what specific issues any report may have dealt with. The milestone specifically requires that the report cover the financial implications of the reform and a proposed way forward, including timing of an intergovernmental agreement and legislation.

The report may have addressed the timing of an intergovernmental agreement, given that COAG deferred the deadline for the intergovernmental agreement from 'in 2009' to 'early 2010'. It is not clear whether the timing of legislation was covered.

As noted above, the Australian Transport Council agreed to report to COAG on remaining issues of principle and detail, including the funding of the national regulator, by the middle of 2010. A number of governments, including those of the Commonwealth (2009b, pp. 56–57), Victoria (2009b, p. 43) Queensland (2009a, p. 36), South Australia (2009a, p. 30), Tasmania (2009b, p. 36) and the Northern Territory (2009, pp. 33–34) indicated that financial and legislative issues remained to be resolved.

As such, this milestone was only partially completed. However, these matters could be resolved in the process of governments finalising an intergovernmental agreement by early 2010, as required by the 2009–10 milestone for this reform.

Table 24.2 provides the council's assessment of progress on the milestones in this reform.

Table 24.2: Maritime safety—progress assessment by milestone

Milestone	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
1									
2									

Table 24.3 provides the council's overall assessment of progress on this reform. The overall assessment takes into account that milestone 1 was a statement of fact whereas milestone 2 required substantive action.

Table 24.3: Maritime safety—overall progress assessment

	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Overall assessment									

24.4 Risk assessment

No implementation milestones

As at 30 September 2009, there is a small risk that the delay in agreeing the financial and regulatory arrangements for the national regulator of maritime safety could cause a delay in settling the intergovernmental agreement that is the final milestone for this reform.

That the intergovernmental agreement is the final milestone in the implementation plan for this reform is also considered to be a risk because it means there are no specific milestones for the implementation of the agreement. COAG may wish to consider including specific milestones for the various tasks required to implement this reform in the next edition of the implementation plan.

The coverage of the national system was unclear

The communiqué of the Australian Transport Council meeting of 22 May 2009 noted that Victoria's endorsement of national maritime safety regulation was 'limited at this stage to

interstate maritime safety' (Australian Transport Council, 2009b). There was no similar statement associated with COAG's (2009f, p. 8) agreement on 2 July 2009 to implement national regulation of maritime safety. As at 30 September 2009, Victoria was reviewing its *Marine Act 1988* (Vic) with that review covering commercial vessels on *intrastate* trips in Victorian waters (Department of Transport [Vic], 2009, p. 25).

As at 30 September 2009, it remained unclear whether the national system would cover all commercial vessels in Australian waters or some subset of commercial vessels. The decisions of the Australian Transport Council and COAG appeared to suggest that all commercial vessels would be covered by the national system, although one jurisdiction had suggested that coverage would be negotiated with each government (Victorian Government, 2009b). Some jurisdictions had also indicated that the definition of 'commercial vessel' to be used by the national system remained to be agreed (Commonwealth Government, 2009b, p. 56; South Australian Government, 2009a, p. 30).

The council will continue to monitor the coverage of the national system and whether a genuinely national system is achieved.

Chapter 25: Wine labelling

Key points

Progress assessment

It is the COAG Reform Council's assessment that the States and Territories have completed the single milestone under this reform by amending their regulations to bring into force the *World Wine Trade Group Agreement on Requirements for Wine Labelling*.

25.1 Output and milestones

Table 25.1 reproduces the output and milestones from the implementation plan for deregulation priority 25—wine labelling.

Table 25.1 Wine labelling—output and milestones

Output				
25. Wine labelling: Better align domestic and export wine labelling requirements.				
Milestones				
2008–09	2009–10	2010–11	2011–12	2012–13
States and Territories: Complete legislative amendments to bring into force the World Wine Trade Group's Agreement on Wine Labelling by early 2009	Reform completed 1 July 2009			

Source: (COAG, 2009p, p. 18)

The original implementation plan agreed by COAG on 29 November 2008 contained the words 'Ongoing milestones to be identified and agreed as project progresses' as the 2009–10 milestone for this reform (COAG, 2009o, pp. 19–20).

The revised implementation plan agreed by COAG on 2 July 2009, as reproduced above, instead includes the words 'Reform completed 1 July 2009' as the 2009–10 milestone for this reform (COAG, 2009p, p. 18).

The council notes that this appears to be a statement of fact rather than a milestone. The council's progress report and assessment set out in section 25.3 confirms that the 2008–09 milestone has been completed.

25.2 The proposed reform

The reform

The purpose of this reform is to facilitate greater access to international trade for Australian winemakers. This is being implemented by harmonising wine labelling requirements specified in State and Territory legislation with labelling requirements agreed by a number of wine trading countries, including Australia, through the World Wine Trade Group. The reforms will mean that wine producers can use the same labelling for wine intended both for domestic and selected international markets.

Background

The World Wine Trade Group is a group of government and industry representatives from Argentina, Australia, Canada, Chile, Mexico, New Zealand, South Africa and the United States of America (World Wine Trade Group, 2003b).

The mission statement for the World Wine Trade Group includes the following aim:

> This group aims to create the opportunities for its industries to achieve growth in the wine markets and to increase responsible wine consumption (World Wine Trade Group, 2003a).

On 23 January 2007, government representatives of World Wine Trade Group countries, including Australia, signed the *World Wine Trade Group Agreement on Requirements for Wine Labelling* (World Wine Trade Group, 2007). Article 2 of the Agreement states that:

> The purpose of this Agreement is to accept common labelling information and to minimize unnecessary labelling-related trade barriers with the objective of facilitating international trade in wine among the Parties (World Wine Trade Group, 2007).

The Agreement provides for the presentation of 'Common Mandatory Information' on wine packaging:

- within a single field of vision
- in one or two of the official languages in use in the relevant territory
- legibly and clearly and in contrast to the background
- in certain type sizes depending on the size of the package (World Wine Trade Group, 2007).

'Common Mandatory Information' means:

- country of origin specifications
- the product name 'wine'
- net contents stated using the metric system and displayed either in millilitres or litres (including in the abbreviated forms ml, mL, l and L)

- alcohol content by volume in percentage terms to a maximum of one decimal point, which may be expressed as 'alc/vol' (World Wine Trade Group, 2007).

An importing country who is a party to the Agreement is also allowed to require other 'national mandatory information' on wine labels, in addition to the 'Common Mandatory Information'.

The Agreement requires that all information presented on a wine label is 'clear, specific, and not misleading to the consumer' (World Wine Trade Group, 2007).

The *World Wine Trade Group Agreement on Requirements for Wine Labelling* is not yet a treaty in force in Australia (Department of Foreign Affairs and Trade, 2009). On 26 March 2008, COAG asked the Ministerial Council on Consumer Affairs to expedite the bringing into force of the *Agreement on Requirements for Wine Labelling* (COAG, 2008d, p. 21).

On 23 May 2008, the Ministerial Council on Consumer Affairs agreed to expedite bringing the agreement into force, noting estimates from the Australian Bureau of Agricultural and Resource Economics of potential savings for wine producers of $25 million per year on labelling costs (Ministerial Council on Consumer Affairs, 2008, p. 5).

25.3 Progress report and assessment

The following actions have been taken by governments regarding the 2008–09 milestone for deregulation priority 25.

Milestone 1: States and Territories: Complete legislative amendments to bring into force the World Wine Trade Group's Agreement on Wine Labelling by early 2009

Progress report

The States and Territories have amended their trade measurement regulations with respect to wine labelling. The details of the regulatory amendments made by each jurisdiction are listed separately following a general statement about the amendments required.

The amendment regulations made by jurisdictions largely reflect the terms of the *World Wine Trade Group Agreement on Requirements for Wine Labelling*. In particular, each State and Territory regulation includes provision for the position of measurement marking on standard wine packages including the country of origin, the product name or product description, and the actual alcohol content by volume expressed as a percentage. The regulations all provide for this information to be presented in a single field of vision.

All of the regulations, except the South Australian regulations, also provide for the statement of measurement to be included as information on a standard wine package.

Although the amendment regulations do not specifically set out the *Agreement on Requirements for Wine Labelling* obligation that the wine packaging information must be clear, specific, and not misleading to the consumer, this obligation is satisfied through existing obligations in trade measurement regulations and by Commonwealth, State and Territory fair trading laws.

However, although the obligations in the agreement are mostly provided for in the State and Territory amendment regulations, it is worth noting that the amendment regulations are less prescriptive than is allowed under the *Agreement on Requirements for Wine Labelling*.

The Agreement specifically acknowledges that parties to the agreement may have in place less restrictive labelling rules. Clause 7.1 states:

> Where an importing Party adopts or maintains for its market labelling rules in respect of Common Mandatory Information that are less restrictive than the rules specified in this Agreement, nothing in this Agreement shall allow the Parties to prevent exporters exporting to that market from labelling in accordance with the importing Party's rules (World Wine Trade Group, 2007).

As a general rule, the State and Territory amendment regulations described in the list below are less prescriptive than is possible under the *Agreement on Requirements for Wine Labelling* in regard to:

- *product name*: the amendment regulations set out that the product name must be listed on a wine label, but do not specify that the product name must be listed as 'wine'
- *alcohol content*: the amendment regulations set out that the alcohol content must be expressed as actual alcohol content by volume expressed as a percentage, but they do not specify that the volume should be expressed as a percentage to a maximum of one decimal point
- *language*: the Agreement provides that an importing party may require that 'Common Mandatory Information' appear in one or two of the languages in official use in the territory of the importing party, however, the amendment regulations do not address this possible obligation
- *type size information*: the Agreement provides that if an importing party maintains type size requirements, then the importing party can require the 'Common Mandatory Information' to be presented in certain type sizes, however, the amendment regulations do not address this possible obligation.

The relevant State and Territory regulations, and the dates that these amendment regulations were incorporated into the trade measurement regulations, are set out below.

New South Wales

The Trade Measurement Amendment (Wine Labelling) Regulation 2008 amended the Trade Measurement Regulation 2007 (NSW) with effect from 12 December 2008 (Parliamentary Counsel's Office [NSW], 2009c).

Victoria

The Trade Measurement Amendment (Standard Wine Package Marking) Regulations 2008 amended the Trade Measurement Regulations 2007 (Vic) with effect from 25 November 2008 (Office of the Chief Parliamentary Counsel [Vic], 2008b, p. 95).

Queensland

The Trade Measurement (Prepacked Articles) Amendment Regulations (No. 1) 2008 amended the Trade Measurement (Prepacked Articles) Regulation 1991 with effect from 26 September 2008 (Office of the Queensland Parliamentary Counsel, 2008b, p. 38).

Western Australia

The Trade Measurement Amendment Regulations (No. 2) 2008 amended the Trade Measurement Regulations 2007 with effect from 24 December 2008 (State Law Publisher [WA], 2008, p. 110).

South Australia

The Trade Measurement (Pre-Packed Articles) Variation Regulations 2007 amended the Trade Measurement (Pre-Packed Articles) Regulations 1993 with effect from 22 November 2007 (Office of Parliamentary Counsel [SA], 2008b, p. 21). The Trade Measurement (Pre-Packed Articles) Regulations 1993 were revoked on 31 August 2008 and remade as the Trade Measurement (Pre-Packed Articles) Regulations 2008 and the relevant provisions were continued (Office of Parliamentary Counsel [SA], 2008c).

Tasmania

The Trade Measurement (Pre-packed Articles) Amendment Regulations 2009 amended the Trade Measurement (Pre-packed Articles) Regulations 2000 (Tas) with effect from 1 July 2009 (Office of Parliamentary Counsel [Tas], 2009).

Australian Capital Territory

The Trade Measurement (Prepacked Articles) Amendment Regulation 2009 (No 1) amended the Trade Measurement (Prepacked Articles) Regulation 1991 (ACT) with effect from 23 June 2009 (Parliamentary Counsel's Office [ACT], 2009, p. 1).

Northern Territory

The Trade Measurement (Pre-Packed Articles) Amendment Regulations 2008 amended the Trade Measurement (Pre-Packed Articles) Regulations with effect from 17 December 2008 (Department of the Chief Minister [NT], 2009).

Progress assessment

It is the COAG Reform Council's assessment that this milestone was completed on time by New South Wales, Victoria, Queensland, Western Australia, South Australia and the Northern Territory.

It is the COAG Reform Council's assessment that this milestone was completed by Tasmania (1 July 2009) and the Australian Capital Territory (23 June 2009) late but within the reporting period.

There are no milestones for this deregulation priority beyond the 2008–09 milestone for the States and Territories to 'complete legislative amendments to bring into force the World Wine Trade Group's Agreement on Wine Labelling by early 2009.' The 2009–10 milestone appears to be a statement of fact as it states 'Reform completed 1 July 2009.'

Box 25.1 sets out future Commonwealth Government actions required to bring into force the *Agreement on Requirements for Wine Labelling* and potential further alignment of wine labelling requirements that could occur under the agreement.

Box 25.1: Wine labelling—future Commonwealth Government actions

Ratification of *World Wine Trade Group Agreement on Requirements for Wine Labelling*

The final step required to bring into force the *World Wine Trade Group Agreement on Requirements for Wine Labelling* is for the Commonwealth Parliament to ratify the agreement as a treaty. There is no milestone in the implementation plan for this to occur.

In addition, the council notes that wine labelling regulation will become a Commonwealth responsibility from 2010 as part of the new national system of trade measurement. The national system of trade measurement is deregulation priority 6, and is the subject of chapter 8 of this report.

Potential further alignment of labelling requirements

There are further potential steps that could be taken in Australia to better align domestic and export wine labelling requirements. Article 13 of the *World Wine Trade Group Agreement on Requirements for Wine Labelling* provides that:

> the Parties shall continue discussing the following matters with a view to concluding an additional agreement on labelling within three years from the closing of the period for signature of the Agreement as specified in Article 19.1:
>
> a) labelling requirements concerning information on alcohol tolerance, vintage, variety, and wine regions;
>
> b) labelling requirements concerning the linking of National Mandatory Information or voluntary information or both; and
>
> c) any other relevant trade facilitating matters concerning labelling requirements such as type size, presentation of net contents, multiple languages, and icewine (World Wine Trade Group, 2007).

Article 19.1 of the Agreement provides that the Agreement shall be open for signature by the parties until 1 December 2007 (World Wine Trade Group, 2007). As such, the three year period for the conclusion of an additional agreement on labelling appears to end in December 2010. It is not clear whether Australia intends to pursue a further agreement.

Table 25.2 provides the council's overall assessment of progress on this reform.

Table 25.2: Wine labelling—overall progress assessment

	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Overall assessment									

25.4 Risk assessment

Given that it is the council's assessment that the milestone for this deregulation priority has been achieved, there are no specific risks to be assessed. However, there is an issue regarding the achievement of the output for this reform of better aligning domestic and export wine labelling requirements the council wishes to raise for the consideration of governments.

The *World Wine Trade Group Agreement on Requirements for Wine Labelling* has been implemented in the States and Territories in a broad and non-prescriptive manner. From a best-practice regulation making perspective, this is a good thing.

However, the *Agreement on Requirements for Wine Labelling* allows for signatory nations to implement more prescriptive rules for wine labelling than are provided for in the State and Territory regulations. This means that it is possible that Australian wine producers that comply with the new domestic wine labelling regulations may not necessarily be satisfying the wine labelling regulations of the other signatory nations.

If one of the other member nations has more prescriptive wine labelling rules—for example, regarding the language, type size or information to be used on the labels—it could require Australian wine producers to meet these stricter standards before allowing importation of their wine. This could potentially undermine the aim of the reform—to make it easier for Australian wine producers to gain access to selected markets.

One way that this risk can be ameliorated is by educating Australian wine producers about the possible differences between domestic and export wine labelling requirements.

Chapter 26: Directors' liability

Key points

Progress assessment

It is the COAG Reform Council's assessment that jurisdictions did not reach agreement on principles for the imposition of personal criminal liability for corporate fault by March 2009 as required.

Risk assessment

The lack of agreement on principles as at 30 September 2009, and the consequent delays in auditing legislation, create a risk that the milestone for all jurisdictions to enact legislation by December 2010 may not be achieved.

26.1 Output and milestones

Table 26.1 reproduces the output and milestones in the implementation plan for deregulation priority 26—directors' liability.

Table 26.1: Directors' liability—output and milestones

Output				
26. Directors' liability: a consistent and principled approach to the imposition of personal criminal liability for corporate fault.				
Milestones				
2008–09	2009–10	2010–11	2011–12	2012–13
All jurisdictions: COAG referred principles for advice on their adequacy to the Ministerial Council for Corporations (MINCO) in Nov 2008 All jurisdictions: MINCO to agree the principles for increased consistency across jurisdictions to the imposition of	All jurisdictions: MINCO to finalise audit of Commonwealth, State and Territory provisions by mid August 2009 All jurisdictions: MINCO to consider audit outcomes, identify areas for nationally agreed principles and provide an interim report to BRCWG by end August	All jurisdictions: enact legislation by Dec 2010		

personal criminal liability for corporate fault by March 2009	2009 All jurisdictions: MINCO to complete report panel/focus groups including recommendations for nationally agreed principles by mid October 2009 All jurisdictions: MINCO to consider report and agree national principles by end October 2009 All jurisdictions: MINCO to report to COAG, through BRCWG, by the end of 2009 COAG to agree reforms in 2009

Source: (COAG, 2009p, pp. 18–19)

The original implementation plan agreed by COAG on 29 November 2008 included a 2009–10 milestone for the '[Ministerial Council for Corporations] to finalise audit of Commonwealth, State and Territory provisions and identify areas for reform including recommendations by mid 2009' (COAG, 2009o, pp. 18–19).

The revised implementation plan agreed by COAG on 2 July 2009, as reproduced above, specified a new deadline of 'mid August 2009' for this milestone and included four new 2009–10 milestones, which set out in more detail the steps required for agreement on these reforms.

The other 2009–10 milestone from the original implementation plan, for COAG to agree reforms in 2009, and the sole 2010–11 milestone, for all jurisdictions to enact legislation by December 2010, remain unchanged in the revised implementation plan.

26.2 The proposed reform

The reform

Directors and other corporate officers can incur criminal liability in a corporate context in two ways. The first form of liability is that an individual can be held criminally liable for his or her

own misconduct. The second form of liability is that an individual can be criminally liable as a consequence of a company's misconduct.[36]

This reform is directed at the second form of personal criminal liability: when directors and other corporate officers are held criminally liable for corporate fault.

The aim of the reform is to develop a nationally consistent, principled approach to when a director or other corporate officer can be held criminally liable for corporate fault. Three key steps are set out for the reform:

- agreement on principles for the imposition of personal liability for corporate fault
- an audit of Commonwealth, State and Territory laws against the agreed principles
- amendment of the laws on the basis of agreed reforms emanating from the audit.

Background

There have been a number of reports that have recommended changes to, and harmonisation of, Commonwealth, State and Territory laws with respect to personal liability for corporate fault.[37]

The *Corporate Law Economic Reform Program Paper No 3: Directors' Duties and Corporate Governance* (Treasury [Cwlth], 1997) suggested that a balance was required between the need to provide incentives for directors to have effective risk management arrangements in place on the one hand; and the possibility that the risk of personal liability will act as a disincentive for individuals' accepting positions as directors, or will result in directors acting in an unnecessarily risk averse way, on the other hand.

In October 2002, an Australian Law Reform Commission (2002, p. 8.28) report found that 'there has been an increasing trend towards provisions that deem directors and other senior corporate officers personally liable for a contravention where the body corporate contravened the legislation and may also be held liable for such a contravention'.

The *Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business* (2006, pp. 106–107) noted the inconsistencies in the imposition of personal liability on directors and other corporate officers for corporate fault across jurisdictions and recommended that:

> COAG should initiate reviews to identify reforms to achieve more nationally consistent regulation of: …
>
> (c) personal liability for company directors and officers following the completion of the Corporations and Market Advisory Committee review.

[36] For further explanation of the distinction between the two forms of personal criminal liability in a corporate context, see the Corporations and Market Advisory Committee Report 'Personal Liability for Corporate Fault' (Corporations and Market Advisory Committee, 2006).

[37] In addition to the reports cited in this section, see also Commonwealth Treasury, 'Review of Sanctions for Breaches of Corporate Law (Treasury [Cwth], 2007).

The Corporations and Market Advisory Committee released *Personal Liability for Corporate Fault* in September 2006, which sets out:

- the legal steps required for determining personal liability for corporate fault under various Commonwealth, State and Territory laws (for example, occupational health and safety, environment protection, hazardous goods, fair trading and taxation laws)
- the different standards of fault imposed by current Commonwealth, State and Territory laws, including:
  - laws where the individual has promoted, authorised or otherwise been an accessory to a breach by the corporation
  - laws where the individual has some involvement in the corporate misconduct—for example, where the individual has organisational or operational responsibility for the conduct, or failed to take reasonable steps to prevent the misconduct
  - laws where personal liability can be imposed on the corporate officer without the need to establish any personal fault by the individual, but with some defences available to the individual
- the different kinds of defences to claims of personal liability available to corporate officers under Commonwealth, State and Territory laws (Corporations and Market Advisory Committee, 2006, pp. 18, 22–23, & 71–97).

The *Personal Liability for Corporate Fault* report also highlights that a key problem with the different approaches to personal liability for corporate fault across jurisdictions is that they:

> result in complexity and lack of clarity for individuals in considering their responsibilities. Directors and other individuals may be subject to differing standards of responsibility with divergent defences available to them under various statutes that affect the operations of their company in different jurisdictions (Corporations and Market Advisory Committee, 2006, p. 6).

In that report, the Corporations and Market Advisory Committee (2006, p. 9) recommended increased harmonisation of Commonwealth, State and Territory laws applying personal liability for corporate fault. This recommendation was based on principles that are substantially similar to the principles referred by COAG to the Ministerial Council for Corporations on 29 November 2008 as the first step in this reform.

On 26 March 2008, COAG (2008d, p. 22) requested the Business Regulation and Competition Working Group (BRCWG) to report to COAG at its July 2008 meeting on the case for reforms in this area, and for it to develop implementation plans for any identified reform areas by October 2008.

On 3 July 2008 COAG (2008f, p. 7) agreed that there was a case for reform and that the approach to reform will ensure that 'appropriate sanctions will apply to egregious conduct which should be dealt with by the imposition of personal criminal liability'. COAG (2008f, p. 7) also asked the BRCWG to report to the October 2008 COAG meeting on principles and identified reform areas, other than workplace health and safety and environment protection laws.

On 29 November 2008 COAG (2008e, p. 2) agreed to increased harmonisation of the laws with respect to personal criminal liability for corporate fault, other than laws relating to workplace health and safety and environment protection. COAG referred the following three principles to the Ministerial Council for Corporations, for 'advice on their adequacy for reforming Commonwealth, State and Territory provisions':

- where companies contravene statutory requirements, liability should be imposed in the first instance on the company itself
- personal criminal liability of a corporate officer for the misconduct of the corporation should generally be limited to situations where the officer encourages or assists the commission of the offence (accessorial liability)
- in exceptional circumstances, where there is a public policy need to go beyond the ordinary principles of accessorial liability, a form of deemed liability could be imposed on a corporate officer only using a 'designated officer' approach (for minor offences) or a 'modified accessorial' approach (for more serious offences) (COAG, 2008e, p. 2).

COAG (2008e, p. 2) requested that the ministerial council audit all relevant laws against these principles.

26.3 Progress report and assessment

The following actions have been taken by governments regarding the 2008–09 milestones for deregulation priority 26.

Milestone 1: All jurisdictions: COAG referred principles for advice on their adequacy to the Ministerial Council for Corporations (MINCO) in Nov 2008

Progress report

This milestone is a statement of fact. COAG referred the principles set out above on 29 November 2008.

Progress assessment

Noting that this milestone is a statement of fact, it is the COAG Reform Council's assessment that this milestone was completed on time.

Milestone 2: All jurisdictions: MINCO to agree the principles for increased consistency across jurisdictions to the imposition of personal criminal liability for corporate fault by March 2009

Progress report

On 14 April 2009 a set of alternative principles to the set of principles referred by COAG in November 2008 was circulated between governments (Australian Capital Territory Government, 2009b, p. 33; Commonwealth Government, 2009b, p. 59; Northern Territory Government, 2009, p. 36).

At its 17 April 2009 meeting, the Ministerial Council for Corporations did not agree to the principles referred by COAG in November 2008 or the alternative set of principles circulated on 14 April 2009 (Australian Capital Territory Government, 2009b, p. 33; New South Wales Government, 2009c; South Australian Government, 2009a, p. 32).

Following the 17 April 2009 Ministerial Council for Corporations meeting, the Commonwealth Minister for Superannuation and Corporate Law, Senator the Hon Nick Sherry, announced that the Commonwealth will audit its laws against the principles announced by COAG on 29 November 2008. The minister stated that the Commonwealth aimed to conduct this audit of its laws in the second half of 2009 (Sherry, 2009b).

On 2 July 2009, COAG (2009e, p. 3) agreed that the Ministerial Council for Corporations will identify areas for nationally agreed principles based on an audit of legislation and provide an interim report to the BRCWG by the end of August 2009 and on agreed national principles by the end of 2009.

This agreement appears to be reflected in the implementation plan's 2009–10 milestones, particularly the milestone for the 'MINCO to consider report and agree national principles by end October 2009'. The council notes that there now appears to be some inconsistency between the 2008–09 and 2009–10 milestones in relation to when the principles are to be agreed, as COAG did not remove the 2008–09 milestone for 'MINCO to agree the principles for increased consistency across jurisdictions...by March 2009'.

The Northern Territory Government (2009, p. 36) reported that the Ministerial Council for Corporations provided an interim report at the 3 September 2009 BRCWG meeting, but 'it was considered to be of limited utility as it was not based on uniformly agreed principles.'

Progress assessment

Noting the internal inconsistency between the 2008–09 and 2009–10 milestones described above, it is the COAG Reform Council's assessment that this milestone has not been completed.

As at 30 September 2009, the Ministerial Council for Corporations had not agreed on a set of principles for increased consistency for the imposition of personal criminal liability for corporate fault.

Table 26.2 provides the council's assessment of progress on the milestones in this reform.

Table 26.2: Directors' liability—progress assessment by milestone

Milestone	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
1									
2									

Table 26.3 provides the council's overall assessment of progress on this reform. The overall assessment takes into account that the first milestone is a statement of fact and that the second, more substantive, milestone was not completed by 30 September 2009.

Table 26.3: Directors' liability—overall progress assessment

	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Overall assessment									

26.4 Risk assessment

Principles have not been agreed

The fact that governments did not, by 30 September 2009, agree principles for an audit of legislation for the purposes of harmonising the imposition of personal criminal liability for corporate fault poses a risk to the achievement of the 2009–10 milestones and to the enactment of legislation to implement the reforms by December 2010. The COAG Reform Council understands that all jurisdictions are aware that a lack of agreement on the principles is a risk to this reform and that effort is being made to resolve the differences between the set of principles referred by COAG in November 2008 and the set of principles circulated on 14 April 2009.

The Ministerial Council for Corporations has formed a directors' liability consultative panel, with responsibility for considering the adequacy of the two sets of alternative principles (Northern Territory Government, 2009, p. 36; Victorian Government, 2009b, p. 46). As at 30 September 2009, the panel was due to meet in early October 2009, and then produce a final opinion (Northern Territory Government, 2009, p. 36; Victorian Government, 2009b, p. 46).

The risk from the lack of agreed principles is mitigated to some extent by the changes made to the implementation plan on 2 July 2009. Through these changes COAG has given the Ministerial Council for Corporations clear direction to reach agreement on national principles by the end of October 2009 and a set of interim steps to lead to that agreement.

Audit and implementation of reform risks

As a result of the lack of agreement on principles, the Commonwealth has conducted its audit based on one set of principles, and some States and Territories have either commenced, or completed their audits on the basis of the alternative set of principles (Australian Capital Territory Government, 2009b, p. 34; Queensland Government, 2009a, p. 38; South Australian Government, 2009a, p. 32; Victorian Government, 2009b, p. 46; Western Australian Government, 2009b, p. 35).

As a result of the audits being conducted on the basis of two different sets of principles, there will need to be further (and perhaps significant) work by all or most jurisdictions to ensure that the audit process is consistent with the set of principles that are resolved, and agreed, by all governments.

The delay on agreed principles and the audit process also presents risks to the achievement of the milestone for all jurisdictions to enact legislation by December 2010. This is particularly the case if, as the Queensland (2009a, pp. 38–39) and South Australian (2009a, pp. 31–32) governments note, this involves a substantial legislative drafting process. One jurisdiction has indicated that it did not expect the legislative drafting task to implement reforms to be substantial (New South Wales Government, 2009b).

Further milestones may be needed

There is some risk that the current milestones will not necessarily meet COAG's agreed output for this reform—a consistent and principled approach to the imposition of personal criminal liability for corporate fault. Further milestones may be required to put in place a process to minimise variations arising from the separate legislative processes of jurisdictions. Similarly, consideration may need to be given to an agreement covering future legislative changes by individual jurisdictions, as exist in a number of other reforms under the *National Partnership Agreement to Deliver a Seamless National Economy*.

PART C: COMPETITION REFORM

Chapter 27: Anti-dumping and countervailing

Key points

Progress assessment

It is the COAG Reform Council's assessment that the milestone for the commencement of a Productivity Commission review was completed on time.

27.1 Output and milestones

Table 27.1 reproduces the output and milestones from the implementation plan for competition reform 1—anti-dumping and countervailing system.

Table 27.1: Anti-dumping and countervailing—output and milestones

Output
1. Review of Australia's anti-dumping and countervailing system

Milestones				
2008–09	2009–10	2010–11	2011–12	2012–13
Commonwealth: Productivity Commission (PC) to commence review in March 2009	Commonwealth: PC to finalise review in December 2009 Commonwealth: release PC's final report by mid 2010 Commonwealth: release a government response to the PC review by June 2010.	Ongoing milestones to be identified and agreed as project progresses		

Source: (COAG, 2009p, p. 2)

The original implementation plan agreed by COAG on 29 November 2008 specified a 'late 2008' deadline in the 2008–09 milestone for the Productivity Commission to commence its

review (COAG, 2009o, p. 22). It also included an additional 2008–09 milestone for the completion of the review by May 2009.

On 2 July 2009, COAG agreed a revised implementation plan for this National Partnership, as reproduced above, which:

- deferred the deadline for the 2008–09 milestone for the commencement of the Productivity Commission review from late 2008 to March 2009
- deferred the deadline for the completion of the review from May 2009 to December 2009 (and it accordingly became a 2009–10 milestone)
- deferred the deadline for the 2009–10 milestone for the release of the final report of the review from September 2009 to mid 2010
- deferred the deadline for the 2009–10 milestone for the release of a government response to the review from March 2010 to June 2010 (COAG, 2009p, p. 21).

27.2 The proposed reform

The reform

The specific nature of this reform is yet to be finalised. At this stage, the output is a review by the Productivity Commission of the anti-dumping and countervailing system. The Productivity Commission was asked to:

- assess the policy rationale for, and objectives of, Australia's anti-dumping system, and its effectiveness in achieving those objectives
- examine the economy-wide costs and benefits of Australia's anti-dumping system
- report on the administration and compliance costs of the anti-dumping system, taking account of the concerns of both importers and domestic industry (Productivity Commission, 2009d, pp. iv–v).

Background

The anti-dumping and countervailing duties regime is in place to counter the impact on Australian industry of imported goods deemed to be unfairly priced. Dumping occurs when goods are exported and sold in a second market at prices below those in the exporters' market or where goods imported to Australia are subsidised by the government of the country of origin (Productivity Commission, 2009d, p. xi).

To counter the dumping and subsidisation of imported goods, Australia has a two-fold regime providing for Australian businesses to:

- apply for anti-dumping duties to be levied on goods that have been dumped in the Australian market at a lower price than in their home market
- apply for countervailing duties to be levied on imported goods which have been subsidised by the government of the country of origin (Productivity Commission, 2009d, p. xi).

Claims for the application of these duties are managed by the Australian Customs and Border Protection Service, which also imposes the duties if a claim is upheld. In determining the legitimacy of a claim by a business for these duties to be levied, it must be established that the dumping or subsidisation results in material injury to local industry (Productivity Commission, 2009d, pp. 10–12).

The National Competition Policy legislative review program provided for a review of the anti-dumping arrangements (Bowen, 2009a). In January 2006, the Taskforce on Reducing the Regulatory Burdens on Business also recommended that the system be reviewed (Bowen, 2009a). A joint study by the then Australian Customs Service and the former Department of Industry, Tourism and Resources into the administrative elements of the anti-dumping arrangements was finalised in August 2006 and made 20 recommendations to improve the administrative arrangements of the system, all but one of which were implemented (Bowen, 2009a; Productivity Commission, 2009d, p. 123).

On 3 July 2008, COAG (2008k, p. 5) agreed that the Commonwealth would request the Productivity Commission to undertake a review of Australia's anti-dumping system. On 23 March 2009, the then Assistant Treasurer, the Hon Chris Bowen MP (2009a), and then Home Affairs Minister, the Hon Bob Debus MP, announced that the Productivity Commission would undertake such an inquiry.

The Productivity Commission (2009d) released *Australia's Anti-dumping and Countervailing System: Draft Inquiry Report* on 10 September 2009 for comment by 6 November 2009.

27.3 Progress report and assessment

The following actions have been taken by governments regarding the 2008–09 milestone for competition priority 1.

Milestone 1: Commonwealth: Productivity Commission (PC) to commence review in March 2009

Progress report

The terms of reference for the Productivity Commission *Inquiry into Australia's Anti Dumping and Countervailing System* were issued on 23 March 2009 (Bowen, 2009a). On 1 April 2009, the Productivity Commission (2009c) released a circular announcing that it had commenced the inquiry and allocated two commissioners to oversee its progress.

Progress assessment

It is the COAG Reform Council's assessment that this milestone was completed on time.

Table 27.2 provides the council's overall assessment of progress on this reform.

Table 27.2: Anti-dumping and countervailing—overall progress assessment

	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Overall assessment									

27.4 Risk assessment

As at 30 September 2009, the Productivity Commission was on track to complete its review by December 2009, as required (COAG, 2009f). As such, the COAG Reform Council considers that there is no significant risk to the completion of this reform. The deferral of the early milestones in the implementation plan has led to a three month delay in the programmed completion of the review. This should not have a significant impact on the implementation of any changes to the anti-dumping and countervailing regime recommended by the Productivity Commission.

The council presumes that further milestones will be identified together with the Commonwealth Government's response to the Productivity Commission review.

Chapter 28: Book importation

Key points

Progress assessment

It is the COAG Reform Council's assessment that the milestone for the release of a Productivity Commission report was completed late but within the quarter following the end of the 2008–09 reporting period.

28.1 Output and milestones

Table 28.1 reproduces the output and milestones from the implementation plan for competition reform 2—parallel importation restrictions on books.

Table 28.1: Book importation—output and milestones

Output				
2. Parallel importation restrictions on books.				
Milestones				
2008–09	2009–10	2010–11	2011–12	2012–13
Commonwealth: PC to commence review by late 2008 Commonwealth: release PC's final report by June 2009	Commonwealth: release a government response to the PC review by Dec 2009	Ongoing milestones to be identified and agreed as project progresses		

Source: (COAG, 2009p, p. 21)

28.2 The proposed reform

The reform

The nature of this reform was not defined beyond a Productivity Commission review of the restrictions on the parallel importation of books in Australia.

Parallel importation refers to the importation of books published overseas when the same title is offered by an Australian publisher. Parallel importation restrictions operate separately and in addition to core copyright protections and are designed to protect Australian publishers and authors from competition by overseas publishers (Productivity Commission, 2009j, p. 16).

At present, books written and published overseas may not be imported into Australia if an Australian publisher releases an edition during the first 30 days of its publication anywhere in the world. The restriction is maintained if the publisher keeps that edition in continuous publication—in effect, 'continuous publication' means maintaining a capacity to resupply the book within 90 days of supply being exhausted (Productivity Commission, 2009j, p. xvii).

Most major English speaking markets have similar parallel import restrictions on books including the United Kingdom, the United States and Canada. New Zealand does not have import restrictions (Productivity Commission, 2009j, p. 16).

Background

Australia's parallel import restrictions have been reviewed frequently over the last two decades, beginning with the Copyright Law Review Committee's 1988 review, which resulted in the introduction of the 30 and 90 day rules in 1991 (Productivity Commission, 2009j, p. 1.2).

The following reviews have each recommended the removal of importation restrictions on books:

- the Prices Surveillance Authority's *Inquiry into Book Prices* in 1989—also updated in 1995
- the Australian Competition and Consumer Commission's Potential Consumer Benefits of Repealing the Importation Provisions of the Copyright Act 1968 as they apply to Books and Computer Software in 1999 and the update of that report in 2001
- the Intellectual Property and Competition Review Committee's Review of intellectual property legislation under the Competition Principles Agreement in 2000
- the Senate Legal and Constitutional Legislation Committee's *Inquiry into the Provisions of the Copyright Amendment (Parallel Importation) Bill 2001*—the majority report of which recommended removal of the restrictions (Productivity Commission, 2009j, p. 1.2).

Although the detailed reasons for their recommendations differ, generally, these reviews recommended removal of the restrictions on book importation due to the impact of the restrictions on the availability and price of books for consumers (Productivity Commission, 2009j, p. 1.2). The recommendations of these reports to remove the restrictions were not adopted and there have been no reviews of the restrictions since 2001 (Productivity Commission, 2009j, p. 1.2).

On 3 July 2008, COAG (2008k, p. 3) announced that the Commonwealth Government would request the Productivity Commission to conduct a review of the copyright restrictions on the parallel importation of books into Australia.

The commission received terms of reference for a study on the restrictions from the then Assistant Treasurer, the Hon Chris Bowen MP, on 13 November 2008 to undertake the study and report within six months (Productivity Commission, 2009j, p. v & 1.3). Key elements of the terms of reference included the need to have regard to:

- the extent to which the restrictions promote and achieve the objectives of the *Copyright Act 1968*

- the intended objectives of the restrictions in the overall policy framework for competition, intellectual property, trade and industry policy
- the impacts on all relevant groups including authors, publishers, printers, distributors, retailers, consumers, libraries and educational institutions.

The Productivity Commission's (2009j) June 2009 research report on *Restrictions on the Parallel Importation of Books* assessed the benefits and costs of the parallel import restrictions and the merits of options for reform.

The Productivity Commission (2009j, p. 25) recommended that:

- parallel import restrictions be repealed, with a transition period of three years
- the current subsidies available to the Australian writing and publishing sector should be reviewed with a view to better targeting them to the achievement of cultural benefits
- any changes to the subsidies identified by the review should be in place before the repeal takes effect, if the restrictions are to be removed
- a review be undertaken five years after the removal of the restrictions, including an assessment of any subsidy arrangements put in place, supported by a revised version of the Australian Bureau of Statistics' 2003–04 survey on the book industry.

The Productivity Commission (2009j, p. 14) also found that:

- the restrictions insulate publishers from import competition causing upward pressure on prices, which at times can be substantial, though the magnitude of the price difference will vary across time, book genre and the exchange rate
- the benefits of the restrictions go to publishers and authors and create additional demand for local printing, at the expense of consumers
- the economic rents earned by publishers go toward reinvestment in local authors, resulting in positive benefits to the community (however, the restrictions apply to all books, including books written overseas, resulting in a leakage of income overseas—the commission estimates that every dollar of benefit for Australian authors and publishers generated by the restrictions is offset by the one dollar and fifty cents the restrictions generate for overseas copyright holders)
- better designed subsidies would allow for a more transparent and targetable form of assistance to Australian writers and publishers that could also minimise the leakage of income to overseas copyright holders.

28.3 Progress report and assessment

The following actions have been taken by governments regarding the 2008–09 milestones for competition priority 2.

Milestone 1: Commonwealth: PC to commence review by late 2008

Progress report

The Productivity Commission received terms of reference for its review of *Restrictions on the Parallel Importation of Books* on 13 November 2008. On 26 November 2008, the commission (2009j, p. 1.3) released an issues paper and sought interim submissions on the review by 20 January 2009. On 1 July 2009, the Productivity Commission (2009h) announced that it had completed the review and submitted it to the Commonwealth Government.

Progress assessment

It is the COAG Reform Council's assessment that this milestone was completed on time.

Milestone 2: Commonwealth: release PC's final report by June 2009

Progress report

The Minister for Competition Policy and Consumer Affairs, the Hon Chris Bowen MP, announced an extension of the Commission's final report date to the government from 13 May to 30 June 2009 (Bowen, 2009e). The Productivity Commission released its final report on 14 July 2009 (2009j, p. 1.3). The commission also released a supplement to its report in September 2009 (Productivity Commission, 2009k).

Progress assessment

It is the COAG Reform Council's assessment that this milestone was completed late but within the quarter following the end of the 2008–09 reporting period.

The final report was not released until 14 July 2009—two weeks after the deadline for its release.

Table 28.2 provides the council's assessment of progress on the milestones in this reform.

Table 28.2: Book importation—progress assessment by milestone

Milestone	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
1									
2									

Table 28.3 provides the council's overall assessment of progress on this reform. The overall assessment takes into account completion of the first milestone on time and the minor delay in completion of the second milestone.

Table 28.3: Book importation—aggregate progress assessment

	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Overall assessment									

28.4 Risk assessment

As at 30 September 2009, the council has not identified any risks to the achievement of the single 2009–10 milestone for the Commonwealth to release a response to the Productivity Commission review by December 2009.

Chapter 29: Energy

Key points

Progress assessment

It is the COAG Reform Council's assessment that:

- the milestone for Western Australia to report to the Business Regulation and Competition Working Group on national gas laws by November 2008 was partially completed within the quarter following the end of the reporting period
- the milestone for the Australian Energy Market Commission to report by the end of 2008 to the Ministerial Council for Energy on retail price competition in South Australia was completed on time.

In regard to the previous National Reform Agenda milestones, it is the council's assessment that, while some aspects of the work are proceeding, the core and more difficult tasks—such as the removal of derogations from the national framework, prudential requirements in the market, and the roll-out of smart meters—are moving more slowly. There is a case to clarify governments' current energy reform commitments.

Risk assessment

The COAG Reform Council considers that the key risks in this area are:

- the outstanding National Reform Agenda milestones create significant complexity for monitoring and reporting on this reform stream
- that the Australian Energy Market Commission reviews of retail price competition may not achieve their aim both because there are no milestones related to implementation of their findings and because there are no milestones for reviews of some jurisdictions' retail markets
- the risk that there will be a delay in introducing the retail policy package legislation which is a 2009–10 milestone for this reform.

29.1 Output and milestones

Table 29.1 reproduces the output and milestones in the implementation plan for competition reform 3—previously agreed energy reform.

Table 29.1: Energy—output and milestones

Output				
3. Previously agreed energy reform				
Milestones				
2008–09	2009–10	2010–11	2011–12	2012–13
WA: report to BRCWG on national gas laws by Nov 2008. Commonwealth: Australian Energy Market Commission (AEMC) to report by end 2008 to Ministerial Council for Energy on competition in the SA market and advise on measures to remove retail price regulation in SA.	SA: retail policy package legislation introduced by Sept 2009 All jurisdictions: Australian Energy Market Operator commences operation by mid 2009.	Commonwealth AEMC to complete review of competition in ACT retail market by end 2010	Commonwealth AEMC to complete review of competition in NSW retail market by end 2011	

Source: (COAG, 2009p, pp. 21–22)

Additional milestones

In addition to the implementation plan milestones, there are a number of outstanding National Reform Agenda milestones assessed in this report. These milestones are:

National energy market reform

- All jurisdictions: Ministerial Council on Energy to report annually to the COAG Reform Council on progress implementing energy reforms (ongoing).

- All jurisdictions: review of energy market governance arrangements (to be completed by July 2014).[38]
- All jurisdictions: review and remove or harmonise derogations from the national framework and report to COAG on this work.
- All jurisdictions: develop options to integrate the spot and forward markets into the National Energy Market prudential requirements (by December 2007).
- Western Australia and the Northern Territory: to continue to monitor developments and consider entering the National Energy Market (ongoing).

Smart meters

- All jurisdictions: Ministerial Council on Energy to implement necessary rule changes in the National Energy Market to mandate the roll-out of smart meters consistent with the outcomes of the smart meter cost benefit analysis report (during 2008).
- Queensland: report to the Ministerial Council on Energy by July 2009 with a timetable for the implementation of pilots to inform a decision on a Queensland smart meter roll-out, desirably sooner than June 2012.
- Western Australia: commit to finalising the Electricity Retail Market review, including reporting to the Ministerial Council on Energy by July 2009 with a timetable for a decision on a Western Australian smart meter roll-out desirably sooner than June 2012.
- All jurisdictions: replacement of existing meters with smart meters to commence by end 2008.
- All jurisdictions: COAG Reform Council to continue to monitor and report on work toward the achievement of a staged national roll-out of electricity smart meters.

29.2 The proposed reform

The reform

The aim of this reform is to undertake a number of remaining elements of the national energy reforms previously agreed by COAG to establish a national energy market. These remaining initiatives include:

- various reforms covering the remaining steps to establish a national energy market
- a national roll-out of electricity smart meters
- a review of energy retail market competition in different jurisdictions
- the potential removal of price restrictions on retail energy sales.

[38] This date is based on the original commitment to review the governance arrangements, which commenced on 1 July 2009, after they have been in place for five years.

These remaining initiatives will require implementation of some changes to the current legislative framework for the national energy market. This legislative framework is made up of the following laws:

- the National Electricity Law, which is a schedule of the *National Electricity (South Australia) Act 1996* (SA)[39]
- the National Electricity Rules, which support the National Electricity Law
- the National Gas Law, which is a schedule of the *National Gas (South Australia) Act 2008* (SA)[40]
- the *Australian Energy Market Commission Establishment Act* 2004 (Cwlth), which establishes the Australian Energy Market Commission
- Part IIIA of the *Trade Practices Act 1974* (Cwlth), which establishes the Australian Energy Regulator
- the *Australian Energy Market Act 2004* (Cwlth) which applies the National Electricity Law and National Gas Law to offshore areas and other Commonwealth government involvement.

Background

The establishment of a national energy market has been a strong focus for COAG for over a decade. Governments have made significant progress on national energy market reform over this time, including the establishment of the Australian Energy Market Operator in 2009.

The background information below sets out the progress that governments have made in relation to the establishment of a national energy market, the reforms that remain to be achieved, and the background on COAG decisions with respect to the roll-out of electricity smart meters.

National energy market

In June 2001, COAG (2001, p. 2) stated that the effective operation of an open and competitive national energy market will contribute to improved economic and environmental performance and deliver benefits to households, small business and industry, including in regional areas.

On 8 June 2001, COAG (2001, p. 3) agreed to establish the Ministerial Council on Energy, to conduct an independent review of energy market directions and to create a national energy policy framework to guide future energy policy decision making by jurisdictions.

The independent Parer Review released a report in 2002 titled *Towards a Truly National and Efficient Energy Market*, which identified strategic issues for Australian energy markets and proposed policy directions (COAG Energy Market Review, 2002; COAG Reform Council, 2008). On 11 December 2003, the Ministerial Council on Energy provided a report to COAG in response to this independent review on energy market directions. As a result of this review, all

[39] The National Electricity Law applies to all participating jurisdictions that have enacted a law which corresponds with the *National Electricity (South Australia) Act 1996* SA.
[40] The National Gas Law applies to all participating jurisdictions that have enacted a law which corresponds with the *National Gas (South Australia) Act 2008* (SA).

governments entered into the *Australian Energy Market Agreement* on 30 June 2004 (COAG, 2004).

The objectives of the *Australian Energy Market Agreement*[41] are:

- the promotion of the long term interests of consumers with regard to the price, quality and reliability of electricity and gas services
- the establishment of a framework for further reform to:
  - strengthen the governance of energy markets
  - streamline and improve the quality of economic regulation across energy markets
  - improve the planning and development of electricity transmission networks to create a stable framework for efficient investment in new generation and transmission capacity
  - enhance the participation of energy users in the market through demand side management and further introduction of retail competition
  - further increase the penetration of natural gas into the Australian market, lower energy costs and improve energy services, particularly to regional Australia
  - address greenhouse emissions from the energy sector (COAG, 2009a, p. 8).

Under the *Australian Energy Market Agreement*, all governments agreed to reform of the National Electricity Law, the establishment of a National Gas Law and the establishment of the Australian Energy Market Commission and the Australian Energy Regulator (COAG, 2004, pp. 10–12).

The Australian Energy Market Commission is responsible for rule making and energy market development, including in respect of the National Electricity Rules and the National Gas Laws (COAG, 2004, p. 10). The Australian Energy Regulator is the economic regulator of the gas and electricity markets, including in respect of national energy market laws (COAG, 2004, p. 10).

In June 2004, the Productivity Commission (2004b) released a report titled *Review of the Gas Access Regime*. This report found that the gas access regime generated benefits, but that it also had significant costs such as the potential to distort investment. The commission made a number of recommendations aimed at alleviating the costs, including a recommendation for the development of less costly monitoring options for the gas regime (Productivity Commission, 2004b, p. xxii).

On 10 February 2006, COAG (2006d, p. 5) agreed that, while structural reforms taken under the National Competition Policy and other COAG initiatives had significantly improved the efficiency of the energy sector, further reform would yield greater efficiency and energy security benefits.

To this end, COAG agreed to establish the Energy Reform Implementation Group to recommend proposals for:

[41] The *Australian Energy Market Agreement* was amended on 2 June 2006 and 2 July 2009 (COAG, 2009a) . The objectives and the intent of the agreement have remained the same.

- achieving a fully national transmission grid
- measures that may be necessary to address structural issues affecting the ongoing competitiveness and efficiency of the electricity sector
- measures that may be necessary to ensure there are transparent and effective financial markets to support energy markets (COAG, 2006d, p. 5).

On 13 April 2007, COAG (2007b) considered the Energy Reform Implementation Group's report which included a number of recommendations to further improve energy market governance. COAG endorsed a number of these recommendations and made commitments:

- to establish a National Energy Market Operator
- to introduce a national transmission planning function
- for the Ministerial Council on Energy to report annually on progress in implementing energy reforms to the COAG Reform Council to ensure that agreed timelines are met (COAG, 2007b, pp. 2–8).

The COAG Reform Council (2008) reported on the operation of the 'National Energy Market Operator' (now known as the Australian Energy Market Operator) in its March 2008 report. The council recommended that:

> COAG note the good progress made in establishing the AEMO and new transmission planner and requests that MCE resolve outstanding matters as soon as possible (COAG Reform Council, 2008).

The Australian Energy Market Operator was established on 1 July 2009 (Department of Resources, Energy and Tourism [Cwlth], 2009a). It is responsible for market operation functions for electricity and gas, the operation of the 'National Transmission Planner' for electricity, publishing a gas statement of opportunities and (once finalised) the operation of a gas short-term trading market (Australian Energy Market Operator, 2009).

In 2009, the COAG Reform Council (2009b, pp. 20–21) made two recommendations in relation to national energy market reform:

> [T]hat COAG requests that the MCE develop a revised timetable for the review and removal or harmonisation, as appropriate, of derogations from the national framework, and other state-specific differences, to proceed expeditiously after the legislation for the national framework is in place
>
> [T]hat COAG requests that the MCE commit to a review of the effectiveness of the *Energy Community Service Obligations National Framework* in achieving COAG's objectives after it has been in place for three years (i.e. October 2011).

On 30 April 2009, COAG (2009d, p. 1) endorsed the council's energy reform recommendations. These recommendations now form part of the additional milestones for competition reform which are reported in this chapter.

Electricity smart meters

Electricity smart meters are electricity meters that can measure and record electricity consumption in short intervals, be remotely connected and read by energy providers, and can provide more detail about consumption than traditional meters (COAG Reform Council, 2009b,

p. 4). These capabilities mean that electricity smart meters may provide significant benefits in reduced meter reading costs, improved information about energy use patterns and costs, and may allow for the introduction of time-of-use pricing and other energy demand management strategies (COAG, 2007b, p. 9).

On 10 February 2006, COAG (2006d, p. 5) committed to the progressive national roll-out of smart meters to allow the introduction of time-of-day pricing and to allow users to better manage their demand for peak power.

On 13 April 2007, COAG (2007b, p. 9) endorsed a staged, national roll-out of electricity smart meters to 'areas where benefits outweigh costs, as indicated by the results of the cost benefit analysis which will be completed by the end of 2008'. COAG (2007b, p. 9) stated that the roll-out of smart meters would 'improve energy supply reliability, enable customers to manage better their energy use and greenhouse gas emissions and help maintain Australia's relatively low energy prices.'

In March 2008, the COAG Reform Council (2008) recommended that 'COAG note that the progressive national roll-out of smart meters as previously agreed by COAG is important and should continue in accordance with the agreed timeframes.'

In March 2009, the COAG Reform Council (2009b) made three recommendations regarding smart meters:

1. The Council recommends that COAG supports the Queensland Government's intention to report to the MCE by July 2009 with a timetable for the implementation of pilots to inform a decision on a Queensland smart meter roll-out, desirably sooner than June 2012.

2. The Council recommends that COAG requests that the Western Australian Government commits to finalising the Electricity Retail Market Review, including reporting to the MCE by July 2009 with a timetable for a decision on a Western Australian smart meter roll-out, desirably sooner than June 2012.

3. The Council recommends that COAG notes that it will continue to monitor and report on work toward the achievement of a staged national roll-out of electricity smart meters (COAG Reform Council, 2009b, p. v).

COAG (2009d) endorsed the three recommendations made in relation to smart meters. These recommendations, and the decisions made by COAG in respect of the council's first and second recommendations, now form part of the additional milestones which are reported in this chapter.

29.3 Progress report and assessment

This section provides a progress report and assessment on the 2008–09 implementation plan milestones for this reform stream, as well as the outstanding National Reform Agenda milestones.

The following actions have been taken by governments regarding the milestones for energy reform.

National partnership milestones

Milestone 1: WA: report to BRCWG on national gas laws by Nov 2008

Progress report

The Commonwealth Government (2009b, p. 63) reported that Western Australia had not formally reported to the Business Regulation and Competition Working Group (BRCWG) on national gas laws.

In the absence of a report by the Western Australian Government to the BRCWG, the council has reviewed the steps taken by Western Australia to adopt the National Gas Law, as the report would have addressed the steps taken by Western Australia to adopt the law. The council notes that a formal report to the BRCWG may also have covered other issues relevant to Western Australia approach to the National Gas Law.

The *National Gas Access (WA) Act 2009* (WA) became law on 1 September 2009. The first two sections of the law—which provide the short title of the Act and the terms of commencement of the various parts of the law—came into operation on 1 September 2009. The substantive provisions of the *National Gas Access (WA) Act 2009* (WA) will come into effect on a day or days fixed by proclamation. In other words, the operative parts of the act and its regulations—including the regulation prescribing one or more pipelines as designated pipelines—have not commenced. The Western Australian Government (2009b, p. 38) reported that it is intended that the legislative scheme will commence in late 2009.

The *National Gas Access (WA) Act 2009* (WA) adopts a modified version of the National Gas Law. Under this law, the national gas access regime will operate in Western Australia with respect to gas access regulation, whereas in other jurisdictions the national gas law also regulates distribution and retail activities (Parliament of Western Australia, 2008a, p. 2).

In addition, the *National Gas Access (WA) Act 2000* (WA) will involve regulation by State based bodies, rather than the Australian Energy Regulator (Parliament of Western Australia, 2008a, p. 2). The explanatory memorandum for the law states that '[w]hile Western Australia will benefit from participation in the national access regime, the different nature of Western Australia's energy market means that it would be inappropriate to commit to broader national regulation at this stage' (Parliament of Western Australia, 2008a, p. 2).

Progress assessment

It is the COAG Reform Council's assessment that this milestone was partially completed within the quarter following the end of the reporting period. Western Australia may have completed the substance of this reform by enacting the *National Gas Access (WA) Act 2009* (WA) on 1 September 2009. However, the council does not know whether the enactment of the law was the only matter to which this milestone referred. Given that Western Australia has not formally reported on this matter, this milestone is considered to be only partially completed.

Milestone 2: Commonwealth: Australian Energy Market Commission (AEMC) to report by end 2008 to Ministerial Council for Energy on competition in the SA market and advise on measures to remove retail price regulation in SA

Progress report

The Australian Energy Market Commission undertook a two stage process to report to the Ministerial Council on Energy on the South Australian energy market. This review is one of a series of reviews to be conducted by the Australian Energy Market Commission, with reviews already completed in regard to the effectiveness of retail markets in Victoria (Australian Energy Market Commission, 2009b) and reviews of the markets in the Australian Capital Territory and New South Wales required in 2010–11 and 2011–12 respectively under the implementation plan for this reform.

The First Final Report was released on 19 September 2008 (Australian Energy Market Commission, 2008b). This report confirmed the Australian Energy Market Commission's preliminary finding that there is effective competition in both electricity and gas retailing in South Australia.

The Second Final Report was published on 18 December 2008 (Australian Energy Market Commission, 2008c). The report sets out the Australian Energy Market Commission's final advice to the Ministerial Council on Energy and the South Australian Government on ways to phase out retail pricing. The report included the following recommendations:

- that the regulation of standing contract prices should cease by no later than the expiry of the current price determinations for electricity and gas
- that a comprehensive price monitoring and reporting framework be put in place for a period of at least three years following the removal of retail price regulation
- that a conditional statutory reserve power be put in place to reintroduce retail price regulation, if competition deteriorates
- that the obligation on retailers to agree to supply and sell energy to small customers be retained
- that South Australia's non-price consumer protection framework continue (Australian Energy Market Commission, 2008c, pp. 10–12).

Progress assessment

It is the COAG Reform Council's assessment that this milestone was completed on time.

National Reform Agenda milestones: national energy market

Milestone 3: All jurisdictions: Ministerial Council on Energy to report annually to the COAG Reform Council on progress implementing energy reforms (ongoing)

Progress report

The COAG Reform Council received reports from the Ministerial Council on Energy on implementation of energy reforms in July 2008 and February 2009.

Progress assessment

It is the COAG Reform Council's assessment that this ongoing milestone is being met.

Milestone 4: All jurisdictions: review of energy market governance arrangements (to be completed by July 2014)

Progress report

The legislation to establish the Australian Energy Market Operator, the *Australian Energy Market Amendments (AEMO and Other Measures) Act 2009* (Cwlth) passed the Commonwealth Parliament on 11 March 2009 and all provisions of the Act commenced by 1 July 2009 (Attorney-General's Department [Cwlth], 2009d, p. 2).

As a result of this new law, the Australian Energy Market Operator, and associated governance arrangements commenced on 1 July 2009. As such, the review of governance arrangements to occur after five years of operation should occur by 1 July 2014.

Progress assessment

It is the COAG Reform Council's assessment that it is too early to assess progress on achieving this milestone by July 2014. However, the council has no specific concerns regarding implementation of this milestone at this stage.

The COAG Reform Council notes that although this is an 'all jurisdictions' milestone, Western Australia and the Northern Territory are not current participating jurisdictions in the National Energy Market. Consequently, Western Australia and the Northern Territory have not been assessed against this milestone.

Milestone 5: All jurisdictions: review and remove or harmonise derogations from the national framework and report to COAG on this work

Progress report

In its 2009 report to COAG, the COAG Reform Council (2009b, p. vi) recommended that COAG request the Ministerial Council on Energy to develop a revised timetable for this task to follow expeditiously after the passage of the law to establish a national framework. COAG (2009d, p. 1) agreed to this recommendation at its 30 April 2009 meeting. In its *Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services*, the Productivity Commission (2009b, p. 217) supported the council's recommendation about the need for a revised timetable for the expeditious review and removal or harmonisation of derogations.

The COAG Reform Council noted that this initiative had been delayed to allow for the transfer of all energy functions to the national regime. This is because the transfer of functions may

create additional differences and derogations from the national framework. The Ministerial Council on Energy (2009b, p. 7) reaffirmed its commitment to reviewing derogations at its 6 February 2009 meeting, although the issue was not discussed at its 10 July 2009 meeting (Ministerial Council on Energy, 2009c). The Commonwealth Government (2009b, p. 64) reported that the review is scheduled to commence in 2010, following the introduction of the National Energy Customer Framework.

Progress assessment

It is the COAG Reform Council's assessment that this milestone has not been completed. However, the council expects to be able to report on a revised timeframe for this milestone in future reports.

The COAG Reform Council notes that although this is an 'all jurisdictions' milestone, Western Australia and the Northern Territory are not current participating jurisdictions in the National Energy Market. Consequently, Western Australia and the Northern Territory have not been assessed against this milestone.

Milestone 6: All jurisdictions: develop options to integrate the spot and forward markets into the National Energy Market prudential requirements (by December 2007)

Progress report

In its 2009 report, the COAG Reform Council noted that the development of these reform options was very late.

The reform options are being considered by the Australian Energy Market Commission. As noted in the council's 2009 report, in January 2009 the Australian Energy Market Commission advised that it will not make a draft rule dealing with these matters because of their complexity (COAG Reform Council, 2009b, p. 18). Instead, the Australian Energy Market Commission will initiate a review under section 45 of the National Electricity Law to provide advice to the Ministerial Council on Energy on ways in which participants' futures and other types of contracts can be integrated into the National Energy Market prudential framework (COAG Reform Council, 2009b, p. 18).

The Australian Energy Market Commission released a framework and issues paper—*Review into the Role of Hedging Contracts in the Existing NEM Framework*—on 26 March 2009 (Australian Energy Market Commission, 2009a). On 16 April 2009, the commission held a public forum on its framework and issues paper (Australian Energy Market Commission, 2009c). Submissions on the issues raised in the commission's paper were due by 24 April 2009 (Australian Energy Market Commission, 2009a, p. iii).

The Australian Energy Market Commission was due to provide recommendations to the Ministerial Council on Energy in September 2009 and draft recommended rules by December 2009 (COAG Reform Council, 2009b, p. 18).

The newly established Australian Energy Market Operator is also reviewing prudential requirements in the National Energy Market. The Commonwealth Government (2009b, p. 64) reported that the Australian Energy Market Operator's interim *Energy Market Financial Readiness Review* was due in December 2009, with a final report to be released in September 2010.

The Commonwealth Government (2009b, p. 64) also reported that the Financial Markets Working Group has developed option papers which are relevant to this reform. The Financial Markets Working Group was established by the Ministerial Council on Energy Standing Committee of Officials in February 2008 to 'consider options for reducing prudential costs on National Electricity Market (NEM) participants' (Ministerial Council on Energy, 2009a). The working group is mainly comprised of industry-based experts (Ministerial Council on Energy, 2009a).

In July 2009, the Financial Markets Working Group released two papers: a survey of second tier retailers, and an analysis of the desirability and feasibility of introducing a shorter settlement cycle in the current prudential environment (Ministerial Council on Energy, 2009a). These two papers, and any feedback received by the working group, will be used as inputs into related work streams.

This related work includes:

- the Australian Energy Market Operator's review of the readiness of the energy financial markets for the introduction of the Carbon Pollution Reduction Scheme
- the Australian Energy Market Commission reviews of the energy market framework and of the role of hedging contracts in the existing prudential framework
- the Ministerial Council on Energy's development of the national energy market customer framework (Ministerial Council on Energy, 2009a).

Progress assessment

It is the COAG Reform Council's assessment that this milestone was not completed within the reporting period.

The COAG Reform Council notes that although this is an 'all jurisdictions' milestone, Western Australia and the Northern Territory are not current participating jurisdictions in the National Energy Market. Consequently, Western Australia and the Northern Territory have not been assessed against this milestone.

Milestone 7: WA and NT: to continue to monitor developments and consider entering the National Energy Market (ongoing)

Progress report

The Western Australian Government (2009b, p. 39) reported that it is 'monitoring and participating in developments' with respect to entering the National Energy Market. The Western Australian Government also reported that 'harmonisation with and adoption of national institutions will be considered where this appropriate and beneficial to WA.'

The Northern Territory Government (2009, p. 41) reported that it released a draft policy paper in May 2008 which outlines regulatory options to promote efficient and reliable electricity supply in the Northern Territory.

The Northern Territory Government (2009, p. 43) also reported that it has recently announced a reform program aimed at strengthening the regulatory oversight of the Northern Territory electricity market and improving system reliability and performance. The Northern Territory Government (2009, p. 43) stated that the reform program will be undertaken by the Northern

Territory Utilities Commission and it will be directed to consider the merits of alignment of customer service standards and system planning and monitoring arrangements with those applying in the National Energy Market.

Progress assessment

It is the COAG Reform Council's assessment that Western Australia and the Northern Territory have continued to monitor developments in, and consider entering, the National Energy Market in accordance with this milestone.

National Reform Agenda milestones: smart meters

Milestone 8: All jurisdictions: Ministerial Council on Energy to implement necessary rule changes in the National Energy Market to mandate the roll-out of smart meters consistent with the outcomes of the cost benefit analysis report (during 2008)

Progress report

The rule changes needed to mandate the roll-out of smart meters had not occurred as at 30 September 2009. In the COAG Reform Council's (2009b, pp. 7–9) 2009 report it was noted that the rule changes did not occur in 2008 and that the following work was being undertaken to achieve this milestone:

- the legislative changes required to enable smart meter roll-outs under a national framework were released for public consultation on 23 December 2008 and were scheduled to be introduced into the South Australian Parliament in 2009

- the National Stakeholder Steering Committee and the Ministerial Council on Energy Standing Committee of Officials agreed on a timeframe for work on rule changes—the Ministerial Council on Energy also agreed that consistency between the National Energy Market and non-national energy market jurisdictions be sought where beneficial, given different market arrangements

- the Ministerial Council on Energy would commission the Australian Energy Market Commission to undertake a review of the current economic regulatory framework, focusing on its ability to facilitate accelerated smart meter roll-outs in the national energy market and broader use of smart meters following the roll out—the timing of this review would be aligned with the National Smart Metering Program Work Plan

- on 20 January 2009, the Australian Energy Market Commission granted the Victorian Government's request for a jurisdictional derogation from the National Electricity Law for distributors to act as the 'responsible person' for the roll-out of smart meters—this derogation, which commenced on 1 July 2009, allows Victoria to pursue its electricity smart meter roll-out in advance of agreed national rule changes (COAG Reform Council, 2009b, pp. 7–9).

On 9 July 2009, the Ministerial Council on Energy Standing Committee of Officials released a response to the submissions following its public consultation on the changes required to the National Electricity Law. The standing committee also released a second draft bill to make these changes to the National Electricity Law, a draft rule and an explanatory note (Ministerial Council on Energy, 2009d; Ministerial Council on Energy, 2009e).

The National Electricity (South Australia) (Smart Meters) Amendment Bill 2009 (SA) was introduced into the South Australian parliament on 9 September 2009 (Office of Parliamentary Counsel [SA], 2009). The purpose of the bill is to amend the *National Electricity (South Australia) Act 1996* (SA) to enable jurisdictions' energy ministers to direct energy companies within the jurisdiction to roll-out smart meters (Commonwealth Government, 2009b). The National Electricity (South Australia) (Smart Meters) Amendment Bill had not passed the South Australian Parliament by 30 September 2009.

Progress assessment

It is the COAG Reform Council's assessment that this milestone was partially completed within the reporting period. The council is of the view that although the necessary rule changes had not been completed, the legislation had been introduced and effective interim processes have been adopted to ensure that the delay in passing the National Electricity (South Australia) (Smart Meters) Amendment Bill has not prevented jurisdictions from mandating a smart meter roll-out. In particular, the Australian Energy Market Commission granted Victoria the derogation required to pursue its smart meter roll-out in January 2009.

Milestone 9: Queensland: report to the Ministerial Council on Energy by July 2009 with a timetable for the implementation of pilots to inform a decision on a Queensland smart meter roll-out, desirably sooner than June 2012

Progress report

On 30 April 2009, COAG (2009d, p. 1) supported the Queensland Government's intention to report to the Ministerial Council on Energy as recommended in the COAG Reform Council's 2009 report. COAG (2009d, p. 1) noted that a roll-out in Queensland should not commence before the national framework agreed to be developed by the Ministerial Council on Energy, which is expected to be in place before June 2012.

On 10 July 2009, the Ministerial Council on Energy noted that Queensland intended to provide a timetable for the implementation of its pilot scheme for the roll-out of smart meters to the Ministerial Council on Energy by July 2009 (Ministerial Council on Energy, 2009c). The pilot scheme is an Energex/Ergon pilot and has an end date of June 2012. The objectives and indicative information about this pilot project are set out in the National Stakeholder Steering Committee's *Pilot and Trials 2008 Status Report to the Ministerial Council on Energy* (National Stakeholder Steering Committee, 2009).

The Queensland Government (2009a, p. 43) reported that its pilot implementation timeline was submitted to the Ministerial Council on Energy in August 2009.

Progress assessment

It is the COAG Reform Council's assessment that this milestone was completed late but within the first quarter after the end of the reporting period**.**

Milestone 10: Western Australia: commit to finalising the Electricity Retail Market Review, including reporting to the Ministerial Council on Energy by July 2009 with a timetable for a decision on a Western Australian smart meter roll-out desirably sooner than June 2012

Progress report

On 30 April 2009, COAG supported the COAG Reform Council's recommendation that Western Australia finalise its electricity retail review and report to the Ministerial Council on Energy on a smart meter roll-out. COAG noted that a roll-out in Western Australia will require it to develop its own arrangements to regulate the roll-out while seeking consistency with the national arrangements where possible.

On 10 July 2009, the Ministerial Council on Energy noted that 'Western Australia is actively considering the way forward for smart meters and noted the continued engagement of Western Australia energy businesses with the [National Stakeholder Steering Committee] particularly on pilots and trials and functional requirements' (Ministerial Council on Energy, 2009c, p. 3).

The Western Australian Government (2009b, p. 40) reported that it had developed a Smart Meters Policy Statement relating to the implementation of smart meters. The policy statement states that the 'government intends to take into account the results of potential trials and further analysis relevant to local circumstances, with a view to informing the Ministerial Council on Energy in mid 2012 on the merits of a smart meter roll-out in Western Australia' (Western Australian Government, 2009c).

However, the Western Australian Government has not reported to the Ministerial Council on Energy with a timetable for a decision on a Western Australian smart meter roll-out.

Progress assessment

It is the COAG Reform Council's assessment that this milestone was not completed within the reporting period.

Milestone 11: All jurisdictions: replacement of existing meters with smart meters to commence by end 2008

Milestone 12: All jurisdictions: COAG Reform Council to continue to monitor and report on work toward the achievement of a staged national roll-out of electricity smart meters

Progress report

The council has assessed these two milestones together, as they are strongly related to the achievement of a 'staged national roll-out' of smart meters.

As noted in Section 29.2, COAG (2007b, p. 9) endorsed a staged, national roll-out of electricity smart meters to 'areas where benefits outweigh costs, as indicated by the results of the cost-benefit analysis which will be completed by the end of 2008.'

The Ministerial Council on Energy reviewed a final cost benefit analysis of the roll-out of smart meters on 13 June 2008 (Ministerial Council on Energy, 2008). The cost benefit analysis considered four scenarios:

- a distributor-led smart meter roll-out
- a retailer-led smart meter roll-out

- a non-smart meter direct load control roll-out by distributors
- a smart meter roll-out with centralised communication infrastructure.

The cost benefit analysis estimated that a distributor led smart meter roll-out would result in the greatest potential net benefits of the four scenarios examined (Ministerial Council on Energy, 2008, p. 1).

The cost benefit analysis found net benefits of a national roll-out on a net present value basis over 20 years ranging from $146 million (assuming highest potential costs and lowest potential benefits) to $4.6 billion (assuming highest potential benefits and lowest potential costs). This assessment was based on a comparison with a continuation of current metering policy in each jurisdiction and based on a distributor-led roll-out of smart meters, including the incorporation of a Home Area Network interface and assuming some adoption of in-home energy conservation devices (Ministerial Council on Energy, 2008, p. 1).

The balance of costs and benefits varied across jurisdictions, with some jurisdictions found to have net costs under some scenarios. On 13 June 2008, the Ministerial Council on Energy (2008, p. 3) stated that:

> [w]hile all jurisdictions demonstrated potential net benefits in the best possible outcome (the consultants maximum net benefit assessment), variations and uncertainty in benefits and costs have resulted in some jurisdictions having the potential for the costs to outweigh benefits (the consultants minimum potential net benefit). This uncertainty in costs and benefits supports undertaking trials in some jurisdictions to confirm benefits and costs, with jurisdictions facing greater uncertainty learning from those jurisdictions who have commenced smart meter roll-outs.

The cost benefit report found that a distributor-led roll of smart meters in New South Wales, Queensland and Western Australia would deliver positive net benefits on the basis of the estimated avoided meter costs and business efficiencies alone (Ministerial Council on Energy Standing Committee of Officials, 2008a, p. 97). The cost benefit report found that smart metering in Victoria would deliver net benefits under any of the scenarios considered (Ministerial Council on Energy Standing Committee of Officials, 2008a, p. 97).

The cost benefit analysis found that for a roll-out of smart meters in South Australia to have a net positive benefit, it would be necessary to have costs at the low end of the range estimated by the consultants (Ministerial Council on Energy Standing Committee of Officials, 2008a, p. 98).

For Tasmania, the Australian Capital Territory and the Northern Territory, the consultants concluded that the justification for a smart meter roll-out is dependent on whether the bottom end of the range of cost estimates can be achieved together with the upper end of the avoided meter costs and business efficiency benefits (Ministerial Council on Energy Standing Committee of Officials, 2008a, p. 98). The consultants found that it was 'unlikely that there will be the same scope for potential "upside" through demand response as there is in Victoria and South Australia' (Ministerial Council on Energy Standing Committee of Officials, 2008a, p. 98).

The following actions have been taken by governments towards a staged national roll-out of smart meters. The COAG Reform Council notes that in addition to State and Territory government coordinated smart meter trials, a number of energy companies are engaging in smart meter trials throughout Australia (Ministerial Council on Energy, 2009c, p. 3).

New South Wales

The New South Wales Government has committed to a smart meter roll-out and confirmed this commitment to the Ministerial Council on Energy in December 2007 (Ministerial Council on Energy, 2008, p. 3).

The New South Wales Government (2009b) reported that there are around 600,000 smart meters currently installed in New South Wales from a total of 3 million customer connections.

The New South Wales Government (2009c) reported that it expects smart meters to be installed throughout New South Wales by 2017.

Victoria

The Victorian Government has committed to a smart meter roll-out (Ministerial Council on Energy, 2008, p. 3), and has reported (Victorian Government, 2009b, p. 50) that its smart meter roll-out commenced in 2009 and approximately 500 000 smart meters have been installed to date (Victorian Government, 2009b). The Victorian Government (2009b) reported that it has committed to roll-out 2.5 million smart meters by 2013.

The Victorian Government (2009a) also reported that it expects that, after completion of a testing program, interval energy consumption data will be provided to the market for wholesale, network and retail billing purposes from May 2010.

Queensland

As noted in the progress report for milestone 9 above, the Queensland Government (2009a, p. 43) reported that its smart meter pilot implementation timeline was submitted to the Ministerial Council on Energy in August 2009.

As at 30 September 2009, the Queensland Government had not committed to, and therefore had not commenced, a smart meter roll-out.

Western Australia

As noted in relation to the progress report for milestone 10 above, the Western Australian Government (2009b, p. 40) reported that it had developed a Smart Meters Policy Statement relating to the implementation of smart meters. However, the Western Australian Government had not reported to the Ministerial Council on Energy with a detailed program and timetable for a decision on a Western Australian smart meter roll-out.

As at 30 September 2009, the Western Australian Government had not committed to, and therefore had not commenced, a smart meter roll-out.

South Australia

As at 30 September 2009, the South Australian Government had not commenced pilots or trials of smart meters, and had not committed to, or commenced, a roll-out of smart meters.

The South Australian Government (2009a, p. 37) reported that, after considering the findings of the national smart meter cost benefit analysis, South Australia was not required to conduct pilots or trials.

Tasmania

As at 30 September 2009, the Tasmanian Government had not conducted pilots or trials of smart meters, and had not committed to, or commenced, a smart meter roll-out.

The Tasmanian Government (2009b, p. 41) reported that its position is in line with the findings of the cost benefit analysis that the potential net benefits of a smart meter roll-out in Tasmania were marginal.

Australian Capital Territory

The Australian Capital Territory Government reported that smart meter trials were underway. The Australian Capital Territory Government also reported that '[r]oll out options will be reconsidered by the ACT before 2012' (Australian Capital Territory Government, 2009b, p. 37).

The Australian Capital Territory had not committed to, or commenced, a smart meter roll-out.

Northern Territory

As at 30 September 2009, the Northern Territory Government had not conducted pilots or trials of smart meters, and had not committed to, or commenced, a roll-out of smart meters.

Progress assessment

If the progress assessment schema used in this report was applied to a literal interpretation of the milestones, the progress of all jurisdictions would be rated as 'red' for these milestones. However, the council has adopted a pragmatic approach to recognise that COAG's commitment is to a staged, national roll-out of electricity smart meters to areas where benefits outweigh costs, as indicated by the results of the cost benefit analysis. Jurisdictions that have committed to/commenced a smart meter roll-out are rated 'green' and those that have not are rated 'white'.

On the basis of this approach, New South Wales and Victoria are the only jurisdictions that have committed to/commenced replacing existing meters with smart meters and are rated 'green'. All other jurisdictions are rated 'white'.

That said, it should be noted that the Queensland and Western Australian governments are assessed on their progress towards a smart meter roll-out under milestones 9 and 10 respectively, which are interim steps toward the achievement of milestones 11 and 12.

Table 29.2 provides the council's assessment of progress on the milestones in this reform, including remaining National Reform Agenda milestones.

Table 29.2: Energy—progress assessment by milestone

Milestone	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Implementation plan milestones									
1									
2									
National Reform Agenda—National Energy Market									
3									
4									
5									
6									
7									
National Reform Agenda—smart meters									
8									
9									
10									
11 and 12									

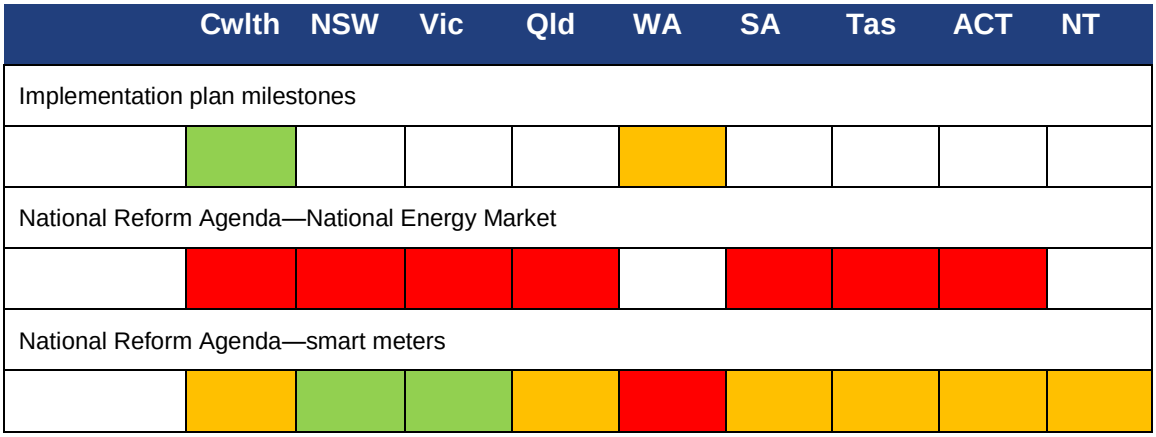
Table 29.3 provides the council's overall assessment of progress on this reform.

The overall assessment on the National Energy Market reforms gives greater weight to the more substantive milestones 5 and 6. Western Australia and the Northern Territory have not been given an overall assessment for these reforms as they are not current participating jurisdictions in the National Energy Market.

The overall assessment on smart meters takes into account:

- the partial completion of the milestone to make rule changes to enable smart meter roll-outs (milestone 8)
- the progress made by New South Wales and Victoria in committing to/commencing roll-outs of smart meters (milestones 11 and 12)
- the delay in Western Australia reporting to the Ministerial Council on Energy with a timetable for a decision on a Western Australian smart meter roll-out (milestone 10).

Table 29.3: Energy—overall progress assessment



29.4 Risk assessment

Notwithstanding the significant progress that governments have made on energy reform, the COAG Reform Council identified three areas of risk to the achievement of the reforms that it has been asked to report on. These areas of risk are:

- the lack of clarity around what further energy reforms are required
- the nature of the implementation plan's milestones with respect to Australian Energy Market Commission reviews of competition in different jurisdictions' retail markets
- the 2009–10 milestone for South Australia to introduce a retail policy package legislation by September 2009.

A lack of clarity on reforms and milestones

The effect of reporting against two very specific National Partnership milestones and a range of specific, and out of date, National Reform Agenda milestones is to create a partial and unrepresentative picture of the status of energy reform in Australia. While some important steps remain to be taken to fully implement a National Energy Market, much has already been achieved through the establishment of the national legislative framework and energy market institutions.

The COAG Reform Council recommends that COAG aim to set clear milestones in the next edition of the implementation plan to clarify the remaining overall body of work in energy reform (see Chapter 37).

Partial coverage of Australian Energy Market Commission reviews

The current version of the implementation plan includes a 2008–09 milestone for the Australian Energy Market Commission to report to the Ministerial Council on Energy on competition in the South Australian market and advise on measures to remove retail price regulation. Similarly, the implementation plan includes a milestone for the commission to conduct a review of competition in the Australian Capital Territory retail market by the end of 2010 and a review of competition in the New South Wales retail market by the end of 2011.

The council has some concerns about these milestones. The first concern is that, although the 2008–09 milestone was met by the commission by delivering two reports to the Ministerial Council on Energy, the South Australian Government has not accepted the findings of the report

and is not expecting to implement any of the recommended measures to remove retail price regulation (Conlon, 2009).

The council's second concern is that there are no milestones for the review of retail market competition in other State and Territory jurisdictions, beyond the completed review of retail market competition in Victoria (Australian Energy Market Commission, 2008a), the completed South Australia review, and the upcoming Australian Capital Territory and New South Wales reviews. The council understands from the Commonwealth Government's report that there are plans for a review of Queensland's retail market in 2012 and Tasmania's retail market in 2013 (Commonwealth Government, 2009b, p. 66).

The council notes that the Productivity Commission (2009b, p. xlii) has also identified related concerns in its *Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services*. In its report the commission recommends that:

> The Australian Energy Market Agreement should be amended to:
>
> - provide a clear timetable for future reviews by the Australian Energy Market Commission (AEMC) of the effectiveness of competition in energy markets in those states and territories not yet reviewed by the AEMC
> - clarify the process for follow up reviews of competition in those jurisdictions where an initial review by the AEMC has recommended the removal of price regulation, but that recommendation has not been accepted by the relevant jurisdiction
> - require ongoing price monitoring by the Australian Energy Regulator, for a period of at least three years, where retail price regulation has been removed.

COAG may wish to review the next edition of the implementation plan to include milestones for the review of other jurisdictions' retail markets. COAG may also wish to consider whether the implementation plan should include milestones for COAG, or the relevant jurisdiction, to consider implementing the Australian Energy Market Commission's recommendations.

Delayed introduction of the retail policy package legislation

The implementation plan includes a 2009–10 milestone for South Australia (on behalf of all jurisdictions) to introduce a retail policy package of legislation by September 2009. The national framework will be 'mainly concerned with regulating those entities that are engaged with the sale and supply of energy to small customers (residential and small business customers). Therefore, the package will regulate the activities of distributors, retailers and customers' (Ministerial Council on Energy Standing Committee of Officials, 2008b, p. 6).

The legislative policy package was not introduced into the South Australian Parliament by 30 September 2009. The Commonwealth Government (2009b, p. 67) reported that final legislation is not likely to be introduced into the South Australian Parliament until the 2010 Spring parliamentary sitting.

The Commonwealth Government (2009b) reported that a progress report on the legislative policy package was due to be considered by the Ministerial Council on Energy on 4 December 2009. The delay in introducing this legislation presents a significant risk to the timely achievement of this milestone, any future related milestones which are incorporated in the next edition of the implementation plan, and the underlying reforms that need to be underpinned by these proposed laws.

Chapter 30: National access regime

Key points

Progress assessment

It is the COAG Reform Council's assessment that the single, unambitious milestone for this reform was completed on time.

Risk Assessment

The COAG Reform Council considers that, despite the above milestone being met, the Commonwealth Government's repeated delays in implementing the reforms to the National Access Regime pose a risk to other reforms under the *Competition and Infrastructure Reform Agreement*, particularly the certification of State-based access regimes.

30.1 Output and milestone

Table 30.1 reproduces the output and milestones in the implementation plan for competition reform 4—infrastructure access regulation.

Table 30.1: National access regime—output and milestone

Output				
4. Infrastructure access regulation.				
Milestones				
2008–09	2009–10	2010–11	2011–12	2012–13
Commonwealth: consultation with States and Territories on reforms to the National Access Regime by the first half of 2009	Ongoing milestones to be identified and agreed as project progresses			

Source: (COAG, 2009p, p. 22)

30.2 The proposed reform

The reform

This reform aims to reduce regulatory uncertainty and compliance costs for owners, users and investors in nationally significant infrastructure and to support the efficient use of national infrastructure.

To implement this reform, jurisdictions agreed to a number of measures under the *Competition and Infrastructure Reform Agreement* (COAG, 2006a) including:

- wherever possible, promoting commercial negotiations as the means to determine terms and conditions of third party access to services provided by means of significant infrastructure facilities (clause 2.2)
- within access regimes, adoption of common objects clauses, pricing principles and limitations on merits review proceedings, where merits review is provided (all principles are to be incorporated in the Competition Principles Agreement guidelines for effective access regimes) and six-month binding time limits on regulatory decisions (clauses 2.4, 2.5, 2.6)
- all existing State and Territory access regimes are to be submitted for certification as 'effective' access regimes under the National Access Regime by December 2010, following agreement on a streamlined certification process—with new access regimes to be certified as soon as practicable (clause 2.9).

Background

Essential infrastructure facilities, such as ports, railways and the electricity grid play an important role in economic development and productivity. However, it is often not efficient to duplicate such infrastructure: it may operate most effectively as monopoly infrastructure.

Fair and reasonable access arrangements for third parties to monopoly infrastructure promote competition and efficiency. According to the Commonwealth Government's *National Competition Policy Report 2005–07*:

> Where restricted, access arrangements result in higher prices or lower service quality, and whether through reduced competition and/or limited supply, the impact is felt by businesses and consumers alike (Commonwealth of Australia, 2007b, p. 72).

Even when access to third parties is technically available, there may still be an imbalance in bargaining power between the infrastructure owner and potential third party users, which impacts upon the terms and cost of access and makes entry potentially prohibitive for competitors (Commonwealth of Australia, 2007b, p. 72).

The genesis of infrastructure reforms lies in the national competition reforms of the 1990s, which are described in more detail in Chapter 2.

In April 1995, COAG (1995) agreed to implement the National Competition Package. As part of the package, the *Competition Principles Agreement* provided for a national access regime for 'nationally significant' infrastructure (National Competition Council, 1998, pp. 13–26).

The *National Competition Policy Reform Act 1995* (Cwlth) established a National Access Regime under Part IIIA of the *Trade Practices Act 1974* (Cwlth). The National Access Regime

was not intended to replace commercial negotiations between infrastructure facility owners and third parties but to provide a means of access if negotiations failed.

Three means are provided through which a business can get access to the services of nationally significant monopoly infrastructure facilities:

- by applying to the National Competition Council asking for it to recommend that a particular service be 'declared'[42]
- by using an existing access regime which has been deemed to be 'effective'[43]
- by seeking access under the terms and conditions of an access undertaking given by the service provider and accepted by the Australian Competition and Consumer Commission (National Competition Council, 2009b, p. 11).

Clause 2.6 of the *Competition Principles Agreement* requires that the agreement be reviewed after five years of operation. The Productivity Commission (2002) released its *Review of the National Access Regime* on 17 September 2002. The commission's main concern was the potential for investment in infrastructure to be deferred because of an expectation among industry participants that access regulation has the potential to reduce or remove profits (Productivity Commission, 2002, pp. xxi, 279). The commission (2002, p. xxxi) advocated retention of the National Access Regime, but made 33 recommendations aimed at improving the operation of the Regime, including:

- clarifying the objectives and scope of the Regime by inserting an objects clause[44] and pricing principles[45] in Part IIIA of the *Trade Practices Act 1974* (Cwlth)
- strengthening the declaration criteria so that a declaration would 'have to promote a substantial increase in competition in another market' (Productivity Commission, 2002, pp. xxii–xxiii).

The Commonwealth's response (Costello, 2004) accepted the thrust of the majority of the commissions' recommendations and was implemented through the *Trade Practices Amendment (National Access Regime) Act 2006* (Cwlth).

In June 2005, COAG (2005b, p. 3) agreed to a review of the National Competition Policy, which would assess the effectiveness of existing arrangements.

[42] Having a service 'declared' provides access seekers with a legal right to negotiate terms and conditions for access with the service provider of the service and recourse to mandatory dispute resolution if needed (National Transport Commission, 2009, p. 11).

[43] Under the National Access Regime, States and Territories are able to establish their own access regimes. States and Territories can then apply to the National Competition Council to have these regimes certified as 'effective'. Although 'effective' is not explicitly defined, in determining whether a regime is 'effective' the National Competition Council applies the principles set out in clauses 6.2–6.5 of the *Competition Principles Agreement* and has regard to the objects of Part IIIA of the *Trade Practices Act 1974* (Cwlth) set out in section 44AA (National Competition Council, 2009b, p. 11). Services covered by an 'effective' access regime are immune from 'declaration' under Part IIIA.

[44] The Productivity Commission (2002, p. 126) found that inserting an objects clause would 'reduce uncertainty by assisting all parties—regulators, the judiciary, access seekers, facility owners and potential infrastructure investors—to interpret the intent of various criteria.'

[45] The Productivity Commission (2002, p. 143) found that inserting pricing principles would provide a measure of certainty to regulated firms and access seekers and provide better guidance on how the broad objectives of access regimes should be applied.

On 10 February 2006, COAG (2006a) signed the *Competition and Infrastructure Reform Agreement* to provide for a simpler and consistent national system of economic regulation for nationally-significant infrastructure. Under the Agreement, five commitments were made:

- simpler and consistent access regulation, including:
  - that State-based access regimes be certified as 'effective' under the *Competition Principles Agreement*
  - that common objects clauses and pricing principles be used
  - the adoption of six-month binding time limits on decisions by regulators
  - that the *Competition Principles Agreement* and Part IIIA of the *Trade Practices Act 1974* (Cwlth) be amended to incorporate these changes
- improved economic regulation of rail
- simpler and consistent regulation of significant ports
- consideration of use of competitive tendering
- enhancement of the application of competitive neutrality principles to government business enterprises.

In April 2007, COAG (2007b, pp. 26–54) agreed to an implementation plan for the *Competition and Infrastructure Reform Agreement* covering these five broad commitments and including the actions listed below. COAG (2007e, p. 3) also referred the agreement to the COAG Reform Council for annual reporting to COAG on implementation.

Access regimes

Governments agreed to consistent principles for regimes for third party access to monopoly infrastructure, including streamlined processes, time limits for regulator decisions and limited merits review of decisions. These principles were to be applied to the National Access Regime and to State and Territory access regimes, which were to be submitted for certification by the National Competition Council by December 2010 (COAG, 2007b, pp. 29–33, 43). State and Territory access regimes are dealt with in Chapter 31.

In regard to the National Access Regime, which is the subject of this chapter on competition reform 4, Clause 2.7 of the *Competition and Infrastructure Reform Agreement* requires that the agreed principles be incorporated into the National Access Regime and the implementation plan indicated that the Commonwealth was to do this in 2007 (COAG, 2007b, p. 32 & 43).

Rail

Governments agreed to implement a national system of rail access regulation for agreed nationally significant railways using the Australian Rail Track Corporation access undertaking as a model for the remaining sections of track between Perth and Brisbane by December 2008. In essence, this covered the track from Perth to Kalgoorlie and the track from Brisbane to the New South Wales border.

State-based access regimes governing other significant export-related rail facilities were also to be submitted for certification under the National Access Regime by December 2010 (COAG, 2007b, pp. 34–35).

Ports

Governments agreed to review the regulation of their ports and port authorities, handling and storage facility operations at a specific set of nationally significant ports. This was to ensure that:

- where economic regulation is warranted it conforms with agreed access, planning and competition principles
- where port access regimes are required, these regimes are to be certified under the National Access Regime.

These reviews were to be completed by December 2007 and their findings implemented by December 2008 (COAG, 2007b, pp. 36–38, 44).

Competitive tendering

Governments agreed to consider the use of competitive tendering to establish the terms and conditions for the supply of significant new services provided by government owned monopoly infrastructure (COAG, 2007b, p. 39).

Competitive neutrality

Governments also committed to annual reporting on the enhanced application of competitive neutrality principles to government business enterprises that have significant business activities that compete with the private sector (COAG, 2007b, pp. 40–41).

COAG Reform Council reporting on these reforms

This report

The five areas of reform in the *Competition and Infrastructure Reform Agreement* were split into two reform streams in the *National Partnership Agreement to Deliver a Seamless National Economy*:

- competition reform 4—the subject of this chapter—covers the Commonwealth's commitment to incorporate COAG's agreed principles for nationally consistent infrastructure regulation into the National Access Regime
- competition reform 5—the subject of chapter 31—covers the remaining access regime reforms and the four other areas of reform of rail, ports, competitive tendering and competitive neutrality.

Previous reports

In regard to the National Access Regime, the COAG Reform Council's 2008 report to COAG on implementation of the National Reform Agenda noted that the process for introducing amending legislation was underway but had been disrupted by the announcement of the general election on 14 October 2007. At the time, the council noted that this delay was temporary and that the process had started again, with the Commonwealth working toward introducing legislation in the 2008 Winter Sittings of Parliament (COAG Reform Council, 2008).

However, by the time of the council's second report in April 2009, the Commonwealth had still not introduced the required legislation. The then Assistant Treasurer and Minister for Competition Policy and Consumer Affairs, the Hon Chris Bowen MP, had announced on 4 August 2008 that he would soon announce a comprehensive review of Part IIIA of the *Trade Practices Act 1974* (Cwlth) (COAG Reform Council, 2009b, pp. 57–58).

The Commonwealth Government (2009d, p. 26) also stated in its *Updated Economic and Fiscal Outlook*, on 3 February 2009, that it was 'developing a package of reforms, building on the COAG commitments, to enhance the operation of the National Access Regime for nationally significant infrastructure.'

In its 2009 report to COAG on the National Reform Agenda, the COAG Reform Council (2009b, p. ix) found that:

> overall progress on the infrastructure regulation reform stream has been disappointing. Of those milestones that were agreed by COAG to be completed by now, most are not complete or are not clearly in line with COAG's objectives in agreeing the reforms.
>
> A major concern for the Council is the Commonwealth's failure to implement reforms to the National Access Regime under Part IIIA of the *Trade Practices Act 1974* (TPA). On this reform, the Council finds itself in the same place it was last year: with advice that the reforms are close to being finalised and will be implemented this year. The Council considers that the reforms must be implemented in 2009 as a demonstration that the Commonwealth's commitment to cooperative reforms through COAG is as strong as the commitment it expects from the States and Territories.

Consequently, the council (2009b, p. 11) recommended:

> that COAG requests the Commonwealth to expedite the development of its package of reforms to Part IIIA of the *Trade Practices Act 1974* (TPA) and the necessary consultation on the reforms with a view to the urgent implementation of the already agreed reforms and any further reforms emanating from this process by the end of 2009.

On 30 April 2009, in its response to the council's report, COAG noted that:

> the Commonwealth has developed a package of reforms to Part IIIA of the TPA, and consulted with the States and Territories, with a view to introducing amending legislation in mid 2009 (COAG, 2009d, p. 3).

30.3 Progress report and assessment

The following actions have been taken by governments regarding the 2008–09 milestones for competition reform 4.

Milestone 1: Commonwealth: Consultation with States and Territories on reforms to the National Access Regime by the first half of 2009

Progress report

On 7 April 2009, the then Assistant Treasurer and Minister for Competition Policy and Consumer Affairs, the Hon Chris Bowen MP (2009, p. 1), announced the development of a package of reforms to enhance the National Access Regime.

Mr Bowen stated that the reforms will:

- implement COAG commitments in the *Competition and Infrastructure Reform Agreement* to introduce binding time limits and limited merits review
- streamline decision-making criteria and processes in Part IIIA of the *Trade Practices Act 1974* (Cwlth) and improve regulatory certainty by providing scope for binding no-coverage rulings and fixed principles in access undertakings
- improve the timeliness of outcomes under the National Access Regime through reform of the administrative processes in the Australian Competition and Consumer Commission, the National Competition Council and the Australian Competition Tribunal.

Mr Bowen (2009f, p. 1) also announced that consultations had commenced with the States and Territories on the reforms to the National Access Regime and indicated that legislation to amend the regime was expected to be introduced into the Commonwealth Parliament in mid 2009.

COAG noted on 30 April 2009 that the Commonwealth had consulted with States and Territories and that the Commonwealth aimed to introduce legislation in mid 2009 (COAG, 2009e, p. 3).

The Commonwealth Government (2009b, p. 68) reported that the former Assistant Treasurer and Minister for Competition Policy and Consumer Affairs wrote to Premiers and Chief Ministers on 16 March 2009, seeking the States and Territories views on a proposed reform package for the National Access Regime. The States and Territories have confirmed to the COAG Reform Council that they were consulted by the Commonwealth Government on the proposed reform package.

At this stage, no legislation to amend the National Access Regime has been introduced into parliament. The Commonwealth Government (2009b, p. 68) reported that 'subject to drafting resources being made available' the amending legislation was expected to be introduced into the Commonwealth parliament in November 2009.

Progress assessment

It is the COAG Reform Council's assessment that this milestone was completed on time.

Table 30.2 provides the council's overall assessment of progress on this reform.

Table 30.2: National access regime—overall progress assessment

	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Overall assessment									

30.4 Risk assessment

The single, unambitious milestone for this reform stream has been met.

However, the Commonwealth Government's repeated delays in introducing reforms to the National Access Regime are concerning. These reforms were initially meant to be implemented by the end of 2007. It is now likely that the reforms will not be implemented until the beginning of 2010, at the earliest.

For the third time, the COAG Reform Council is reporting on reforms to streamline the National Access Regime. For the third time, the reforms have not been implemented and the Commonwealth Government has reported to the council that the introduction into parliament of legislation to implement the reforms is imminent. The council hopes that—for the first time—this is true.

The council remains of the view that the Commonwealth must implement this reform to demonstrate its commitment to cooperative reforms through COAG.

There are other reforms under the *Competition and Infrastructure Reform Agreement* that may be contingent on reform of the National Access Regime—particularly the certification of State-based access regimes—and there is a risk that the delays reforming the National Access Regime will flow through to these further processes. This risk is discussed further in Chapter 31 of this report.

Reforms to infrastructure access remain of key importance to the broader COAG reform agenda. As recently noted by the Business Council of Australia (2009, p. 4), the importance of efficient and effective infrastructure regulation has only increased as a result of the global economic crisis, where reducing costs for business and encouraging investment through simple and consistent regulation will help to better position Australia in the recovery from the crisis. That significant stimulus funds are being directed at infrastructure projects is also a reason to deliver reforms that ensure the efficient and effective regulation of infrastructure.

Streamlining the National Access Regime is a key starting point for reform in infrastructure regulation and a precondition under the *Competition and Infrastructure Reform Agreement* for further reform of State and Territory infrastructure regulation.

Chapter 31: Infrastructure

Key points

Progress assessment

It is the COAG Reform Council's assessment that:

- all jurisdictions have reported to the council on the progress of the *Competition and Infrastructure and Reform Agreement*
- a report on the application of competitive neutrality principles to government businesses was agreed out of session by Heads of Treasuries but was not provided to COAG by 30 September 2009.

On the milestone requiring jurisdictions to implement recommendations from their reviews of significant ports by early 2009, it is the council's assessment that:

- Victoria and South Australia had implemented the findings of their reviews
- New South Wales and the Northern Territory have partially completed this milestone within the reporting period, with some further implementation actions required
- Queensland did not complete this milestone owing to some issues with the quality of the Queensland Government's review of port regulation and incomplete implementation actions
- Western Australia did not complete this milestone and remained the only jurisdiction that had not completed its port regulation review.

Risk Assessment

The key risks to this reform area are that:

- the milestones for this reform are unclear and the implementation plan does not include all the commitments made by governments under the *Competition and Infrastructure Reform Agreement*
- the Commonwealth's repeated delays in streamlining the National Access Regime may have flow-on effects for the certification of State and Territory access regimes.

31.1 Output and milestones

Table 31.1 reproduces the output and milestones from the implementation plan for competition reform 5—previously agreed infrastructure reforms.

Table 31.1: Infrastructure—output and milestones

Output				
5. Previously agreed infrastructure reforms				
Milestones				
2008–09	2009–10	2010–11	2011–12	2012–13
All jurisdictions • report to COAG on progress of CIRA reforms • implement recommendations competition/ regulation reviews of significant ports by early 2009	Commonwealth: implement competitive tendering regulations for National Access regime by late 2009	States and Territories: submit third party access regimes for streamlined certification (including access regimes applying to major intrastate rail networks) by end 2010		

Source: (COAG, 2009p, p. 22)

The original implementation plan agreed by COAG on 29 November 2008 listed the implementation of competitive tendering regulations for the National Access Regime as a 2008–09 milestone with a deadline of early 2009 (COAG, 2009o, pp. 23–24).

In the revised implementation plan agreed by COAG on 2 July 2009, as reproduced above, this reform is now a 2009–10 milestone with the deadline deferred to late 2009.

31.2 The proposed reform

The reform

This chapter covers reforms from the *Competition and Infrastructure Reform Agreement*, part of which is also discussed in Chapter 30 on the National Access Regime.

The five areas of reforms from the *Competition and Infrastructure Reform Agreement* are access regimes, rail, ports, competitive tendering and competitive neutrality. The access regime reforms relate to both the National Access Regime and State and Territory access regimes. The National Access Regime reform is included in the implementation plan for competition reform 4 and is reported on in Chapter 30. The State and Territory access regime reforms, and the other four areas of competition and infrastructure reform, are included in the implementation plan for competition reform 5, and are the subject of this chapter.

In summary, the five areas of reform dealt with in this chapter are:

- *Access regimes:* the application of consistent principles, including streamlined processes, time limits for regulator decisions and limited merits review of decisions, within State and Territory access regimes and submission of those access regimes to the National Competition Council by December 2010 for certification as effective. The achievement of this is a 2010–11 milestone in the implementation plan.

- *Rail:* a national system of rail access regulation based on the Australian Rail Track Corporation access undertaking as a model for the remaining sections of track between Perth and Brisbane. There are no milestones for this reform in the implementation plan. However, the COAG Reform Council's 2009 report to COAG:

  - noted that the required actions had been done but had not resulted in a national system of rail access

  - recommended this be reviewed as part of the review of the *Competition and Infrastructure Reform Agreement* due in 2011.[46]

- *Ports:* a simpler and consistent national approach to regulation of significant ports through reviews of the regulation of nationally significant ports. This is covered by a 2008–09 milestone. On ports, the council's 2009 report to COAG noted completion of all but Western Australia's review and deferred the council's assessment of consistency with COAG's requirements to this report.

- *Competitive tendering:* consideration of the use of competitive tendering to establish the terms and conditions for the supply of significant new services provided by government owned monopoly infrastructure, which is the subject of the 2009–10 milestone in this reform stream.

- *Competitive neutrality:* enhanced application of competitive neutrality principles to government business enterprises engaged in significant business activities in competition with the private sector and annual reporting to COAG through Heads of Treasuries on the application of the principles. The council's 2009 report noted the first annual report on competitive neutrality was a good first step and noted a few points for clarification in future reports (COAG, 2007b, pp. 26–54; COAG Reform Council, 2009b, pp. 57–60).

Background

A detailed background to this reform is provided in Chapter 30.

31.3 Progress report and assessment

The following actions have been taken by governments regarding the 2008–09 milestones for competition reform 5.

[46] In response to this recommendation, COAG noted that all aspects of the *Competition and Infrastructure Reform Agreement* would be reviewed (COAG, 2009d).

Milestone 1: All jurisdictions: report to COAG on progress of CIRA reforms

Progress report

The council considers that this milestone has two aspects:

- jurisdictions reporting to COAG on progress of the *Competition and Infrastructure Reform Agreement* reforms
- jurisdictions satisfying the requirements set out in the *Competition and Infrastructure Reform Agreement* that fall due within the 2008–09 reporting period.

Reports to COAG

Governments were offered the opportunity to report to COAG through the COAG Reform Council on progress of the reforms in the agreement. Each jurisdiction has taken up that opportunity by reporting on competition reform 5 in their respective 2008–09 progress report to the COAG Reform Council.

In addition, the Commonwealth Government (2009b, p. 69) reported that the Commonwealth Treasury provided a progress report on 29 May 2009 to the Business Regulation and Competition Working Group on the *Competition and Infrastructure Reform Agreement*, except for the competitive neutrality reform.

Competitive neutrality

There are two specific requirements in the *Competition and Infrastructure Reform Agreement* which fall within the 2008–09 reporting period. The first requirement is the implementation of port regulation reviews, which is dealt with in the assessment of milestone 2 below. The second requirement is the annual report to COAG on the application of competitive neutrality principles to government businesses.

The Commonwealth Government (2009b) reported that the Heads of Treasuries 2009 *Competitive Neutrality Matrix Report* was agreed out of session in September 2009 and is intended to be provided to COAG for consideration at its meeting on 7 December 2009 (see box 31.1).

Progress assessment

It is the COAG Reform Council's assessment that this milestone was partially completed within the quarter after the end of the reporting period. All jurisdictions have reported to the council on progress of the *Competition and Infrastructure Agreement* reforms. However, the Heads of Treasuries report on the application of competitive neutrality principles to government businesses was not presented to COAG by 30 September 2009. The council understands that this may occur by the end of 2009.

Box 31.1: The 2009 Competitive Neutrality Matrix Report

The 2009 *Competitive Neutrality Matrix Report* is an improvement on the 2008 report, particularly in respect to the explanation provided for exceptions to the application of competitive neutrality principles.

In its 2009 report to COAG, the COAG Reform Council (2009b, p. 60) noted that some jurisdictions had not included their assessments of their Government Business Enterprises against the criteria for application of the competitive neutrality provisions of the *Competition and Infrastructure Reform Agreement*, namely:

- that the business conducted significant business activities
- that these activities were conducted in competition with the private sector.

In the 2009 matrix, only New South Wales, Victoria, Queensland and the Northern Territory have explicitly provided this information. The council has found that the approach taken by New South Wales in both the 2008 and 2009 matrix reports, and adopted by Victoria in the 2009 matrix report, provides a clear and accessible response to the above questions. All jurisdictions should consider adopting a similar approach in the 2010 matrix report.

The council notes the following exceptions or variations from the competitive neutrality principles and hopes that these exceptions will be further explained in the 2010 matrix report.

Principle 6.1 (a): Clear commercial objectives

- The Western Australian report indicates that this principle does not apply to the Chemistry Centre but does not explain why the principle does not apply.

Principle 6.1 (c): Does not exercise regulatory/planning approval

- The Western Australian report does not explain why this principle does not apply to the following businesses: Armadale Redevelopment Authority, East Perth Redevelopment Authority, Midland Redevelopment Authority, Potato Marketing Corporation of Western Australia, Subiaco Redevelopment Authority, West Australian Land Authority (Landcorp) and Keystart Housing Scheme.

Principle 6.1 (e): Governing board appointed on the basis of skills

- The Western Australian report does not explain why this principle does not apply to the following businesses: Animal Resources Authority, Broome Port Authority, Bunbury Port Authority, Dampier Port Authority, Freemantle Port Authority, Geraldton Port Authority, Metropolitan Cemeteries Board and Port Headland Port Authority.

Principle 6.1 (j): Publication of directions given by government

- The New South Wales report indicates that this principle is not specified in the government legislation for Forests NSW and the State Transit Authority, but does not explain the reason it is not included. This issue was raised by the COAG Reform Council in its 2009 report to COAG.

(Box 31.1 continued)

- The South Australian report indicates that this principle is not specified in the legislation for its Lotteries Commission, Public Trustee, HomeStart and the West Beach Trust, but does not explain why it is not specified. This issue was raised by the COAG Reform Council in its 2009 report to COAG.

Enterprises currently under review

- The Western Australian entries for the Bunbury Water Board, Busselton Water Board, Rottnest Island Authority and the Insurance Commission of Western Australia note that the exemptions recorded for these enterprises are currently under review.

- The South Australian entry for the Adelaide Cemeteries Authority notes that the enterprises tax equivalent policy, performances measures and dividend policy will be reviewed as part of the new Ownership Framework.

Milestone 2: All jurisdictions: implement recommendations competition/regulation review of significant ports by early 2009

Progress report

Completion of the reviews

Appendix 2 to the *Competition and Infrastructure Reform Agreement—Implementation Plan* lists nationally significant ports to be reviewed as required by clause 4.3 of the agreement. This list included ports in New South Wales, Victoria, Queensland, Western Australia, South Australia and the Northern Territory (COAG, 2007b, p. 44).

The COAG Reform Council's 2009 Report to COAG noted that:

- New South Wales, Victoria, Queensland and South Australia had completed their port regulation reviews on time
- the Northern Territory had completed its port regulation review late
- Western Australia had not completed its port regulation review but it had released a draft report of the review in November 2008 for public comment by 19 December 2008 (COAG Reform Council, 2009b, pp. 53–56).

As at 30 September 2009, Western Australia had not finalised its port regulation review (Department of Transport [WA], 2009b). The Western Australian Government (2009b, p. 43) reported that its review of significant ports had been completed, however, 'the report has yet to be considered by Cabinet before being submitted to COAG.'

Consistency with COAG's requirements

Consultancy firm KPMG was engaged by the COAG Reform Council to review all government port regulation reviews for consistency with COAG's (2007b, pp. 36–38) commitment to the 'establishment of a simpler and consistent national approach to regulation of significant port

infrastructure.' The KPMG review of port regulation reviews examined the application of the principles set out in clauses 4.1 and 4.2 of the *Competition and Infrastructure Reform Agreement* by the reviews.

The KPMG (2009, p. 2) review of port regulation assessed the jurisdictions' port reviews against five broad criteria. These criteria are:

1. Whether the jurisdiction has attained high level consistency with the *Competition and Infrastructure Reform Agreement* principles.

2. Whether the reviews are of a sufficient quality to meet the intent of the *Competition and Infrastructure Reform Agreement* principles.

3. Was appropriate consultation undertaken and considered in developing the findings?

4. Were the recommendations consistent with the *Competition and Infrastructure Reform Agreement* principles?

5. Has the government responded to the review and implemented the recommendations?

The findings of the report (KPMG, 2009, pp. 76–78) were:

- The New South Wales review is consistent with four out of five criteria: New South Wales is not fully consistent with the criterion regarding consistency of the government's response with the Competition and Infrastructure Reform Agreement because the implementation of the recommendations had not yet been finalised.

- The Victorian review is fully consistent with the criteria.

- The Queensland review is consistent with some of the criteria but is only partially consistent with the:

  - 'review quality' criterion because the review relies heavily on the consultation phase and does not include any empirical evidence to support its findings and does not consider the matter of the need for and efficiency of the access regime for the Dalrymple Bay Coal Terminal

  - 'consultation and consideration of findings' criterion because a draft report was not issued and stakeholders views were not sought on the findings and recommendations of the report

  - 'response by government consistent with *Competition and Infrastructure Reform Agreement*' criterion because the implementation of findings had not yet been finalised—in the KPMG report, the Queensland Government is reported as stating that the 2008–09 Statements of Corporate Intent of all Queensland Port Authorities are expected to be tabled in parliament by the end of 2009.

- The South Australian review is fully consistent with the criteria.

- The Western Australian draft review is consistent with some of the criteria but is only partially consistent with the:
  - 'consistency with *Competition and Infrastructure Reform Agreement*' criterion because a final report had not been released
  - review quality criterion because it does not include any empirical evidence to support its findings
  - 'response by government consistent with *Competition and Infrastructure Reform Agreement*' criterion because a final report had not been released.
- The Northern Territory review is consistent with four out of five criteria: the Northern Territory is not fully consistent with the 'reviews of sufficient quality criteria' because it does not include any empirical evidence to supports its findings.

The KPMG Review of Government Port Reviews report is available on the COAG Reform Council's website (www.coag.gov.au/crc).

In response to the findings of the KPMG report, the Queensland Government (2009c, pp. 2–4) reported that:

- a draft report was not released as the findings were not contentious and reflected initial stakeholder submissions
- the timing of the ports review was in close proximity to the Queensland Competition Authority's finalisation of the Dalrymple Coal Bay Terminal's access undertaking and public consideration of whether the access arrangements were the most efficient model would have 'raised issues of regulatory uncertainty – which in itself poses its own potential costs'
- it publicly announced its planned approach to address its compliance with *Competition and Infrastructure Reform Agreement* clause 4.2(c)[47] and each Port Authority's Statement of Corporate Intent now contains guidance to seek a commercial return while not exploiting monopoly powers.

Progress assessment

Victoria

It is the COAG Reform Council's assessment that Victoria completed this milestone late but within the first quarter after the end of the reporting period. This is based on the findings of the KPMG review that the substantive actions to implement the Victorian port reviews were completed in July and August 2009.

South Australia

It is the COAG Reform Council's assessment that South Australia has largely completed this milestone. As noted in the KPMG review, legislation to amend the *Maritime Services (Access)*

[47] Clause 4.2(c) states that 'commercial charters for port authorities should include guidance to seek a commercial return without exploiting monopoly powers' (COAG, 2007b, p. 37)

(Miscellaneous) Amendment Act 2009 (SA) will commence at a date to be fixed by proclamation and was not yet in effect.

New South Wales, Northern Territory

It is the COAG Reform Council's assessment that New South Wales and the Northern Territory have partially completed this milestone within the reporting period. This is based on the findings of the KPMG review that some further implementation actions are required by these governments in response to their port reviews.

Queensland

It is the COAG Reform Council's assessment that Queensland did not complete this milestone within the reporting period. This is based on the findings of the KPMG review that there are some issues with the quality of the Queensland Government's review of port regulation, that the Dalrymple Bay Coal Terminal access regime was not considered, and that the findings of the review were not implemented by 30 September 2009.

The council notes the Queensland Government's comments above in regard to the review of the Dalrymple Bay Coal Terminal. However, under the *Competition and Infrastructure Reform Agreement* clause 4.3, each party was required to review whether the regulation of ports in its jurisdiction is consistent with the principles set out in clauses 4.1 and 4.2. Clause 4.1 states that 'ports should only be subject to economic regulation where a clear need for it exists.' The Queensland port review does not canvass the issue of the clear need for the Dalrymple Bay Coal Terminal access regime. The further information provided by the Queensland Government similarly does not canvass this matter.

Western Australia

It is the COAG Reform Council's assessment that Western Australia did not complete this milestone within the reporting period.

Table 31. provides the council's overall assessment of progress on this reform.

Table 31.2: Infrastructure—overall progress assessment

	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Review of ports									
Other infrastructure									

31.4 Risk assessment

The COAG Reform Council has identified two key risks with respect to competition reform 5.

Unclear milestones

The implementation plan for this reform does not include all commitments made by governments in the *Competition and Infrastructure Reform Agreement*. There should be:

- a milestone in each of the 2009–10, 2010–11 and 2011–12 reporting periods for the Heads of Treasuries to report to COAG on the enhanced application of competitive neutrality principles
- a milestone in the 2011–12 reporting period for the review of the agreement that is required by COAG at the end of 2011.

On 13 April 2007, COAG (2007e, p. 3) referred the *Competition and Infrastructure Reform Agreement* to the COAG Reform Council for annual reporting to COAG on implementation. The council will report on the two items listed above as remaining National Reform Agenda milestones, however, it would be more straightforward for such actions to be clearly and separately incorporated into the next edition of the implementation plan.

It is important that the 2009 report on application of competitive neutrality principles to government business enterprises is released soon. This is the only consolidated form of disclosure of the arrangements applying to government businesses that operate in competition with the private sector and is therefore a key accountability measure.

Access regime reform

As noted in section 31.3 above, one of the five areas of reform from the *Competition and Infrastructure Reform Agreement* involves implementing reform of access regimes. The Commonwealth Government (2009b, p. 69) reported that the National Competition Council had not yet received applications by any State or Territory for certification of any access regimes identified in Appendix 1 of the implementation plan for the *Competition and Infrastructure Reform Agreement*.

This issue reaffirms the COAG Reform Council's view presented in its 2009 report that there is a risk of the certification regimes all being submitted at the end of the deadline period, creating difficulties for the National Competition Council in managing its work on these matters (COAG Reform Council, 2009a, p. 57). In its report, the council also noted that the delay in streamlining the National Access Regime may have a flow-on effect to the certification of State and Territory access regimes, because the commitment by States and Territories to certify their access regimes was contingent on the Commonwealth first streamlining the National Access Regime (2007b, pp. 29–33, 43). This has also been identified as an issue by jurisdictions in consultations with KPMG as part of its work reviewing port reviews for the COAG Reform Council (KPMG, 2009, pp. 39–40).

The persistent delays on the reforms to the National Access Regime are discussed in greater detail in Chapter 30.

A number of jurisdictions have processes underway to meet their commitment to submit the listed access regimes to the National Competition Council for certification. The Victorian

Government (2009b, p. 53) reported that it has completed reviews on its channel access regime and grain handling regime, and a review of the Victorian Rail Access Regime is currently underway. On 28 September 2009, in response to a review by the Essential Services Commission, the Victorian Minister for Finance, Tim Holding MP, determined that the grain handling access regime would cease, with effect from 1 October 2009 (Essential Services Commission [Vic], 2009).

The South Australian Government (2009a, p. 40) reported that it had initiated reviews of its rail and ports access regimes through the Essential Services Commission of South Australia.

Chapter 32: Occupational licensing

Key points

Progress assessment

It is the COAG Reform Council's assessment that all States and Territories completed the milestone relating to the rationalisation of occupational licensing, although New South Wales was the only jurisdiction to have completed a public review process.

It is the COAG Reform Council's assessment that the milestone for COAG to agree options for occupational licensing reform was not completed within the reporting period.

32.1 Output and milestones

Table 32.1 reproduces the output and milestones from the implementation plan for competition reform 6—rationalisation of occupational licences.

Table 32.1: Occupational licensing—output and milestones

Output				
6. Rationalisation of occupational licences				
Milestones				
2008–09	2009–10	2010–11	2011–12	2012–13
States and Territories: based on PC's list of occupations, advise BRCWG on scope for rationalising licences by early 2009 All jurisdictions: COAG to agree options by early 2009	States and Territories: introduce legislation and complete all related transitional arrangements by end 2009			

Source: (COAG, 2009p, p. 23)

32.2 The proposed reform

The reform

The aim of this reform is to reduce unnecessary barriers to entry to certain occupations and barriers to trade across State and Territory borders for those occupations. In the first instance, this is to be achieved by rationalising the number of occupational licenses in operation with particular reference to those occupations which are licensed in only one or two jurisdictions (Commonwealth Government, 2009c, p. 16).

Background

The Productivity Commission's (2008d, p. 21) *Review of Australia's Consumer Policy Framework* noted that there are currently several hundred State and Territory laws covering a range of activities including home building, retail energy supply, credit providers, vehicle sales, retirement villages, travel agents, pawnbrokers and second-hand dealers, and various professional occupations.

For the most part, this legislation is administered by fair trading authorities, but there are also industry specific regulators in many areas. Different occupational licences are provided for all of these occupations, imposing a range of conditions on service providers, such as:

- educational and professional qualification requirements
- restrictions on the activities which a licensed provider can undertake
- proscribed forms of conduct
- sanctions for non-compliance with any or all of these requirements (Productivity Commission, 2008d, p. 93).

Table 32.2 lists occupations which are currently licensed in only one or two jurisdictions based on the Productivity Commission's report.

Table 32.2: Occupational licensing—required in only one or two jurisdictions

Occupation	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Aboriginal Health Worker								✘
Acupuncturist		✘				✘		
Chinese medical practitioner/dispenser		✘						
Energy Assessor							✘	
Engineer		✘				✘		
Entertainment industry agent/manager	✘							
Firearms instructor		✘						
Firearms repairer				✘				
Floor finisher and coverer	✘		✘					
Hairdresser				✘				
Hawker							✘	
Hydraulic services designer		✘	✘					
Inbound tourism operator			✘					
Introduction agent		✘	✘					
Kit home supplier	✘							
Marine designer			✘					
Marine surveyor			✘					
Motor vehicle repairer	✘			✘				
Optical dispenser	✘				✘			
Passive fire equipment installer					✘			
Plumbing plan certifier							✘	
Professional engineer-chartered		✘	✘					
Property developer			✘					
Property inspector (pre-purchase)	✘							

Occupation	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Quantity surveyor	✘							
Rehabilitation provider						✘		
Shopfitter			✘					
Site classifier			✘					
Specialised contractor			✘					
Speech pathologist			✘					
Steel fixer	✘		✘					
Strata manager	✘							
Structural landscaper	✘		✘					
Venue consultant	✘							
Wool, hide and skin dealer	✘							

Source: (Productivity Commission, 2008d, pp. 491–495)

Occupational licences can help to overcome problems arising from information asymmetries[48] in some industries by imposing standards of behaviour on service providers. The Productivity Commission (2008d, p. 93) gives the example of health services and the difficulty faced by consumers in judging their quality before or after the provision of service.

The commission states that the potentially severe consequences of poor health services makes the licensing of medical professionals seem highly desirable (Productivity Commission, 2008d, p. 93). However, such benefits are not apparent in all regulated occupations where, in some cases, there are anti-competitive effects of occupational licensing as they form a barrier to market entry or imply a standard of service that is not delivered.

This can lead to higher prices and reduced choice for consumers as well as the potential to create a false sense of security in the quality of services (Productivity Commission, 2008d, p. 93).

In its report, the commission recommended the rationalisation of occupational licences to improve the licensing regime whilst retaining the necessary protections for consumers.

The Australian Retailers Association, in its submission to the Productivity Commission Report, made the point that current consumer regulation is extremely burdensome for retailers with myriad enforcement agencies, multiple laws, inconsistencies across States and Territories, and multiple licensing systems. According to the association, this not only leads to excessive compliance costs, but in some cases may be a cause of non-compliance (Productivity Commission, 2008d, p. 49).

[48] Information asymmetries occur when one side to a transaction has access to less or less accurate information about the nature of the product or service being exchanged than the other side.

The Productivity Commission identified occupational licensing as an area where there is considerable scope to reduce burdensome regulation (Productivity Commission, 2008d, p. 11). It found that as occupational licensing mainly applies to small business operators, the removal of unnecessary requirements and the national consolidation of others could provide substantial savings to small business (Productivity Commission, 2008d, p. 321).

It also found that occupational licensing should be an early priority for review under this program, noting that while the need for licensing in some areas is not in dispute:

- licensing has costs, meaning that it should not be overused
- there are significant differences across jurisdictions in the use of occupational licensing, raising doubts about the need for licensing of these occupations (Productivity Commission, 2008d, p. 92).

Of the nearly 100 occupations licensed by the States and Territories for consumer policy reasons, more than 30 are licensed in only one or two jurisdictions. The commission noted that, in some instances, there are good reasons for this (eg. Aboriginal Health Workers), in others (e.g. hairdressing) the case for specific requirements seems weak (Productivity Commission, 2008d, pp. 94–96).

The commission indicated that occupations licensed in one or two jurisdictions are only a starting point for investigation (Productivity Commission, 2008d, p. 96).

COAG (2008k, p. 2) agreed on 3 July 2008 to develop a national trade licensing system for a range of economically important trades to be approved by COAG in December 2008. COAG agreed that the national system would initially apply to: air conditioning and refrigeration mechanics, builders, electricians, land transport, maritime occupations, plumbers, and property agents (COAG, 2008k, p. 2). This is a separate reform under the *National Partnership Agreement to Deliver a Seamless National Economy* dealt with in Chapter 6 of this report.

32.3 Progress report and assessment

The following actions have been taken by governments regarding the 2008–09 milestones for competition reform 6.

Milestone 1: States and Territories: based on PC's list of occupations, advise BRCWG on scope for rationalising licences by early 2009

Progress report

The Commonwealth Government (2009b, p. 71) reported that all jurisdictions have provided it with reviews of occupations that are licensed in only one or two jurisdictions. Jurisdictions have provided the COAG Reform Council with the following details of their reviews.

New South Wales

The New South Wales Better Regulation Office (2009c, p. 2) reviewed the need to continue licensing the occupations listed in Appendix G of the Productivity Commission *Review of Australia's Consumer Policy Framework* as being licensed only in New South Wales, or in New South Wales and one other jurisdiction, and reported on this review in April 2009.

The review noted that the occupations of quantity surveyor and steel fixer were not regulated in New South Wales, so they were not included in the review. The review also identified two

further occupations—lift mechanic and inbound tourism operator—that were regulated in New South Wales but were not on the Productivity Commission list. The occupation of lift mechanic was included in the review, but the occupation of inbound tourism operator was not included as it was being reviewed by the Australian Transport Council (Better Regulation Office [NSW], 2009c, p. 6).

Taking these clarifications into account, there are 12 occupations licensed in New South Wales alone or are licensed in one other jurisdiction. After excluding the inbound tourism operator occupation, the review covered the 11 occupations and recommended retention of licensing for the following four occupations:

- motor vehicle repairer
- strata manager
- structural landscaper
- wool, hide and skin dealer (Better Regulation Office [NSW], 2009c, p. 2).

The then New South Wales Minister for Regulatory Reform, the Hon Joe Tripodi MP, announced that occupational licences will be removed for the following seven occupations:

- entertainment industry agent and manager
- venue consultant
- floor finisher and coverer
- kit home supplier
- lift mechanic
- optical dispenser
- property inspector (pre-purchase) (Tripodi, 2008).

The *Occupational Licensing Legislation Amendment (Regulatory Reform) Act 2009* (NSW) received assent on 16 September 2009. The substantive provisions of the Act—in terms of removing licensing requirements for five occupations: floor finishers and coverers, kit home suppliers, lift mechanics,[49] optical dispensers, property inspectors (pre-purchase)—commence on 1 July 2010 (Parliamentary Counsel's Office [NSW], 2009a).

In regard to two occupations—entertainment industry agents and venue consultants—Mr Tripodi indicated that the removal of the licensing requirements will follow a review of the operation of the consumer protections in the *Entertainment Industry Act 1989* (NSW) (Tripodi, 2008). A joint Better Regulation Office-Office of Industrial Relations (2009, p. 2) *Option Paper: Review of the Entertainment Industry Act 1989* was released in July 2009 for comment by 3 August 2009. The review was not completed by 30 September 2009.

[49] The actual licensing class that was removed in the case of lift mechanics is the 'mechanical services' class of licence under the *Home Building Act 2004* (NSW), which covers a broader range of activities than those undertaken by a lift mechanic (Better Regulation Office [NSW], 2009c, p. 29).

Based on the above, and excluding the two occupations identified by the Productivity Commission that do not require a licence in New South Wales, licensing requirements will be removed by 1 July 2010, or following the review of the *Entertainment Industry Act 1989* (NSW), for six of the occupations identified for review by the commission and licensing will be retained for four.

Victoria

Victoria had seven occupations on the Productivity Commission list: acupuncturists, Chinese medicine practitioner/dispensers, engineers (building industry), firearms instructors, hydraulic services designers, introduction agents and professional engineers (chartered).

The Victorian Government (2009b) reported that licensing for hydraulic services designers and professional (chartered) engineers exists in more than one other jurisdiction under a different name.

Victoria further reported that the licensing requirements for four of the occupations on its list are covered by alternative policy processes or reviews:

- the licensing of acupuncturists and Chinese medicine practitioners/dispensers will be subject to national regulation from 1 July 2012 under the national registration and accreditation scheme for the health professions (see Chapter 7)
- the license requirement for building industry engineers will be considered as part of a broader review of occupational regulation within the building sector
- the registration requirements of introduction agents are being reviewed, including through a public consultation process, with negative licensing being considered as an option by the review.

Victoria also reported that the licensing of firearms instructors relates to their holding of the firearm (similar in other jurisdictions) and is not an occupational license.

Queensland

Queensland had 14 occupations on the Productivity Commission list: floor finishers and coverers, hydraulic services designers, inbound tourism operators (fishing tours), introduction agents, marine designers, marine surveyors, professional engineers (chartered), property developers, shopfitters, site classifiers, specialised contractors, speech pathologists, steel fixers and structural landscapers.

The Queensland Government (2009a) reported that licensing of three of the occupations on its list—professional engineers (chartered), specialised contractors and speech pathologists—is not required in Queensland.

It also reported that it has undertaken a preliminary review and has committed to removing licensing for two of the listed professions: floor finishers and coverers by early 2010; and property developers in 2010 with the implementation of the COAG National Licensing System (Queensland Government, 2009b, pp. 12–16).

The Queensland Government (2009a) reported that it had reviewed and decided to retain licensing of nine occupations on its list: hydraulic services designers, inbound tourism operators (fishing tours), introduction agents, marine designers and surveyors, restricted letting agents,

shopfitters, site classifiers, steel fixers and structural landscapers. The retention of the licenses is on the following basis:

- *Inbound tourism operator:* to be retained on the basis of likely industry opposition although Queensland noted that if the proposed generic consumer law is adequate, licensing may be repealed

- *Introduction agent:* to be retained on the basis of deterring unethical operators although Queensland noted that if the proposed generic consumer law is adequate, licensing may be repealed

- *Restricted letting agent:* to be retained on the basis that it represents a minimalist approach to licensing and regulation by ensuring that the licence holder is competent to perform their activities without having to undertake studies in the wider real estate sector which are not relevant as occurs in most other jurisdictions[50]

- *Hydraulic Services Designer:* to be retained on the basis of significant claimed financial and health and safety risks and that licensing provides a mechanism whereby best practice in building standards and consumer protection can be achieved

- *Marine designers and marine surveyors:* to be retained on the basis that these professions perform the certification function under marine safety legislation and that there would be a net cost to both industry and government if the licence were to be abolished—Queensland also reported that licensing may need to be retained to give effect to maritime safety reform (the subject of chapter 24 of this report)

- *Shopfitter:* to be retained in order to uphold building standards and in particular those which relate to quality of work, fire protection and health and safety

- *Site classifier:* to be retained on the basis of significant claimed financial and health and safety risks if work were carried out incorrectly and in order to insure that licensees hold the minimum level of $1 million in professional indemnity insurance as required by the Building Services Authority

- *Steel fixer:* to be retained on the basis of the importance of this role in ensuring the structural integrity of completed constructions and for insurance purposes

- *Structural landscaper:* to be retained in order to uphold building standards and in particular those which relate to quality of work and health and safety (Queensland Government, 2009b, pp. 12–16).

Western Australia

Western Australia had three occupations on the Productivity Commission list: firearms repairers, hairdressers and motor vehicle repairers.

[50] Queensland also reported that the that the renting of residential real estate on behalf of another person requires a real estate agent's licence in every jurisdiction (Queensland Government, 2009b, pp. 12–16).

The Western Australian Government (2009a, p. 3) reported that it had reviewed and decided to retain the licensing of firearms repairers on the basis that the license relates to the holding of the firearm (similar to the requirement in other jurisdictions).

On hairdressers, Western Australia reported that drafting had commenced on a bill to repeal the licensing requirement and abolish the licensing board. It further reported that approval had been given for a bill to abolish the licensing board for motor vehicle dealers and repairers and transfer licensing responsibility to the Commissioner for Consumer Protection (Western Australian Government, 2009a, p. 3).

South Australia

South Australia had two occupations on the Productivity Commission list: optical dispensers and passive fire equipment installers.

The South Australian Government (2009a, p. 41) reported that it has repealed the licensing of optical dispensers with the commencement of the *Optometry Practice Act 2007* (SA) on 17 July 2007. South Australia (2009a, p. 41) further reported that the passive fire equipment installer licensing requirement will be considered as part of the building license reforms under the National Licensing Scheme, which is a separate reform under the National Partnership and is dealt with in Chapter 6 of this report.

Tasmania

Tasmania had three occupations on the Productivity Commission list: acupuncturist, engineer and rehabilitation provider. The Tasmanian Government (2009b) reported that:

- the licensing requirement for acupuncturists will be retained until the Chinese medicine practitioners license, which includes acupuncturists, is incorporated into the national registration and accreditation scheme for the health professions
- there is no licensing requirement for engineers or rehabilitation providers in Tasmania.

Australian Capital Territory

The Australian Capital Territory had three occupations on the Productivity Commission list: energy assessor, hawker and plumbing plan certifier. The Australian Capital Territory Government (2009b, p. 42) reported to the council that it had reviewed the three occupations and will retain the licensing requirements for each of them. The retention of the licenses is on the following basis:

- *energy assessor*: to be retained to support the Australian Capital Territory's mandatory disclosure regime for the energy rating of residential buildings and will be reassessed following consideration of licensing issues under the National Framework for Energy Efficiency
- *hawker*: to be retained to provide a mechanism to control order in public places, which is typically done under public land and amenities regulation in other jurisdictions
- *plumbing plan certifier*: to be retained to support the Australian Capital Territory's fully privatised building certification process (Australian Capital Territory Government, 2009b).

Northern Territory

The Northern Territory had one occupation on the Productivity Commission list: Aboriginal health worker. However, in including this occupation on its list, the Productivity Commission cited it as an example of a justified licensing regime (Productivity Commission, 2008d, p. 96). Aboriginal health workers are also to be included in the second tranche of occupations to be included in the national registration and accreditation scheme for the health professions (COAG, 2006f, p. 4).

Progress assessment

It is the COAG Reform Council's assessment that all States and Territories completed this milestone within the reporting period.

New South Wales is the only jurisdiction to have conducted a public review of the listed licensing requirements.

Milestone 2: All jurisdictions: COAG to agree options by early 2009

Progress report

COAG did not agree to reform options relating to occupational licensing reform at its 5 February 2009, 30 April 2009 or 2 July 2009 meetings. The Victorian (2009b) and Queensland (2009a) governments reported that the Commonwealth, States and Territories agreed through the Business Regulation and Competition Working Group on 3 September 2009 to delay this item by 12 months so that issues relating to the National Licensing System could be settled.

Progress assessment

It is the COAG Reform Council's assessment that this milestone was not completed within the reporting period.

Table 32.3 provides the council's assessment of progress on the milestones in this reform.

Table 32.3: Occupational licensing—progress assessment by milestone

Milestone	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
1									
2									

Table 32.4 provides the council's overall assessment of progress on this reform. The overall assessment gives greater weight to the substantive achievements against milestone 1.

Table 32.4: Occupational licensing—aggregate progress assessment

	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Overall assessment									

32.4 Risk assessment

The key future milestone in this reform stream is the introduction of amending legislation and completion of transitional arrangements for any licenses to be removed by the end of 2009. The council will report on the legislation in its 2009–10 report.

The council notes the Productivity Commission's (2008d, p. 489) finding that a review and rationalisation of occupational licenses required in only one or two jurisdictions is just a starting point for reform in this area. It is noted, however, that deregulation priority 4—a National Licensing System—covers a major additional aspect of the work identified by the Productivity Commission.

Chapter 33: Transport policy

Key points

Progress assessment

It is the COAG Reform Council's assessment that the single milestone for this reform was not completed by 30 September 2009. In particular, milestones were not developed for reforms in the four stated output areas for this reform: uniform regulation of rail safety, heavy vehicles and maritime safety; and the acceleration of existing work on urban congestion.

Risk assessment

The COAG Reform Council considers that:

- the absence of agreed milestones makes it difficult to accurately assess whether there are any risks to the achievement of transport policy reform
- delays in settling the details of a national heavy vehicle regulator are a potential risk to timely reform progress
- the ambiguous status of urban congestion reforms is a risk to the achievement of reforms in this policy area in the life of the National Partnership
- it is unclear whether it is intended that a National Transport Policy will be agreed by COAG.

33.1 Output and milestones

Table 33.1 reproduces the output and milestones from the implementation plan for competition reform 7—national transport policy.

Table 33.1: Transport policy—output and milestones

Output				
7. National Transport Policy: (proposals for accelerated reforms for uniform regulation of heavy vehicles, rail safety and maritime safety and existing work on urban congestion – for maritime refer to #24 under Part 1 Deregulation Priorities)				
Milestones				
2008–09	2009–10	2010–11	2011–12	2012–13
All jurisdictions: Milestones to be developed following consideration by the ATC in early 2009.				

Source: (COAG, 2009p, p. 23)

33.2 The proposed reform

The reform

COAG has not yet agreed to a national transport policy. On 2 May 2008, the Australian Transport Council (2008a, p. 1) agreed to begin the development of a National Transport Policy intended to reduce red tape and result in a more consistent approach to the regulation of transport modes. The Australian Transport Council (2008a, pp. 2–5) agreed:

- that the best focus for reform would be on vehicle registration and licensing and rail safety and investigation and that ministers would consider proposals for single national systems for:
  - regulating, registering and licensing heavy vehicles
  - rail safety regulation and rail safety investigation
  - maritime legislation and safety standards
- to a goal of a seamless national marketplace with better signals for the efficient, productive, safe, sustainable and timely use and provision of transport services and infrastructure, with ministers agreeing that two initial steps toward this goal would be:
  - a national registration scheme for trucks and a national truck driver licence

  - continuation of pricing work under the COAG Road Reform Plan—dealt with in the next chapter of this report

- to the creation of a more rational and predictable environment for investment in transport infrastructure to improve certainty and the prospect of private sector investment—this would include a set of national objectives to be used as a focus for investment in new land transport infrastructure

- to increased cooperation on urban transport and land use to:

  - improve the quality of information, research and modelling available to decision-makers

  - pilot projects to get a better understanding of business transport movements in urban areas

  - enhanced integration of transport and land use planning

  - a comprehensive study to improve understanding of the range of pricing options available to manage urban congestion better

- to the National Transport Commission conducting pilot studies into a number of supply chains identified as being nationally significant, including livestock, grain, oil and gas, and coal supply chains

- to a series of measures to improve road safety, including best practice speed enforcement measures, targeted safety upgrades for high-risk 'black spots' and programs to address crashes involving single vehicles running off the road

- to consideration of measures to complement a national emissions trading scheme to be implemented in 2010—including investigation of mandatory carbon dioxide emissions standards for cars, national standards and targets for vehicle fleets, and research into low emission fuels

- to support a collaborative research agenda that goes beyond a modal focus, including examination of whether existing bodies have the capacity to do this or a new body should be established

- on the importance of workforce planning and skills retention in the transport and logistics sector

- to referral of transport disadvantage factors that contribute to social exclusion to the Commonwealth Minister for Social Inclusion, the Hon Julia Gillard MP, for her consideration

- to a package of railway level crossing safety measures and continued work by the Transport Security Working Group.

The Australian Transport Council (2008a, p. 1) agreed that the overall aim of the National Transport Policy will be to:

> provide better signals to guide both the supply of and demand for transport infrastructure and services, involving whole of transport solutions for corridors and networks rather than simply being mode specific.

The National Transport Policy has not yet been considered by COAG.

Four outputs are listed for the National Transport Policy in the implementation plan for the *National Partnership Agreement to Deliver a Seamless National Economy* (COAG, 2009p, p. 23): uniform regulation of heavy vehicles, rail safety, maritime safety and existing work on urban congestion. Maritime safety is also the subject of deregulation priority 24 of the National Partnership and is dealt with in detail in Chapter 24 of this report.

Background

Australia's large landmass and the long distance between its capital cities make an effective transport industry of vital importance to the economy. Transport policy has historically been developed by the States, Territories and the Commonwealth in isolation. Disparate approaches to transport policy have led to uncertainty and duplication which has imposed additional costs and adversely impacted on the ability of the private sector to efficiently invest and operate in the national transport environment (National Transport Commission, 2008b, p. 8).

On 29 February 2008, the Australian Transport Council (2008c, p. 1) agreed that there was a need to develop a national approach to transport policy. As noted above, on 2 May 2008, the Australian Transport Council (2008a, p. 1) agreed to begin the development of a National Transport Policy.

A meeting of Australian Transport Ministers (2008, p. 1) on 25 July 2008 agreed that, subject to the outcomes of regulatory impact assessments, COAG should agree to the establishment of:

- a single national system of heavy vehicle regulation, registration and driver licensing
- a single national system for maritime safety regulation administered by the Australian Maritime Safety Authority
- a national rail safety regulator and a national rail safety incident investigator.

Ministers also instructed the National Transport Commission to prepare a regulatory impact statement for a single, national rail safety regulatory and investigation framework (Australian Transport Ministers, 2008, p. 1).

As part of a consistent national approach to transport policy, the Australian Transport Council, on 22 May 2009, approved final regulatory impact statements for these three proposals and recommended that COAG agree to the proposals being implemented. In regard to maritime safety, Victoria only agreed to the national system applying to interstate maritime activity in its waters (Australian Transport Council, 2009b, p. 1).

On 2 July 2009, COAG (2009f, pp. 8–9) agreed:

- the Australian Maritime Safety Authority will be the sole national regulator of all commercial vessels in Australian waters

- a new national heavy vehicle regulator will be responsible for all vehicles over 4.5 gross tonnes
- a national rail safety regulator and investigator will be established.

33.3 Progress report and assessment

The following actions have been taken by governments regarding the 2008–09 milestone for competition reform 7.

Milestone 1: All jurisdictions: Milestones to be developed following consideration by the ATC in early 2009

Progress report

On 2 July 2009, COAG (2009p, p. 23) agreed to a revised implementation plan for the *National Partnership Agreement to Deliver a Seamless National Economy*, which did not include any further milestones for the competition reform 7.

However, on 2 July 2009, COAG agreed to implement three of the outputs for this reform: national regulation for maritime safety, rail safety and heavy vehicles (COAG, 2009f, p. 8). No specific workplan, timetable or milestones for the implementation of these outputs were agreed.

Since that meeting, the regulatory impact statement that informed COAG's decision to implement national regulation of rail safety was released. The regulatory impact statement includes a detailed cost benefit analysis of options to establish a national rail safety regulatory framework, including the status quo and enhanced State-based regulation, and recommends a single national regulator (National Transport Commission & Booz and Company, 2009, p. 112). It also identifies a range of significant issues that would need to be settled before implementing the recommended option and does not discuss a timetable or milestones for implementation (National Transport Commission & Booz and Company, 2009).

On 22 May 2009, the Australian Transport Council (2009b, p. 1) committed to resolving certain key matters in relation to these reforms before reporting to COAG by no later than mid 2010. These matters include:

- which jurisdiction will host the proposed national regulator
- the laws for rail and heavy vehicles
- how implementation and ongoing costs for each national system will be met.

The Australian Transport Council (2009b, p. 2) has indicated the national systems of regulation will come into initial effect in 2012 with a view to full implementation by 2013. However, no specific information was provided as to the development of milestones for these reforms.

Jurisdictions have reported further details against some of the outputs in this reform stream as detailed below.

Heavy Vehicles

The Victorian Government (2009b, p. 60) has reported that the Australian Transport Council will consider alternative governance arrangements for the delivery of the national heavy vehicle regulator at its November 2009 meeting.

Rail

The Victorian Government (2009b, p. 60) has reported that the Standing Committee on Transport:

> has formed a Rail Working Group (RWG) to progress the COAG directive. The RWG is considering proposals for policy positions on each of these matters. The next step is to prepare a paper for Ministers at ATC for consideration in November 2009.

Urban congestion

In May 2009, the Urban Congestion Working Group of the Australian Transport Council released its report, *Australian Capital City Congestion Management Case Studies*. The report documents a series of case studies of specific initiatives undertaken in New South Wales, Victoria, Queensland, Western Australia and South Australia to alleviate urban congestion and identifies key lessons for decision-makers. The key finding is that there is no single solution to urban congestion problems (Urban Congestion Working Group, 2009, p. 2).

The Victorian Government (2009b, p. 59) has reported that the Australian Transport Council has:

> established the Network Performance Standing Sub-Committee to investigate urban transport system performance indicators, business vehicle responses to urban congestion and urban road demand management modeling. This sub-committee has a number of urban congestion projects that have been completed or are on-track.

A progress report was due to be presented to Australian Transport Council at its November 2009 meeting.

COAG had not agreed to any specific reforms, proposals or milestones for urban congestion.

Progress Assessment

It is the COAG Reform Council's assessment that this milestone was not completed within the reporting period.

COAG's agreement on 2 July 2009 to national regulation for maritime safety, rail safety and heavy vehicles represents some progress toward implementation of three of the four outputs for this reform. However, no milestones were developed for the implementation of these reforms and it appears that any substantial progress towards implementation is unlikely to occur until the Australian Transport Council reports to COAG in mid 2010.

The release of the Urban Congestion Working Group's case studies into urban congestion in May 2009 is an important step toward improvement of urban congestion data, modelling and performance information for decision-makers. However, no further detail has been provided on urban congestion reforms and no milestones have been agreed.

Table 33.2 provides the council's overall assessment of progress on this reform.

Table 33.2: Transport policy—overall progress assessment

	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Overall Assessment									

33.4 Risk assessment

Lack of agreement on milestones makes assessment difficult

Milestones had not been identified for the four outputs specified in the implementation plan for competition reform 7. In the absence of milestones, it is difficult to accurately assess whether there are any risks to the achievement of future milestones under the National Partnership or to the establishment of the three national regulators by 2013 as agreed by COAG.

National regulation of heavy vehicles still to be settled

Jurisdictions raised a number of concerns about the National Transport Policy, particularly in respect to how a national approach will take into account the unique circumstances of some jurisdictions' current regulation of heavy vehicles. The Queensland Government (2009b, p. 5) has reported that until these issues are resolved, there is unlikely to be any national agreement on the way forward for National Transport Policy reforms. It is essential that these policy differences do not further delay the development of milestones for this reform. The Australian Capital Territory Government (2009b, p. 44) has reported that 'a major risk to the implementation of the heavy vehicle reform is the timeframe through which it is to be implemented'.

Major elements of the reform, such as the governing laws, the form of the regulator and the system under which it will operate, are still to be determined.

Tight timeframes may stretch available resources

Some jurisdictions reported that the tight timeframes for transport reforms—covering rail, road, maritime and urban congestion—will stretch available resources as the same staff members usually work across these reforms.

The Australian Capital Territory Government (2009b, p. 44) reported that smaller jurisdictions may struggle with the scope of the work required to implement reforms, depending on the legislative or system enhancements required. The Australian Capital Territory (2009a, p. 6) further reported that giving the National Transport Policy reforms a priority for implementation 'will also be at the expense of progressing other reforms, which may entail a higher jurisdictional (as opposed to national) priority'.

The Victorian Government (2009a) has also reported that as many State and Territory jurisdictions rely on the same group of policy staff for interrelated reforms, tight timeframes may potentially create risks to successful implementation.

Status of urban congestion reforms was ambiguous

The lack of agreement to any specific urban congestion initiatives is a risk to the achievement of reforms in this policy area in the life of the National Partnership.

Commitment to a National Transport Policy was uncertain

The council is uncertain from the current implementation plan and ministerial council processes whether it is intended that a National Transport Policy will be agreed by COAG. If it is, the lack of a clear indication as to the exact scope and detail of the National Transport Policy is a significant concern one year into the National Partnership. The council considers that agreement to milestones—at least for the current four outputs in this reform—is an important first step in expressing a commitment to a National Transport Policy and would anticipate these milestones being included in the next edition of the implementation plan.

Chapter 34: Road reform plan

Key points

Progress assessment

It is the COAG Reform Council's assessment that the single milestone for this reform was not completed by 30 September 2009.

Risk assessment

The COAG Reform Council considers that the non-completion of the single 2008–09 milestone does not pose a significant risk to the achievement of this reform if the plan for COAG to agree to the milestones by the end of 2009 is realised.

34.1 Output and milestones

Table 34.1 reproduces the output and milestones in the implementation plan for competition reform 8—previously agreed transport reforms.

Table 34.1: Road reform plan—output and milestones

Output				
8. Previously agreed transport reforms.				
Milestones				
2008–09	2009–10	2010–11	2011–12	2012–13
All jurisdictions: Develop milestones following ATC consideration by early 2009, consistent with the National Reform Agenda: Road Reform Plan	All jurisdictions: ATC to consider evaluation study of incremental pricing schemes by July 2009	All jurisdictions: implement work programs agreed by COAG by Dec 2010	All jurisdictions: ATC to report on feasibility study of mass-distance location-based charges by Dec 2011	

Source: (COAG, 2009p, p. 24)

34.2 The proposed reform

The reform

This aim of this reform is to improve price signals for road freight infrastructure providers and users. This will better position Australia to meet forecast growth in the national freight task[51] (COAG, 2007e, p. 2; National Transport Commission, 2006, p. 3). In the long term, the reform can be expected to deliver economic benefits by improving the efficiency of road use for freight purposes.

On 13 April 2007, COAG (2007e, p. 2) agreed to a three-phase road reform plan, with COAG's further agreement required prior to starting each phase (Australian Transport Council, 2009a, p. 10). COAG (2007e, p. 3) also agreed that the COAG Reform Council would report on implementation of the road reform plan.

Phase I (2007–08)

Phase I of the road reform plan involved two key elements:

- a new heavy vehicle charging regime to deliver full cost recovery, remove cross subsidies between heavy vehicle classes and improve the annual adjustment process for the charges in order to maintain their relationship with road infrastructure costs
- a number of research projects on 'externalities',[52] road vehicle use and costs, community service obligations and 'incremental pricing'[53] for higher mass and other innovative vehicles (Australian Transport Council, 2009a, p. 11; National Transport Commission, 2008a).

As noted by the COAG Reform Council (2009b, pp. 29–30) in its 2009 report, Phase I of the COAG Road Reform Plan has effectively been completed.

Phase II (2009–10)

Phase II of the Road Reform Plan—as originally agreed in April 2007 (COAG, 2007b, pp. 14–15) and as refined, in preliminary terms, by the Australian Transport Council (2009a, p. 45) in May 2009—involves further research and examination of the policy issues regarding:

- options for incremental pricing in the context of any overall pricing work under the road reform plan
- more closely aligning road freight revenue to investment in roads
- an ongoing review of regulations relating to heavy vehicle pricing.

[51] The 'national freight task' refers to the freight expected to be carried on Australia's roads, which is predicted to experience rapid growth, doubling in the years from 2000 to 2020 (National Transport Commission, 2006, p. 3).
[52] Externalities are costs and benefits of economic transactions that are not borne by the parties to those transactions—in the case of roads, this includes the cost of road infrastructure itself, road injuries and fatalities, and the environmental costs of road building and use.
[53] Incremental pricing is a charge for heavy vehicle drivers to carry more than the national regulated weight limits for the vehicle class and is used to cover the additional road wear caused by the extra weight.

Phase III (2011–14)

Phase III of the Road Reform Plan builds on the previous phases and comprises a feasibility study of 'mass-distance-location' based charging[54] for road use (COAG, 2007b, p. 15).

COAG Reform Council report

The COAG Reform Council's 2009 report to COAG noted that Phase I of the plan is effectively complete. The council recommended that, once agreed, COAG refer Phase II of the plan to the council for monitoring. The council also recommended that implementation of Phase II should be supported by sound governance arrangements, including detailed responsibilities for milestones and regular and specific reporting timeframes (COAG Reform Council, 2009b, pp. 29–30).

On 30 April 2009, COAG (COAG, 2009d) broadly supported the council's recommendation and noted that the Australian Transport Council will:

- consider a report to COAG on Phase I at its May 2009 meeting
- provide advice to COAG on Phase II
- need to put in place the necessary governance arrangements and resources to support implementation of Phase II.

COAG (COAG, 2009d) stated that it would consider the need for oversight of Phase II by the COAG Reform Council when it considers the Australian Transport Council's advice on Phase I.

On 22 May 2009, the Australian Transport Council (2009a, p. 2) agreed to the final report on Phase I of the COAG Road Reform Plan, to inform COAG's consideration of whether to proceed with Phase II, and agreed that it would develop a detailed work program and milestones for Phase II for consideration at its November 2009 meeting.

Background

COAG (2006d, p. 6) has recognised that the dispersed nature of Australia's population and markets means that efficient transport infrastructure plays an important role in improving productivity. In the case of roads, increases in the volume of freight, larger freight vehicles using the road network and growth in other forms of traffic have made it increasingly difficult for the road network to accommodate freight growth (Australian Transport Council, 2009a, p. 12).

On 10 February 2006, COAG agreed to 'improve the efficiency, adequacy and safety' of Australia's transport infrastructure through committing to national transport market reforms. This included agreement to ask the Productivity Commission to develop proposals for the efficient pricing of road and rail freight infrastructure to be presented to COAG by the end of 2006 (COAG, 2006c, pp. 3–4; 2006d, p. 6).

The Productivity Commission released its review of *Road and Rail Freight Infrastructure Pricing* on 22 December 2006. The commission found that the efficient provision and productive use of road infrastructure was hampered by current pricing arrangements. The

54 'Mass-distance-location' charging is based on the mass of the truck, the distance it has travelled and the specific locations it has travelled through (Australian Transport Council, 2009a).

commission found the following major shortcomings with current charging and provision arrangements for roads:

- current road charges send weak signals to heavy vehicle road users about the costs of using particular roads, or to infrastructure providers about the demand for different roads
- the 'disconnect' between charges and spending on roads can lead to inefficient decisions, such as delaying efficient road projects, and encourage public sector road providers to protect or preserve[55] road assets instead of making optimal use of them
- government provision of roads is unlikely to provide an incentive framework for providing road infrastructure services efficiently (Productivity Commission, 2006d, pp. xxvi–xxxix).

The Productivity Commission (2006d, pp. xl–xlv) recommended that COAG oversee a three-staged agenda for road reform:

- stage one would focus on current arrangements and building a base for change including through improvements to current road charging systems, improved regulation of heavy vehicles and better investment decision making processes
- stage two would focus on trialling and evaluating more direct road user charges and linking road revenues to road providers through 'mass-distance' charges (total distance travelled over a defined time) and mass-distance-location based charges
- stage three would focus on location-based charges and more commercially oriented road provision.

34.3 Progress report and assessment

The following actions have been taken by governments regarding the 2008–09 milestone for competition reform 8.

Milestone 1: All jurisdictions: Develop milestones following ATC consideration by early 2009, consistent with the National Reform Agenda: Road Reform Plan

Progress report

On 22 May 2009, the Australian Transport Council (2009b, p. 2) accepted the report on Phase I of the COAG Road Reform Plan. It also agreed that a detailed work plan for Phase II will be considered at its November 2009 meeting with a view to providing it to COAG by December 2009 for approval (Australian Transport Council, 2009a).

The Phase I report supports proceeding to Phase II of the COAG Road Reform Plan and provides a preliminary Phase II work program and associated milestones (Australian Transport Council, 2009a).

Based on this report, COAG (2009d) agreed, on 2 July 2009, to proceed with the next stage of research under Phase II of the COAG Road Reform Plan. At that same meeting, COAG agreed to a revised implementation plan for the *National Partnership Agreement to Deliver a Seamless*

[55] For example, road agencies can be reluctant to allow higher mass vehicles on road networks as they are aware that this will lead to faster deterioration of the network without any assurance that revenue will be forthcoming to maintain it (Productivity Commission, 2006c, p. 257).

National Economy. The revised implementation plan does not include new milestones for Phase II of the Road Reform Plan.

Progress assessment

It is the COAG Reform Council's assessment that this milestone was not completed within the reporting period.

COAG has agreed to the next phase of the Road Reform Plan. However, the work program for Phase II of the plan and associated milestones under the *National Partnership Agreement to Deliver a Seamless National Economy* were not agreed by 30 September 2009. As noted above, the Australian Transport Council has developed a preliminary work plan and associated milestones and will consider a final work program and milestones in November 2009, with the intention of COAG consideration of both in December 2009.

Table 34.2 provides the council's overall assessment of progress on this reform.

Table 34.2: Road reform plan—overall progress assessment

Milestone	Cwlth	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Overall assessment									

34.4 Risk assessment

As at 30 September 2009, milestones had not been agreed for the implementation of Phase II of the COAG Road Reform Plan. However, the Australian Transport Council had developed preliminary milestones for consideration in November 2009, with these milestones to be provided to COAG in December 2009. If milestones are agreed in December 2009, the failure to meet the single 2008–09 milestone may not be a significant risk to reaching the milestone to implement agreed work programs by December 2010 and the final milestone of the Australian Transport Council reporting to COAG on the feasibility of mass-distance-location pricing by December 2011.

COAG may wish to consider specification of milestones for the implementation of Phase II of the Road Reform Plan in the next edition of the implementation plan for the *National Partnership Agreement for a Seamless National Economy*.

PART D: REGULATORY REFORM

Chapter 35: Regulation making and review

Key points

Progress assessment

The only milestone for regulation making and review is for jurisdictions to implement the specific action commitments set out in Appendix C to COAG's April 2007 *Regulatory Reform Plan*.

It is the COAG Reform Council's assessment that most action items have been implemented. This is unsurprising because many of the specific action commitments are statements of policy that had already been implemented by April 2007 or were imminent at that time.

35.1 Output and milestones

Table 35.1 reproduces the output and milestones in the implementation plan for part 3—regulatory reform.

Table 35.1: Regulation making and review—output and milestones

Output				
The development and enhancement of existing processes for regulation making and review				
Milestones				
2008–09	2009–10	2010–11	2011–12	2012–13
Implementation of specific action commitments outlined in COAG's Apr 2007 *Regulatory Reform Plan* (Appendix C) that were endorsed by BRCWG by 30 June 2009	Ongoing milestones to be identified and agreed as project progresses	Ongoing milestones to be identified and agreed as project progresses	Ongoing milestones to be identified and agreed as project progresses	Ongoing milestones to be identified and agreed as project progresses

Source: (COAG, 2009p, p. 25)

35.2 The proposed reform

The reform

This reform stream reflects the overarching aims of the *National Partnership Agreement to Deliver a Seamless National Economy*:

> to deliver more consistent regulation across jurisdictions and address unnecessary or poorly designed regulation, to reduce excessive compliance costs on business, restrictions on competition and distortions in the allocation of resources in the economy (COAG, 2009n, p. 3).

At this stage, the reform is solely based on the *COAG Regulatory Reform Plan April 2007*. The plan sets out COAG's agreement that:

> all Governments will establish and maintain effective arrangements at each level of government that maximise the efficiency of new and amended regulation and avoid unnecessary compliance costs and restrictions on competition by:
>
> (a) establishing and maintaining "gate keeping mechanisms" as part of the decision-making process to ensure that the regulatory impact of proposed regulatory instruments are made fully transparent to decision makers in advance of decisions being made and to the public as soon as possible;
>
> (b) improving the quality of regulation impact analysis through the use, where appropriate, of cost-benefit analysis;
>
> (c) better measurement of compliance costs flowing from new and amended regulation, such as through the use of the Commonwealth Office of Small Business' costing model;
>
> (d) broadening the scope of regulation impact analysis, where appropriate, to recognise the effect of regulation on individuals and the cumulative burden on business and, as part of the consideration of alternatives to new regulation, have regard to whether the existing regulatory regimes of other jurisdictions might offer a viable alternative; and
>
> (e) applying these arrangements to Ministerial Councils (COAG, 2007a, p. 8).

Regulation is defined in the plan as:

> the broad range of legally enforceable instruments which impose mandatory requirements upon business and the community as well as to those government voluntary codes and advisory instruments, for which there is a reasonable expectation of widespread compliance (COAG, 2007a, p. 8).

The specific actions agreed by governments to achieve this end are set out in Appendix C of the *COAG Regulatory Reform Plan*, implementation of which is the 2008–09 milestone for this reform stream.

Background

The need to develop and maintain good regulatory processes has been an ongoing aim of COAG. A broad history of the COAG reform agenda with respect to business regulation and competition reform is discussed in Chapter 2 of this report.

Governments have recognised that good regulation is necessary and desirable in a modern society to facilitate business transactions and to ensure that social, economic and environmental aims are achieved. However, it is also clear that excessive, poorly designed and overlapping

regulation places a significant burden on Australian businesses and consumers, which negatively affects business efficiency and productivity and the international competitiveness of Australian industry (Regulation Taskforce, 2006, pp. i–ii).

Prior to COAG's March 2008 agreement on a new reform agenda, a number of reform initiatives were undertaken to report on, and reform, government regulatory processes. These included:

- the *National Competition Policy Review* (National Competition Policy Review Committee of Inquiry, 1993)
- the *Competition Principles Agreement* (COAG, 2007d) arising out of COAG's agreement on the principles outlined in the *National Competition Policy Review*
- the 1996 *Time for Business* report by the Small Business Deregulation Taskforce (1996).

In 2005, the Regulation Taskforce (2006, p. 2) was established by the Commonwealth Government to provide a report to:

- identify specific areas of Commonwealth Government regulation that were unnecessarily burdensome, complex or redundant or which duplicate regulations in other jurisdictions
- indicate areas where regulation should be removed or significantly reduced as a matter of priority
- examine non-regulatory options (including self regulation) for achieving desired outcomes
- provide practical options for alleviating the Commonwealth Government's 'red tape' burden on business.

In January 2006, the Regulation Taskforce released *Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business*. This report included recommendations for 99 reforms of existing regulation and proposed a further 51 areas of regulation which needed further investigation by the Commonwealth Government or COAG.

A number of the priority recommendations for reform of existing regulation are reflected in the reforms set out in the implementation plan of the *National Partnership Agreement to Deliver A Seamless National Economy*, including consumer protection, chemicals regulation, food regulation and directors' liabilities (Regulation Taskforce, 2006, p. iv).

The Regulation Taskforce (2006, p. v) report also included 28 recommendations for reform of the regulatory process, which were aimed at addressing the 'systemic causes of bad regulation.' The Taskforce (2006, p. 182) concluded that the 'six principles of good regulatory process [set out in this report] should be endorsed by government'. The Taskforce also concluded that:

> The pre-condition for achieving better regulation boils down to ensuring that the case for it is well made and tested, both at the outset and over time. In the Taskforce's view, the key actions needed to achieve this include:
>
> - 'raising the bar' on the standard of analysis undertaken in assessing regulation, including the rigorous use of cost-benefit analysis...

- establishing a whole-of-government policy on consultation across all stages of the regulatory cycle...
- strengthening the government's existing Regulation Impact Statement requirements...and instituting arrangements so that, except in specially defined circumstances, regulatory proposals do not proceed to Cabinet or other decision-makers unless good process requirements have been met...
- providing for sunset clauses...and periodic reviews of regulations to be built into statutes (Regulation Taskforce, 2006, p. 182).

In October 2007, COAG (2007c) released its *Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies*. The document provides guidance to ministerial councils on the best-practice regulation principles agreed by COAG and agreement that:

> all governments will ensure that regulatory processes in their jurisdictions are consistent with the following principles:
>
> 1. establishing a case for action before addressing a problem;
> 2. a range of feasible policy options must be considered, including self-regulatory, co-regulatory and non-regulatory approaches, and their benefits and costs assessed;
> 3. adopting the option that generates the greatest net benefit for the community;
> 4. in accordance with the Competition Principles Agreement, legislation should not restrict competition unless it can be demonstrated that:-
>   a. the benefits of the restrictions to the community as a whole outweigh the costs, and
>   b. the objectives of the regulation can only be achieved by restricting competition;
> 5. providing effective guidance to relevant regulators and regulated parties in order to ensure that the policy intent and expected compliance requirements of the regulation are clear;
> 6. ensuring that regulation remains relevant and effective over time;
> 7. consulting effectively with affected stakeholders at all stages of the regulatory cycle; and
> 8. government action should be effective and proportional to the issue being addressed (COAG, 2007c, p. 4).

Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies also sets out that a regulatory impact statement should include:

- a statement that clearly identifies the fundamental problem that needs to be addressed
- clearly articulated objectives based on the intended outcomes, goals or targets of any action
- a range of viable options for action including non-regulatory, self-regulatory and co-regulatory options
- analysis of the costs and benefits of the feasible options

- an outline of the consultation undertaken, including how it was conducted, the views of those consulted, how those views were taken into consideration and a reasonable explanation for not undertaking consultation in full if that was the approach taken
- a clear statement of which is the preferred option and why
- information on how the preferred option would be implemented, monitored and reviewed (COAG, 2007c, pp. 9–14).

35.3 Progress report and progress assessment

The only milestone for this reform is for jurisdictions to implement the specific action commitments outlined in Appendix C to COAG's April 2007 *Regulatory Reform Plan*. The progress report and progress assessment for these reforms is presented in Appendix B to this report, containing a separate table for each jurisdiction (Tables B.1 to B.9).

The progress report and assessment tables:

- reproduce the specific action items and completion dates set out in Appendix C of the *COAG Regulatory Reform Plan* in the first two columns
- provide a progress report on each action in the third column
- present the council's progress assessment for each action in the final column.

The final column is shaded in colour consistent with the progress assessment schema used elsewhere in this report. The assessment is based on the updated obligation under the National Partnership for all action items to be completed by 30 June 2009 (rather than this being based on the original completion dates stipulated in Appendix C of the *COAG Regulatory Reform Plan*).

35.4 Risk assessment

There are some risks to the ultimate objective of this reform stream: the development and enhancement of existing processes for regulation making and review. This section outlines some of these risks and possible ways forward.

Unambitious milestones

Currently, the single milestone set for 2008–09 for this reform is for jurisdictions to implement the specific action commitments set out in Appendix C of the *COAG Regulatory Reform Plan* by June 2009.

As the progress assessment set out in the nine tables in Appendix B demonstrates, most of the action items and completion dates set out in Appendix C of the *COAG Regulatory Reform Plan* were expressed in terms of actions already implemented by governments; and a few foreshadowed actions that were imminent when the plan was made in April 2007. Unsurprisingly therefore, the council's assessment is that most action items have been completed.

The implementation plan does not include any milestones for further reform in the area of regulation making and review in future reporting years and states that 'ongoing milestones [are] to be identified and agreed as [the] project progresses'. These statements were not amended when COAG considered and approved the updated implementation plan on 2 July 2009.

In addition, the commitments made in the *COAG Regulatory Reform Plan* reflect differential starting points and the National Partnership does not currently set milestones to bring jurisdictions up to an equivalent level in terms of regulation making and review processes.

The milestones set to date for this reform are therefore relatively unambitious. COAG may wish to consider the specification of new milestones and deadlines in the next edition of the implementation plan, particularly for those jurisdictions that have not yet fully put in place all of the mechanisms specified in the *COAG Regulatory Reform Plan*.

The Commonwealth Minister for Finance on Deregulation, the Hon Lindsay Tanner MP, has commissioned the Organisation for Economic Cooperation and Development to conduct a review of Australian regulation and present its views and recommendations in a final report in December 2009 (Commonwealth Government, 2009b, p. 5). The Commonwealth Government (2009b, p. 5) reported that this review will include a chapter on multi-level regulatory governance, which is being informed by consultation with Commonwealth, State and Territory governments, business and other stakeholders.

The Business Regulation and Competition Working Group will consider future processes to enhance regulatory reform in the context of this report; this process may lead to new and revised milestones in the next edition of the implementation plan (Commonwealth Government, 2009b, p. 5).

A need to move beyond process

While the focus to date on principles and the implementation of better regulatory decision-making processes has been important, it may now be desirable for the focus to shift to ongoing assessment of whether these new processes are actually delivering better regulation and, if not, whether further reforms are required.

The nature of this reform stream raises particular challenges for monitoring and reporting on milestones. This is because the reform stream is directed at both ensuring that good regulatory principles and guidelines are in place and also ensuring that these processes are actually followed by policy decision makers and have an impact on the way policy decisions are made and implemented.

The effectiveness of regulatory reform processes is difficult to assess. In some respects, the COAG Reform Council's role to report to COAG on the aggregate pace of reform activity and the Productivity Commission's role to report to COAG every two or three years on the costs and benefits of the COAG reform agenda—as set out respectively in clause A11(d) and clause 18 of the *Intergovernmental Agreement on Federal Financial Relations* (COAG, 2009l, p. 5)—may provide mechanisms through which this could be explored.

In addition, the COAG Reform Council may draw on existing subject experts or commission technical experts when an assessment of performance is required (COAG, 2009m, p. C4). It remains an option for the council to consider commissioning an appropriate expert organisation to develop a framework on how to assess the effectiveness of regulatory reform efforts. Naturally, this would depend on the future directions taken in this reform stream and require further consultation with jurisdictions.

The council notes that the Productivity Commission is currently undertaking a series of annual reviews of the burdens on business of Commonwealth regulation. The commission's ongoing

five year cycle of reviews covers the primary sector (2007 review completed); the manufacturing sector and distributive trades (2008 review completed); social and economic infrastructure services (2009 review completed); business and consumer services (report due in 2010); and economy-wide generic regulation and other regulation not addressed in other reviews (report due in 2011) (Productivity Commission, 2009a). These reports will assist in the ongoing process of assessing the regulatory burden of Commonwealth regulation. It may be useful for the Productivity Commission to consider the broader regulatory burden, rather than just that of the Commonwealth.

PART E: ADDITIONAL REGULATORY REFORM STREAMS

Chapter 36: New streams

On 5 February 2009, COAG (2009s, p. 10) recognised that, further to the *National Partnership Agreement to Deliver a Seamless National Economy*, there was scope for further reforms in the areas of:

- major city strategic planning that provides for long-term infrastructure needs
- planning reforms for dealing with individual infrastructure projects
- regulation of export related infrastructure
- reform of regulation of the legal profession.

On 2 July 2009, COAG (COAG, 2009f, p. 8) agreed that the COAG Reform Council would, in the future, report on three new items on the agenda of the Business Regulation and Competition Working Group (BRCWG). These new items are:

- reform of regulation of the legal profession
- regulation of the not-for-profit sector
- competition issues in the grocery sector associated with planning and zoning policies (Commonwealth Government, 2009b, p. 6).

The COAG Reform Council has not assessed progress on these reforms in this report as they are not included in the implementation plan for the National Partnership and the specific reforms to be implemented were not agreed by 30 September 2009. This chapter provides a brief profile of ongoing activities in each reform area.

36.1 Regulation of the legal profession

Proposed reform

Reform plan

The legal profession is regulated by State and Territory law, as well as by lawyers' professional duty to the Court (National Legal Profession Reform Consultative Group, 2009, p. 13). The State and Territory laws regulate 'entry into the legal profession; practising entitlements and conditions; the form and manner in which legal practise is conducted; complaints handling; and consumer protections through discipline and remedies' (National Legal Profession Reform Consultative Group, 2009, p. 13). There are currently 55 groups who are responsible for regulating various aspects of the legal profession across Australia (Attorney-General's Department [Cwlth], 2009e).

The States and Territories, except for South Australia, have harmonised their laws in recent years, based on the Legal Profession Model Bill (Model Provisions) 2nd Edition, August 2006 (Standing Committee of Attorneys-General, 2006a). Despite this increased harmonisation, the regulation of the legal profession remains complex and inconsistent across jurisdictions, with each State and Territory using its own regulatory structure and professional rules (Wilkins, 2009).

On 5 February 2009, COAG (2009s, p. 10) recognised four areas of microeconomic reform, including 'reform of legal profession regulation', where there had been recent valuable reform, but where there remained 'considerable scope for further microeconomic reforms'. In relation to these four areas of reform, COAG (2009s, p. 10) agreed to support the microeconomic reform agenda and for papers to be prepared for discussion at the following COAG meeting.

On 30 April 2009 COAG (2009g, p. 10) agreed to the following recommendation in respect of legal profession regulation:

> to set up a taskforce on reform of the regulation of the legal profession, with the objective of uniform laws across jurisdictions.

In a joint media release on 30 April 2009, the Prime Minister and the Commonwealth Attorney-General (2009) announced that COAG had agreed that:

- draft uniform laws regulating the legal profession across Australia be prepared for consideration by COAG within 12 months
- a specialist taskforce be appointed by the Attorney-General to make recommendations and prepare the draft legislation
- a consultative group be appointed by the Attorney-General to advise and assist the taskforce.

Background

At its 25 February 1994 meeting, COAG (1994) agreed to the competition policy principles set out in the *National Competition Policy Report* (Hilmer Report), including the need for reform of legal profession regulation 'with the objective of removing constraints on the development of a national market in legal services, and developing other efficiency enhancing reforms.'

In July 1994 the Law Council of Australia (1994) released a *Blueprint for the Structure of the Legal Profession: A National Market for Legal Services*. This document set out eight general principles and objectives for the legal profession in Australia, including that the national competition policy principles should apply to the legal profession and that the system of regulation of the legal profession should be implemented through uniform State and Territory laws (Law Council of Australia, 1994, pp. 3–4).

Subsequently, and as noted above, the States and Territories (except for South Australia) have adopted the Legal Profession Model Bill, although there remains a large number of inconsistencies across the jurisdictions' laws and regulation of the legal profession (Wilkins, 2009).

Progress on reform

In the joint media release of 30 April 2009, the Prime Minister and the Commonwealth Attorney-General (2009) announced the composition of the specialist legal taskforce, and announced that the taskforce would commence work immediately. The Commonwealth Attorney-General has also established a consultative group to advise the taskforce on its work and an officer level working group to assist the taskforce.

The National Legal Profession Reform Consultative Group (2009) released a background paper on 4 August 2009 which sets out the roles and membership composition of the National Legal

Profession Reform Taskforce, the National Legal Profession Reform Consultative Group and the working group.

The background paper sets out the statement of intent for the reform. It states:

> The Taskforce aims to produce draft legislation and make recommendations on regulatory structures for the uniform regulation of the legal profession across Australia by 30 April 2010.
>
> The work will aim to deliver: (a) a national legal profession and a national legal services market through simplified uniform legislation and regulatory standards; (b) clear and accessible consumer protection, so that consumers have the same rights and remedies available to them regardless of where they live; and (c) a system of regulation that is efficient and effective (National Legal Profession Reform Consultative Group, 2009, p. 9).

In September 2009, the National Legal Profession Reform Taskforce (2009) released a regulatory framework paper which sets out the aims of a new regulatory framework and three alternative models for a national system of regulation. The paper sets out that the key aims for establishing a regulatory framework are to:

- create and support a national legal profession and a national legal services market through simplified uniform legislation and regulatory standards
- provide for setting national standards, policies and practices wherever possible and appropriate
- ensure that legal practitioners can move freely between Australian jurisdictions and that law practices can operate on a national basis
- provide clear and accessible consumer protection, so that consumers have the same rights and remedies available to them regardless of where they live in Australia.
- be efficient and effective
- be robust, relevant and effective over time (National Legal Profession Reform Taskforce, 2009, p. 1).

The Commonwealth Attorney-General's Department has established a website for COAG National Legal Profession Reform, which includes working documents, discussion papers and information on the likely next steps for this reform.

36.2 Regulation of the not-for-profit sector

The proposed reform

Reform plan

COAG (2009g, p. 10) agreed on 30 April 2009 to add the regulation of the not-for-profit sector to the BRCWG's 2009 workplan. As at 30 September 2009, governments had not agreed to specific reforms in the sector.

There is some debate surrounding the definition of a 'not-for-profit' organisation. The Productivity Commission (2009f, p. 7) notes that not-for-profit organisations take a number of different forms but can be collectively defined as those organisations which do not distribute

profits to their members. To be classified by the Australian Taxation Office as a not-for-profit, organisation, an organisation's governing documents must specify that the organisation is unable to distribute profits or assets for the benefit of particular people, both while it is operating and when it winds up (Australian Taxation Office, 2007).

According to the Australian Bureau of Statistics, the not-for-profit sector in Australia employs close to 885,000 people (Productivity Commission, 2009g, p. 7).

A number of submissions to the Productivity Commission's current review have described the Australian regulatory environment for the not-for-profit sector as contradictory and burdensome (Productivity Commission, 2009f). Relevant legislation includes the *Corporations Act 2001* (Cwlth) at the Commonwealth level and the *Associations Incorporations Act 1984* (NSW) and *Corporations Act 1992* (NSW) and equivalents in the States and Territories (Australian Taxation Office, 2008).

There have been calls from the sector, including from the Fundraising Institute of Australia (a peak body), for the creation of a charities commission (Productivity Commission, 2009f). In the United Kingdom, the Charities Commission (2009) regulates the activities of registered charities and reports directly to the Parliament.

Background

On 16 June 1995, the Industry Commission (1995a) released *Charitable Organisations in Australia*, which focused on the size, scope, efficiency, effectiveness of the services provided and funding arrangements of 'community social welfare organisations', a sub-sector of the not-for-profit sector. Of its 31 recommendations, the Productivity Commission (2009g, p. 48) reported that four recommendations have been fully implemented in all jurisdictions.

In June 2001, an independent committee, comprising the Hon Ian Sheppard AO QC, Mr Robert Fitzgerald AM and Mr David Gonski, released its *Inquiry into the Definition of Charities and Related Organisations.* The committee made a number of recommendations on the definition of a charity and not-for-profit organisation and also recommended the strengthening of the public benefit test[56] (Sheppard, Fitzgerald, & Gonski, 2000).

On 18 June 2008, the Senate referred disclosure regimes for charities and not-for-profit organisations to its Standing Committee on Economics (Parliament of Australia, 2009c). The Committee released its *Inquiry into the Disclosure regimes for charities and not-for-profit organisations* in December 2008. The report makes a number of recommendations on the regulation of the not-for-profit sector and the Commonwealth Government's response to the report defers consideration of most recommendations until the release of the current Productivity Commission review (Parliament of Australia, 2009c).

On 17 March 2009, the then Assistant Treasurer and Minister for Competition Policy and Consumer Affairs, the Hon Chris Bowen MP (2009b, p. 1), announced that the Productivity Commission would conduct a review of the contribution of the not-for-profit sector, focusing on:

- the extent to which the sector's contributions are measured and considering alternatives or improvements in such measurements

[56] The authors describe the common law public benefit test at the time of writing in June 2001 'to be of public benefit a purpose must: be aimed at achieving a universal or common good; have practical utility; and be directed to the benefit of the general community or a "sufficient section of the community"' (Sheppard, Fitzgerald, & Gonski, 2000, p. 14).

- identifying unnecessary regulatory burdens or impediments in the sector
- considering options for improving government funded services by community organisations
- the impact of the changing nature of relationships between community organisations, governments and business in recent times
- the extent to which tax deductibility influences decisions to donate
- the extent to which tax exemptions for the commercial operations of not-for-profit organisations affect their competitive neutrality in the market and the overall pool of philanthropic funds (Bowen, 2009b, p. 2).

The Productivity Commission (2009f) released an issues paper on 7 April 2009 and was due to report on its findings by the end of 2009.

Progress on reform

There have been a number of inquiries into the not-for-profit sector over the past decade including an independent committee, a Commonwealth Parliamentary inquiry and two Productivity Commission reviews. These have highlighted broadly similar issues in the sector and there are signs that the progress of reform will gain momentum as the Productivity Commission (2009f) proceeds with its review of the contribution of the not-for-profit sector and the Commonwealth Government moves to establish a national compact with the 'third sector' (Department of Families, Housing, Community Services and Indigenous Affairs [Cwlth], 2009).

36.3 Competition issues associated with planning and zoning

Proposed reform

Reform plan

This reform arises out of two reports released in 2008 which made recommendations with respect to planning and zoning policies.

The Productivity Commission's (2008c) inquiry report, titled *The Market for Retail Tenancy Leases in Australia*, made eight recommendations. These recommendations are that State and Territory Governments should:

- act to improve transparency and accessibility in the retail tenancy market
- increase the transparency of the market by facilitating the lodgement by market participants of a standard one page lease summary at a publicly accessible site
- seek to improve the consistency and administration of lease information across jurisdictions, and in conjunction with the Commonwealth, in order to lower compliance and administrative costs
- detail significant differences in the provisions for unconscionable conduct that apply to retail tenancies, in conjunction with the Commonwealth, and align the provisions where practicable

- facilitate, in conjunction with the Commonwealth, the introduction by landlords and tenant organisations in the industry of a voluntary national code of conduct for shopping centre leases that is enforceable by the Australian Competition and Consumer Commission
- remove those key restrictions in retail tenancy legislation that provide no improvement in operational efficiency, compared with the broader market for commercial tenancies
- seek to establish nationally consistent model laws for retail tenancies, where practicable over the medium term and as prescriptive elements of retail tenancy laws are removed
- examine the potential to relax those controls that limit competition and restrict retail space and its utilisation, while recognising the merits of planning and zoning controls in preserving public amenity (2008c, pp. 252–259).

The Commonwealth Government (2008) issued a response to the Productivity Commission's recommendations on 27 August 2008, and gave in-principle support to recommendations for:

- the harmonisation of State and Territory retail tenancy legislation, including, as part of that process, improvements to information flow, transparency and disclosure
- options for a code of conduct that would be appropriate for the retail tenancy market.

On the latter recommendation, the Commonwealth Government stated that it sees merit in a code of conduct as an alternative to prescriptive legislation if it can improve the operation and efficiency of the market. However, the Commonwealth also cautioned that a code should not be an additional layer of regulation and should only be pursued if the current legislative arrangements are to be reformed (Commonwealth Government, 2008, p. 2).

The Commonwealth Government (2008, p. 2) response stated, however, that it does not support the 'recommendation that state and territory governments remove restrictions that provide no improvement in operational efficiency, compared with the broader market for commercial tenancies.'

The response also noted that it considered the issues raised by the Productivity Commission should be addressed by COAG, in the context of its work in regulatory and competition reform (Commonwealth Government, 2008, p. 3).

The Australian Competition and Consumer Commission's (2008a) *Report of the ACCC Inquiry into the competitiveness of retail prices for standard groceries* made the following recommendation relevant to this reform stream:

> The ACCC recommends that all appropriate levels of government consider ways in which zoning and planning laws, and decisions in respect of individual planning applications where additional retail space for the purpose of operating a supermarket is contemplated, should have specific regard to the likely impact of the proposal on competition between supermarkets in the area. Particular regard should be had to whether the proposal will facilitate the entry of a supermarket operator not currently trading in the area (Australian Competition and Consumer Commission, 2008a, p. xix).

Background

Planning and zoning regulation, with respect to retail tenancy leases, has been the subject of reform proposals and legislative reform since the 1980's (Productivity Commission, 2008c, p. xvii). In its inquiry report, *The Market for Retail Tenancy Leases in Australia*, the Productivity Commission (2008c, p. xvii) identifies that the reform efforts have been designed to 'redress a suite of problems experienced by small tenants widely believed to be due to imbalances in bargaining power between small retail tenants and large landlords'.

Each State and Territory has retail tenancy laws that differ from the laws which regulate all other commercial leases, except for Tasmania which has a code of practice (Productivity Commission, 2008c, p. xviii). These laws cover matters such as the definition of 'retail tenancy', conditions of the lease, security of tenure, information provisions, unconscionable conduct, and dispute resolution (Productivity Commission, 2008c, p. 46). All jurisdictions also have their own laws and regulations which cover the planning and zoning of retail space (Productivity Commission, 2008c, p. 63).

In May 1997, the House of Representatives Standing Committee on Industry, Science and Technology (1997) released a report titled *Finding a Balance: Towards Fair Trading in Australia*. The committee was asked to investigate business conduct issues arising out of commercial dealings between firms and the economic and social implications of these conduct issues (1997, p. 2). The committee's report included 30 recommendations in respect of retail tenancy, franchising, misuse of market power by larger competitors and small business issues. Twelve of these recommendations directly related to commercial retail tenancy regulation, including a recommendation for the adoption of uniform retail tenancy legislation across Australia (House of Representatives Standing Committee on Industry, Science and Technology, 1997, p. 1).

In 2007, the Commonwealth Government requested the Productivity Commission undertake an inquiry into the market for retail tenancy leases in Australia to address the following key questions:

- Is there evidence of significant failings in the retail tenancy market that reduce economic efficiency?
- Is there evidence that regulations to date have been effective in addressing perceived problems (including 'fairness') and improving efficiency?
- Are there new or different approaches that could generate net economic and social benefits (Productivity Commission, 2008c, p. xvii)?

The Productivity Commission finalised its report on 31 March 2008, and publicly released it on 27 August 2008. The commission (2008c, p. xxv) concluded that, overall, the market for retail tenancy leases in Australia is working reasonably well as 'hard bargaining and varying business fortunes should not be confused with market failure'. However, the commission also concluded that there was room to improve the regulatory framework and made a number of recommendations which are set out above.

On 22 January 2008, the then Commonwealth Assistant Treasurer and Minister for Competition Policy and Consumer Affairs, the Hon Chris Bowen MP, requested that the Australian Competition and Consumer Commission hold a public inquiry into the competitiveness of retail

prices for standard groceries, in accordance with Part VIIA of the *Trade Practices Act 1974* (Cwlth) (Australian Competition and Consumer Commission, 2008a). The matters covered by the inquiry included:

- the current structure and nature of competition in the grocery industry at the supply, wholesale and retail levels including mergers and acquisitions by the national retailers
- the competitive position of small and independent retailers
- the pricing practices of the national grocery retailers and the representation of grocery prices to consumers
- factors influencing the pricing of inputs along the supply chain for standard grocery items and any impediments to efficient pricing of inputs along the supply chain
- the effectiveness of the Horticulture Code of Conduct, and whether the inclusion of other major buyers such as retailers would improve the effectiveness of the code (Australian Competition and Consumer Commission, 2008a).

Following a consultation process, the Australian Competition and Consumer Commission (2008b) released its findings in July 2008 in *The Report of the ACCC Inquiry into the competitiveness of retail prices for standard groceries*. The council made a number of recommendations, including the recommendation relating to planning and zoning regulation, which is set out above.

Progress on reform

On 18 September 2009, the Commonwealth Minister for Competition Policy and Consumer Affairs, the Hon Craig Emerson MP, released a policy paper entitled *Introducing more competition and empowering consumers in grocery retailing* (Emerson, 2009). The paper states that reform of planning and zoning laws has been referred to the BRCWG, which has received reports from the States and Territories on their laws. The BRCWG was due to submit recommendations to COAG later this year 'aimed at ensuring planning laws do not unjustifiably impede competition in grocery retailing' (2009, pp. 3–4). The paper also states that '[w]hile the Government is keen to advance the reform process with all states and territories, it will work individually with a state or territory that is committed to early reform' (2009, pp. 3–4).

The *Introducing more competition and empowering consumers in grocery retailing* paper also announces that the Australian Competition and Consumer Commission has reached agreement with the major shopping retailers to remove 80 per cent of their restrictive lease arrangements with shopping centres, with the remaining 20 per cent to be removed over the next five years (2009, p. 3).

PART F: CONCLUSIONS

Chapter 37: Conclusions and recommendations

Deregulation priorities

The COAG Reform Council's assessment of the progress of governments against the 27 deregulation priorities is presented in Part B of this report.

Of these 27, five reform streams are identified where milestones have not been met and/or where there is a significant risk that future milestones or the ultimate objective will not be achieved on time (rated red).

The report identifies a further five reform areas where there is some slippage and/or some risk to future milestones (rated amber). There are also instances where reform streams are assessed as at some risk even though the 2008–09 milestones were met or there were no 2008–09 milestones.

Of these various cases, it the council's view that there are seven matters that require COAG's greatest attention. This is based to some extent on the progress assessment but more weight has been given to the council's assessment of the current level of risk to the ultimate objective of each reform stream.

Box 37.1: Recommendation 1—deregulation priorities

Recommendation 1

The COAG Reform Council recommends that COAG **note** the COAG Reform Council's assessment findings on the deregulation priorities and **consider** any necessary steps to improve performance, particularly in the following seven reforms areas:

- deregulation priority 2—environmental assessment
- deregulation priority 14—development assessment
- deregulation priority 15—construction code
- deregulation priority 16—chemicals and plastics
- deregulation priority 20—food
- deregulation priority 24—maritime safety
- deregulation priority 26—directors' liability.

Competition reforms

The COAG Reform Council's assessment of the progress of governments against the eight competition reforms is presented in Part C of this report. Four of these reform streams are identified where milestones have not been met and where there is a significant risk that future milestones or the ultimate objective will not be achieved on time.

The COAG Reform Council has broader concerns about key competition reforms in energy, infrastructure and transport.

In the case of energy, Chapter 29 presents a partial and confusing picture of the status of energy reform as a result of needing to report against two specific National Partnership milestones as well as ten previously unmet National Reform Agenda items. It is the council's assessment that the milestone framework provides only a partial picture of the status of national energy reform in Australia. The council recommends that COAG should consider revising the implementation plan so that a clearer picture of what remains to be achieved in energy reform is presented.

In the areas of infrastructure and transport, the council's assessment in Part C of this report demonstrates that there is both a lack of specificity in the outputs and milestones as well as a poor record of performance to date.

Competition reforms streams 4 and 5 deal with commitments made under the *Competition and Infrastructure Reform Agreement*. The council finds itself reporting for the third year in a row that the Commonwealth has not amended the National Access Regime. There has been variable progress on the implementation of port regulation reforms, limited progress toward the certification of State and Territory access regimes, and a report on the application of competitive neutrality principles to government businesses was overdue.

Competition reform streams 7 and 8 dealing with the National Transport Policy and the Road Reform Plan respectively required only that milestones be developed by early 2009. In both cases these unambitious requirements were not achieved, even by 30 September 2009.

It is the council's view that there has been a loss of momentum in these key competition reform areas and recommends that COAG should find ways to reinvigorate competition reforms in the infrastructure and transport areas.

More generally in the areas of energy, transport and infrastructure, the council suggests that there may be value in disaggregating the next edition of the implementation plan into some more specific component elements to allow for a more comprehensive assessment of performance to be presented.

Box 37.2: Recommendation 2—competition reforms

Recommendation 2

The COAG Reform Council recommends that COAG:

- **note** the COAG Reform Council's assessment findings on the competition reforms and **consider** any necessary steps to improve performance, particularly in the following four reforms areas:
  - competition reform 3—energy
  - competition reform 4—national access regime
  - competition reform 5—infrastructure
  - competition reform 7—transport policy
- **clarify** its agenda in the area of energy reform with a view to establishing a more coherent set of outputs and milestones in the implementation plan for this reform stream (set in the context of national energy reform achieved to date)
- **reassess** its agenda in the areas of infrastructure and transport, with a view to reinvigorating the competition reform agenda and establishing a more coherent set of outputs and milestones in the implementation plan
- **consider** disaggregating the energy, infrastructure and transport streams into component elements in the next edition of the implementation plan so that a more comprehensive assessment of performance can be presented next year.

Regulation making and review

The COAG Reform Council's assessment of the progress of governments against the stream of reform dealing with better regulation making and review processes is presented in Part D of this report.

The milestones set to date for this reform are relatively unambitious. The single milestone set for 2008–09 for this reform was for jurisdictions to implement the specific action commitments set out in Appendix C of the *COAG Regulatory Reform Plan* by June 2009. Most of the action items and completion dates set out in Appendix C of the *COAG Regulatory Reform Plan* were expressed as actions already implemented by governments, and a few foreshadowed actions that were imminent when the plan was made in April 2007. Unsurprisingly therefore, the assessment is that most action items have been completed.

The commitments made in the *COAG Regulatory Reform Plan* reflect differential starting points and the National Partnership does not currently set milestones to bring jurisdictions up to a more equivalent level in terms of regulation making and review processes. Chapter 35 suggests that COAG may wish to consider the specification of new milestones and deadlines in the next edition of the implementation plan.

Box 37.3: Recommendation 3—regulation making and review

Recommendation 3

The COAG Reform Council recommends that COAG **note** the COAG Reform Council's assessment findings on regulation making and review processes and **consider** whether the next edition of the implementation plan should include the specification of new milestones and deadlines, particularly for those jurisdictions that have not yet fully put in place all of the mechanisms specified in the *Regulatory Reform Plan*.

Chapter 38: Performance reporting framework

Jurisdictions have committed to 'working together to improve performance reporting for the sake of enhanced public accountability' (COAG, 2009l, p. 6). The COAG Reform Council has an important responsibility to 'advise on where changes might be made to the performance reporting framework' (COAG, 2009l, p. C5).

This chapter focuses on the adequacy of the performance reporting framework for the *National Partnership Agreement to Deliver a Seamless National Economy*.

In this first report, the council has reported performance as best as possible within the confines of the current performance reporting framework. There is room for improvement.

This chapter considers the performance reporting framework in two parts:

- the adequacy of the implementation plan
- the efficacy of processes supporting the council's performance reporting role.

Implementation Plan

The chapters in Parts B, C and D of this report that deal with the 36 streams of reform have highlighted various instances where the brief description of the output or the lack of specificity in the milestones hampers the performance reporting task.

Outputs

As explained in Chapter 1, the National Partnership agreement and the implementation plan do not provide a detailed explanation of the intended reform under each stream. In Part 1 of the implementation plan, which deals with the 27 deregulation priorities, a short heading and one (often brief) sentence is used to describe the output sought from the reform. In the case of Parts 2 and 3 of the implementation plan, which deal with competition reforms and regulatory reform, only a brief heading or statement is provided.

In some cases, the milestones provide some further insight into the intended reform or at least the specific legislative or regulatory mechanisms that will be used to roll out the intended reform, and when these mechanisms will be implemented. However, in many cases, the particular reforms to be completed are not specified.

The second section in each reform stream chapter outlines the council's understanding of the intended reform and the history of the development of the proposed reform. This has been done for the benefit of interested readers and to provide a clearer basis against which the council has then assessed the performance of governments under the National Partnership.

It would be advantageous to both governments and interested stakeholders if the implementation plan were to include a fuller description of the intended reform. This would also provide a more robust and transparent basis for the ongoing performance assessment and reporting role of the council.

This could be achieved by the insertion of a short summary of the specific reforms to be made and/or by explicit referencing of the relevant parts of intergovernmental agreements, reports or other documents that provide a description of the agreed reform.

The council acknowledges that, in some cases, the details of the intended reform are not yet settled: where, for example, an intergovernmental agreement is still being negotiated or governments are yet to formulate policy responses to Productivity Commission inquiries. It is expected that the results of further work in such instances will lead to more detailed specification of outputs and milestones in the next edition of the implementation plan.

Milestones

Parts B, C and D of this report have highlighted a range of deficiencies in the manner in which milestones have been specified. Cases include:

- milestones that are actually statements of fact about an action that has already occurred (for example, see deregulation priorities 18, 25 and 26)
- internally inconsistent deadlines (for example, deregulation priorities 14 and 26)
- missing or inappropriate jurisdictional accountability (for example, deregulation priorities 1, 4 and 5, and competition reform 3)
- instances where there are no future milestones for relevant jurisdictions (for example, deregulation priority 21)
- cases where the intended reform is more fully developed and there is scope for greater specificity in the milestones and deadlines (for example, deregulation priorities 2 and 14, and competition reforms 4, 7 and 8).

In certain instances, the council has dealt with outstanding milestones from the previous National Reform Agenda and it is the council's assessment that some of these milestones remain unmet. In most such cases, the original deadlines are well past but new deadlines have not yet been set. To aid transparency and simplify the performance reporting task, it is suggested that relevant remaining commitments should be reflected in updated milestones in the next edition of the implementation plan.

There is one instance where milestones are specified in a manner that appears incompatible with the COAG Reform Council's role to report to COAG on the progress of governments under the National Partnership. Deregulation priority 16, dealing with regulation of chemicals and plastics, includes milestones in 2009–10, 2010–11 and 2011–12 for the 'BRCWG to report to COAG on progress in implementing reforms.' While it remains appropriate for the working group to report to COAG, such milestones are not needed as part of this reporting framework and it would seem unnecessary for the COAG Reform Council to be required to report to COAG on whether the BRCWG has reported to COAG.

It would be advantageous to both governments and interested stakeholders if the implementation plan could be reviewed to ensure a greater degree of rigour in the specification of milestones and deadlines to address the deficiencies identified above.

Clause 11 of the National Partnership requires that the implementation plan be reviewed annually and provides scope for the Commonwealth, with the agreement of the States and Territories, to update the plan as progress is reviewed (COAG, 2009o, p. 4). The implementation plan has already been reviewed once: an updated plan was approved by COAG on 2 July 2009 (COAG, 2009p). It would therefore be appropriate for the implementation plan to be reviewed and updated before the end of the next reporting period: by 30 June 2010. This mechanism would provide an appropriate process through which governments could implement the council's proposals.

Box 38.1: Recommendation 4—improvements to implementation plan

Recommendation 4

The COAG Reform Council recommends that COAG **ask** the Business Regulation and Competition Working Group to bring forward an updated implementation plan before 30 June 2010 which:

- includes a fuller description of the intended reforms (by way of the insertion of a short summary of the specific reforms to be made and/or by explicit referencing of the relevant parts of intergovernmental agreements, reports or other documents that provide a description of the agreed reform)
- is more rigorous in the specification of milestones and deadlines to eliminate the following deficiencies identified throughout this report:
  - milestones that are actually statements of fact about an action that has already occurred
  - internally inconsistent deadlines
  - missing or inappropriate jurisdictional accountability
  - instances where there are no future milestones for relevant jurisdictions
  - cases where the intended reform is more fully developed and there is scope for greater specificity in the milestones and deadlines
- includes updated milestones to capture relevant remaining commitments from the National Reform Agenda.

Performance reporting processes

The performance reporting processes prescribed by COAG, and the methodology adopted by the COAG Reform Council following consultation with jurisdictions, are described in section 1.4 and Appendix A.

The performance reporting process generally worked well for the production of this first report to COAG.

Reporting and consultation timeframes

One aspect that could be refined is the reporting and consultation timeframes. As explained in section 1.4, the council adopted the three month timeframe for reporting to COAG on National Agreements as a guide and proposed that the council would report to COAG on this National Partnership by 31 December each year.

The deadline of 31 December means that the actual time available to the council to prepare the consultation draft report—after receipt of jurisdictional progress reports on 30 September—is approximately five weeks.[57]

The council will develop recommendations, in consultation with jurisdictions, on the reporting and consultation timeframes for this and other National Partnerships and National Agreements, as part of its annual report to COAG in June 2010. The council is of the view, for example, that the three months provided to jurisdictions to provide progress reports could be reduced so that the council has more time to prepare its consultation draft report.

[57] This year for example, the draft report was circulated to governments on 4 November 2009. The council's secretariat had in effect only three weeks (by 21 October) to prepare the draft report before circulating it one week ahead of the meeting at which the council first considered the draft (28 October).

Appendix A: Methodological matters

Section 1.4 discusses the COAG Reform Council's reporting methodology. This appendix describes some further, more administrative and machinery aspects of the council's methodology.

Reporting template

The National Partnership requires jurisdictions to provide progress reports directly to the COAG Reform Council each September (COAG, 2009n, p. 7).

To facilitate this, the COAG Reform Council has developed a standard reporting template in consultation with the jurisdictions. The role of the template is to make the reporting task easier for governments, to regularise the way in which progress reports are presented to the council, and to solicit information that will assist the council to undertake a robust and comprehensive assessment.

The template will be provided to jurisdictions at the end of each reporting period. It will be based on the current version of the implementation plan.[58] This year, the template was provided to governments following the COAG meeting on 2 July 2009 (at which an amended implementation plan was agreed).

Progress reports were received from all jurisdictions on or before 30 September 2009, with the exceptions of:

- Western Australia, which was received on 7 October 2009[59]
- Northern Territory, which was received on 10 October 2009.[60]

Reporting on unfinished National Reform Agenda business

The COAG Reform Council's initial role was to report to COAG annually on the performance of governments in delivering seven streams of business regulation and competition reform under the then National Reform Agenda. The council's 2008 and 2009 reports, and COAG's response to the 2009 report, can be found on the council's website at www.coag.gov.au/crc/reports.cfm.

These previous seven streams of reform are now part of the 36 streams of reform included within the *National Partnership Agreement to Deliver a Seamless National Economy*.

COAG has agreed that the council should continue to report to COAG on previously unmet milestones from the National Reform Agenda through its reports to COAG on the National Partnership (COAG Reform Council, 2009b, p. 65).

Such unmet milestones are associated with three of the 27 deregulation priorities—trade measurement, rail safety and national construction code—and the COAG Reform Council's

[58] If there are any instances where the implementation plan is amended between the end of the reporting period (30 June) and the progress reporting deadline (30 September), the COAG Reform Council will furnish an updated template for use by jurisdictions.
[59] Western Australian officials provided an advance draft report to the COAG Reform Council secretariat on 30 September 2009.
[60] Northern Territory officials provided an advance draft report to the COAG Reform Council secretariat on 6 October 2009.

progress assessment on these matters is presented in Chapters 8, 9 and 15. Because these unfinished National Reform Agenda milestones are not included within the implementation plan, the council's assessment of these milestones is not relevant to Commonwealth decisions to be made in relation to reward payments pursuant to clause 32 of the National Partnership. The other instances of unmet National Reform Agenda milestones relate to some of the eight competition reform streams, which are not the subject of reward payments.

Further streams of reform

At its meeting held on 5 February 2009, COAG (2009s, p. 10) recognised, further to its *National Partnership Agreement to Deliver a Seamless National Economy*, scope for microeconomic reform in four areas: city planning, planning reforms for infrastructure, regulation of export related infrastructure, and reform of legal profession regulation.

On 2 July 2009, COAG (2009f, p. 8) agreed that the COAG Reform Council will report to COAG on progress in the areas of reform of legal profession regulation, reform of regulation of the not-for-profit sector, and competition issues associated with planning and zoning policies and processes.[61]

Because COAG only reached agreement on these three further streams of reform on 2 July 2009, and because implementation milestones are not yet specified, the COAG Reform Council will provide its first report on these matters in its second report on the National Partnership due to COAG in December 2010. Part E of this report provides a preliminary overview of these three additional reform streams.

Changes to implementation plan

The National Partnership includes mechanisms to alter the implementation plan (see section 1.2).

The council will only take into account any changes made to the implementation plan and communicated to the council up to 30 September each year.[62]

The council will record changes made to the implementation plan in its reports to COAG. The first section in each chapter dealing with the 36 streams of reform reproduces the output and milestones from the current version of the implementation plan. Where relevant, this section also describes changes that have been made to the output or milestones relative to the original implementation plan.

Reporting period and interpreting deadlines

This report focuses on achievements up to 30 June 2009 against the milestones specified in the implementation plan for 2008–09. However, in some instances—where information is available from jurisdictional progress reports or from other sources—the council has included in its progress report instances where activity relevant to 2008–09 milestones has occurred in the first quarter of 2009–10. The council has not had regard to any activity that might have occurred after 30 September 2009.

[61] COAG further agreed that the key milestones for these three further streams of reform will be set out in a document in a format similar to the implementation plan for the National Partnership. This document is not yet available to the COAG Reform Council as at 30 September 2009.

[62] This deadline coincides with the deadline for jurisdictional progress reports and occurs three months after the end of the reporting period: this should be sufficient time within which the jurisdictions can reach agreement through a COAG process to make changes to the implementation plan under clauses 11 or 34(c).

The council has framed its assessment in terms of both the specific milestone deadlines and in terms of achievement within the reporting period. Some milestone deadlines are specified in terms such as the 'early', 'mid', 'late' or 'end' part of a calendar year. The council has adopted the following interpretations:

- 'early' means by 31 March
- 'late' or 'end' means by 31 December
- 'mid' is taken to mean 30 June or 30 September, depending on whether the deadline relates to the end or start of the relevant financial year reporting period
- instances where no milestone-specific deadline is specified means 30 June (there are some instances, however, where such an interpretation is inappropriate as it would otherwise cause an inability for subsequent milestones to be met: any such instances are highlighted in the report).

Appendix B: Progress report and assessment—regulation making and review

B.1 Progress report and progress assessment

As noted in Chapter 35, the only milestone for the regulation making and review reform stream is for jurisdictions to implement the specific action commitments outlined in Appendix C to COAG's April 2007 *Regulatory Reform Plan*. The progress report and progress assessment for these reforms is presented below in a separate table for each jurisdiction—Tables B.1 to B.9.

The progress report and assessment tables:

- reproduce the specific action items and completion dates set out in Appendix C of the *COAG Regulatory Reform Plan*—in the first two columns
- provide a progress report on each action in the third column
- present the council's progress assessment for each action in the final column.

The final column is shaded in colour consistent with the progress assessment schema used in this report. The assessment is based on the updated obligation under the National Partnership for all action items to be completed by 30 June 2009 (rather than this being based on the original completion dates stipulated in Appendix C of COAG's April 2007 *Regulatory Reform Plan*). The tables are presented as follows:

- Commonwealth: Table B.1 on page 341
- New South Wales: Table B.2 on page 345
- Victoria: Table B.3 on page 353
- Queensland: Table B.4 on page 357
- Western Australia: Table B.5 on page 359
- South Australia: Table B.6 on page 363
- Tasmania: Table B.7 on page 365
- Australian Capital Territory: Table B.8 on page 367
- Northern Territory: Table B.9 on page 369.

Table B.1: Regulation making and review—progress report and assessment for the Commonwealth

Action	Completion Date	Progress Report	Progress Assessment
Gate-keeping The Australian Government has endorsed the following six principles of good regulatory process: • establishing a case for action; • examining alternatives to regulation; • adopting the option that generates the greatest net benefit to the community; • providing effective guidance to relevant regulators and affected stakeholders; • reviewing regularly to ensure the regulation remains relevant and effective; and • consulting effectively with stakeholders at all stages of the regulatory cycle. These principles have been incorporated into strengthened systems and processes to guard against the introduction of unnecessary regulation in a new *Best Practice Regulation Handbook*, and related guidance material including a companion *User's Guide* and *Quickstart to Regulatory Impact Analysis.* • This documentation is available on the web-site of the Office of Best Practice Regulation (OBPR) http://www.obpr.gov.au/ The 'gate-keeping' role played by the Cabinet Secretariat has also been enhanced to ensure that all Cabinet papers note, as a minimum, any compliance cost to business. • As part of this role, the Cabinet Secretariat would not circulate final submissions and memoranda without an adequate RIS or compliance cost assessment. In exceptional circumstances, regulatory decisions may be made without adequate regulatory impact analysis. In those circumstances, the resulting regulation be the subject of a post-implementation review within 1 to 2 years of the implementation of the proposal.	The new arrangements apply from 20 November 2006. There is a 6-month transitional period to allow departments and agencies to provide feedback and become familiar with the new arrangements. The transitional arrangements will also allow flexibility in the application of the new process. The arrangements are to take full effect by mid 2007.	This action item is a statement of fact, as follows: • the Commonwealth Government endorsed the six principles of good regulatory practice identified by the Taskforce on Reducing Regulatory Burdens on Business on 17 March 2008 (Tanner, 2008, p. 1889) • the *Best Practice Regulation Handbook* was released in August 2007 and the related guidance material—the *Quickstart to Regulatory Impact Analysis: Step-by-Step Guide* and the *Users Guide to the Best Practice Regulation Handbook*—are available on the Office of Best Practice Regulation website (2007a; 2007b; 2007c) • the *Best Practice Regulation Handbook* sets out the Cabinet Secretariat role and the process for post-implementation review of regulations that are made without adequate regulatory impact analysis (2007a, pp. 34–38). The two year time threshold for undertaking post implementation reviews has not yet been reached (Commonwealth Government, 2009b, p. 76). The Commonwealth Government (2009b, p. 76) reported that arrangements are in place for post-implementation reviews.	Noting that it is a statement of fact, it is the COAG Reform Council's assessment that this action item was completed.

Action	Completion Date	Progress Report	Progress Assessment

Improving the Quality of Regulatory Impact Analysis
 	
To strengthen regulation assessment systems and processes, the Australian Government has adopted a three tiered system to assess all regulatory and quasi-regulatory proposals:
 	
• *All* proposals must undergo a preliminary assessment to establish whether they are likely to involve an impact on business and individuals or the economy.
  - The assessment of whether there are compliance costs for business is to be addressed through the use of the *Quickscan* function of the Business Cost Calculator (BCC), or equivalent method approved by the Office of Best Practice Regulation (OBPR).
  - Part of the regulatory impact assessment also includes an assessment of the impact of the proposed regulation on competition.
• If the preliminary assessment shows that a regulation does potentially involve *medium* business compliance costs, a full assessment of the compliance cost implications should be carried out and documented in a BCC, or equivalent, report.
• Regulations that have *significant impact* on business and individuals (whether in the form of compliance costs or other impacts) or that restrict competition, must be subjected to more detailed analysis, and ultimately documented in a Regulation Impact Statement (RIS). If the impacts include medium or significant business compliance costs, the BCC report forms part of the RIS
 	
These requirements apply to *all* government entities which review or make regulations that have an impact on business and individuals, including agencies or boards with administrative or statutory independence and relate to:
 	
• proposals with regulatory and quasi-regulatory obligations being brought to the Cabinet by
	The new arrangements apply from 20 November 2006.
	
	There is a 6-month transitional period to allow departments and agencies to provide feedback and become familiar with the new arrangements.
	
	The transitional arrangements will also allow flexibility in the application of the new process.
	
	The arrangements are to take full effect by mid 2007.
		This action item is a statement of fact, as follows:
		
		• the *Best Practice Regulation Handbook* sets out the three-tier process of assessment for regulatory proposals (2007a, pp. 15–23)
		
		• the *Best Practice Regulation Handbook* sets out this approach to regulation making—in particular, the first principle set out in the *Handbook* is to establish a case for action and the second principle is to examine alternatives to regulation (Office of Best Practice Regulation [Cwlth], 2007a)
		
		• information on the Cost Benefit Analysis unit is available on the Office of Best Practice Regulation website which includes a range of advisory and training materials for departments undertaking cost benefit analysis (Office of Best Practice Regulation [Cwlth], 2007a).
			Noting that it is a statement of fact, it is the COAG Reform Council's assessment that this action item was completed.

Action	Completion Date	Progress Report	Progress Assessment
ministers; • letters with regulatory and quasi-regulatory obligations being referred to the Prime Minister by ministers for approval; and • proposals (regulatory and quasi-regulatory) of ministers, boards, statutory authorities and regulators initiated by other means such as media releases or interviews. Implicit in the new framework is a commitment by ministers and their portfolios to carefully consider, at any early stage, the case for acting in response to a perceived problem, including addressing the fundamental question of whether regulatory action is required, or whether the policy objectives can be achieved by alternative, non-regulatory measures which would impose lower costs on business and the economy. In relation to improving cost-benefit analysis, the OBPR has established a new 'Cost/Benefit and Risk Analysis Unit' to provide technical advice to Departments/Agencies and will expand the range of training and guidance material provided in this area.			
<u>Reducing Red Tape in the Australian Public Service</u> The Australian Government has introduced a principles-based framework for the review of existing internal whole-of-government regulation and administrative requirements and for the ongoing scrutiny of proposals for new requirements, with a view to reducing red tape in the Australian Government. The details of the framework are set out in the Management Advisory Committee report entitled *Reducing Red Tape in the Australian Public Service* (http://www.aspc.gov.au/mac/redtape.pdf).	New framework introduced on 28 February 2007.	This action item is a statement of fact. The Management Advisory Committee's report is available on the Australian Public Service Commission website (Management Advisory Committee [Cwlth], 2007).	Noting that it is a statement of fact, it is the COAG Reform Council's assessment that this action item was completed.

Table B.2: Regulation making and review—progress report and assessment for New South Wales

Action	Completion Date	Progress Report	Progress Assessment
The NSW Government has strengthened the role of the Minister responsible for regulatory reform. The Minister will be responsible for implementing the Government's commitment to a best practice regulatory process, reducing red-tape, and reducing the regulatory burden. The Minister will be a champion for better regulation making in Cabinet; at the heart of Government decision making. The Minister has been tasked with ensuring that red-tape is minimised, and that an effective regulation making process has been followed in the development of all new regulatory proposals.	From November 2006	The Minister for Regulatory Reform position was created in April 2007 (New South Wales Government, 2009c).The role of the New South Wales Minister for Regulatory Reform is set out on the web site of the Better Regulation Office as being: 'the champion for better regulation making in the Cabinet, working right at the heart of government decision making. With responsibility for implementing the Government's commitment to cut red tape, the Minister: • certifies the adequacy of Better Regulation Statements required for all significant new and amending Bills and Regulations. • brings the assessment underlying that certification to the attention of the Cabinet or, in the case of Regulations or other Statutory Instruments, to the Premier • provides strategic policy advice on whether regulatory proposals being put to Cabinet demonstrate compliance with the better regulation principles • scrutinises all Regulations and other Statutory Instruments being put before the Executive Council and advises the Premier whether the regulation should proceed' (Better Regulation Office [NSW], 2009d).	It is the COAG Reform Council's assessment that this action was completed, although not in accordance with the original completion date.
The NSW Government has committed to ensuring all regulation is developed in a manner consistent with the	Principles committed to in February 2007	In April 2008 the New South Wales Government released its *Guide to Better*	It is the COAG Reform Council's assessment that this action item was

Action	Completion Date	Progress Report	Progress Assessment
following best practice principles: - the need for government action should be established; - the objective of action should be made clear; - the costs and benefits of a range of options should be considered, including non-regulatory options; - government action should be effective and proportional; - business and community consultation should inform regulatory decisions; - the simplification, repeal, reform, or consolidation of existing regulation should be considered; and - regulation should be periodically reviewed and, if necessary, reformed to ensure its continued efficiency and effectiveness.	Principles will be implemented through improved processes from June 2007	*Regulation* (Better Regulation Office [NSW], 2008b). The guide applies to all new and amending legislation from 1 June 2008. The guide sets out what new processes have been established. These are: • compliance with the better regulation principles must be demonstration for all new and amended regulation proposals (Bills, Regulations and Statutory Instruments) • a Better Regulation Statement is required for significant new and amending bills and regulations and must be certified by the Minister for Regulatory Reform • there is a greater focus on the need to understand the impacts of proposed regulation which can be achieved by quantitative and qualitative analysis, as well as consultation with stakeholders • the compliance costs for business must be minimised for new and amended regulation and compliance costs must be justified and efforts to reduce them shown in Better Regulation Statements accompanying proposals • planning for implementation, compliance, enforcement and monitoring must be done as part of regulatory development so it informs regulatory design and does not impose unnecessary compliance costs • earlier consultation is required to assist the development of regulatory proposals and to help governments thoroughly understand their impact • regular review is required so regulation	completed before 30 June 2009, although not in accordance with the original completion date. According to the *Regulatory Reform Plan*, the best practice principles were to be implemented through improved processes from June 2007; however, the NSW *Guide to Better Regulation* applies to all new or amending legislation from 1 June 2008.

Action	Completion Date	Progress Report	Progress Assessment
		remains relevant, continues to meet its policy objectives and does not impose unnecessary regulatory burdens as circumstances change (Better Regulation Office [NSW], 2008b, p. 5). The Better Regulation Office is to report on progress in cutting red tape in an annual update. The annual update of October 2008, covering the 18 months up to 30 June 2008, is available on the NSW Government website (Better Regulation Office [NSW], 2008a). Future reports will cover each financial year. In addition, New South Wales Government agency Chief Executive Officers will be required to report to the Better Regulation Office twice a year on what red tape cuts they have achieved over the previous six months and what cuts they intend to achieve in the following six months (Better Regulation Office [NSW], 2009a).	

Action	Completion Date	Progress Report	Progress Assessment
The NSW Government has established the Better Regulation Office. The Better Regulation Office will be an advocate for, and source of assistance for, best practice regulation making across government. In particular the Office will: - provide ongoing advice and practical tools to agencies to assist in meeting the requirements of good regulatory process, including guidance on alternative regulatory forms, risk analysis and cost-benefit analysis; - provide a central source of information on best practice regulation; - conduct targeted reviews into identified areas where reduction of regulatory burden would have benefits across the State's economy or multiple industries within the State's economy; - provide an annual report on compliance with the NSW Government's regulatory process requirements; - review and advise the Minister on the implementation of good regulatory processes across Government; and - provide technical and analytical support to the Minister.	The Office was established administratively in January 2007 and will be fully operational by June 2007.	This action item is a statement of fact. The Better Regulation Office was established with the listed roles in July 2007 (New South Wales Government, 2009c). The Better Regulation Office has completed four targeted reviews and four more reviews are currently underway (New South Wales Government, 2009c). The Better Regulation Office provides an update on progress on red tape reduction and advises on regulatory proposals, including in 2008–09, advising in relation to regulatory proposals in 121 cabinet minutes and 186 executive council minutes (New South Wales Government, 2009c), Further Information about the NSW Better Regulation Office is available on its website (Better Regulation Office [NSW], 2009b).	Noting that it is a statement of fact, it is the COAG Reform Council's assessment that this action item was completed.
The NSW Government will reform the broader processes around regulatory impact assessment and regulation making, and enhance the effectiveness of the requirements for post-implementation review. The NSW Government is developing a new best practice guide. The guide will set out the elements of a best practice regulatory impact assessment process, including the need for a clear understanding of the problem, identification and assessment of options on the basis of analysis of relative costs and benefits, effective business and community consultation, and detailed planning for implementation, monitoring and review. The NSW Government will require that a formal	From early 2007 The guide is to be developed in the first half of 2007, and is expected to be available for use by agencies from June 2007	As discussed above, the New South Wales Government released its *Guide to Better Regulation* in April 2008 (Better Regulation Office [NSW], 2008b). The *Guide to Better Regulation* requires a 'Better Regulation Statement' to be prepared for all significant proposals. The guide defines 'significant proposals' and sets out the process for preparing 'Better Regulation Statements' (Better Regulation Office [NSW], 2008b, p. 24). As noted above, one of the Better Regulation Office's roles will be to assess the adequacy of regulation impact	It is the COAG Reform Council's assessment that this action item was completed before 30 June 2009, although not in accordance with the original completion date. According to the *Regulatory Reform Plan*, the best practice was to be available for use by agencies by June 2007. However, the New South Wales *Guide to Better Regulation* was released in April 2008 with effect from 1 June 2008.

Action	Completion Date	Progress Report	Progress Assessment
'decision making' Regulatory Impact Statement (RIS), reporting on the regulation making process, be prepared for significant proposals. A 'decision making' RIS will be required to accompany proposals for new and amending Bills and Regulations which would - have a significant impact on individuals, the community, or any sector of the community; - have a significant impact on business, including by imposing significant compliance costs; - impose a material restriction on competition; or - impose a significant cost to Government. The Better Regulation Office will assess the adequacy of the RIS before proposals are considered by decision makers, and the Minister will 'certify' the adequacy of RIS.RIS will be made publicly available as appropriate.	The new 'decision making' RIS is to be developed in the first half of 2007, and its use will be phased in from June 2007	statements accompanying new and amended regulations. The adequacy of regulation impact statements is to be certified by the Minister for Regulatory Reform.	
IPART has made specific proposals for reforms in 58 specific areas based on the issues raised by business and the community during its review. The NSW Government will provide a considered and detailed response to each of IPART's specific reform proposals shortly.	From December 2006	The New South Wales Government issued the *Final Government Response to IPART's Investigation into the Burden of Regulation and Improving Regulatory Efficiency*: *Recommendations 1–16* on 13 February 2007 (2007a). Recommendations 1 to 16 relate to regulation making and review processes and are covered by many of the specific commitments made by New South Wales in the *Regulatory Reform Plan*. The New South Wales Government supported, or supported in-principle, all the recommendations other than recommendation 5. Recommendation 5 was that the minimum consultation period for regulatory impact statements be extended from 21 to 42 days. Instead, the NSW Government extended the minimum consultation period to 28 days. In August 2007, the New South Wales Government issued the *Final Government Response to IPART's Investigation into the*	It is the COAG Reform Council's assessment that this action item was completed on time.

Action	Completion Date	Progress Report	Progress Assessment
		Burden of Regulation and Improving Regulatory Efficiency: Recommendations 17–74 (2007b). These recommendations make a series of specific reform proposals to different areas of regulation. Recommendations 17, 18, 20, 24, 28–31, 33, 35, 44, 60, 61 and 64 are covered—or superseded—by ongoing reforms under the *National Partnership Agreement to Deliver a Seamless National Economy.* Of the remaining 44 recommendations, the New South Wales Government supported, or supported in-principle, all recommendation other than: • recommendation 36:to support efforts to achieve greater national consistency in workers' compensation, on which no clear support or rejection of the recommendation is given • part of recommendation 65:to convene an inter-agency working group of senior officers to explore options to improve information sharing, on which the response provides no commitment • part of recommendation 67:to do a post-implementation review of the *Workplace Surveillance Act 2005* (NSW) within two years of its commencement, on which the response refers to the standard five year review of the Act. The Minister for Regulatory Reform will monitor and report on a six-monthly basis on the implementation of the response to all 74 recommendations (New South Wales Government, 2007b, p. 2). The New South Wales Government (2009c) reported that 49 of the 74 IPART recommendations have been implemented and the remaining 25 are	

Action	Completion Date	Progress Report	Progress Assessment
		'on track' to be implemented.	
The new guide to Best Practice Regulation will require that regulatory proposals include processes for post implementation monitoring and review of legislation and regulation. An automatic review clause will continue to be included in principal Legislation. The Government will review and revise the existing staged repeal arrangements for Regulations.	From June 2007	The *Guide to Better Regulation* released in April 2008 includes requirements for post implementation monitoring and review of legislation (Better Regulation Office [NSW], 2008b, pp. 18, 20) The *Guide to Better Regulation* sets out the review and revision of existing staged repeal arrangements as principle 6 of its best practice principles (Better Regulation Office [NSW], 2008b, p. 11). The New South Wales Government (2009c) reported that a detailed review of the staged repeal arrangements will occur in 2010, at the same time as a broader review of the NSW Government's regulatory process requirements.	It is the COAG Reform Council's assessment that this ongoing action item is being met.

Table B.3: Regulation making and review—progress report and assessment for Victoria

Action	Completion Date	Progress Report	Progress Assessment
Gatekeeping In February 2005, the Victorian Government released the *Victorian Guide to Regulation*, which establishes a consistent framework across the whole of government for the development of regulation in Victoria. The *Guide* contains sections on the rationale for and types of government regulation, and on the characteristics of best practice regulatory systems. It also details the relevant process in place for the appropriate scrutiny of regulatory proposals in Victoria: • for primary legislative proposals with potentially significant effects on business or competition, a ***business impact assessment*** (BIA) must be prepared and submitted to Cabinet at the decision-making stage; • for proposed statutory rules (subordinate legislation or "regulations") that impose an "appreciable burden" on the community), a ***regulatory impact statement*** (RIS) must be prepared and released for public consultation before the statutory rule is made. The *Guide* contains detailed guidance about how to prepare BIAs and RISs. The methodologies underpinning the BIA and RIS processes are broadly the same. In summary, the nature of the problem to be addressed and the objectives of the proposed regulation need to be identified, and a range of viable options to achieve the objectives need to be assessed through cost-benefit-analysis to identify the options with the greatest net benefit to the community. The adequacy of the BIAs and RISs are independently assessed by the Victorian Competition and Efficiency Commission.	Arrangements have been in place since February 2005	This action item is a statement of fact. A revised version of the *Victorian Guide to Regulation* was released in April 2007 and is discussed below.	Noting that it is a statement of fact, it is the COAG Reform Council's assessment that this action item was completed.

Action	Completion Date	Progress Report	Progress Assessment
An updated version of the *Victorian Guide to Regulation* is currently being prepared, which will contain improved guidance material in a number of areas, along with details of new processes, including the measurement of changes to the administrative burdens (see below).	The updated *Guide* is expected to be released late April/early May 2007.	This action item is a statement of fact. The second edition of the *Victorian Guide to Regulation* was released in April 2007 (Department of Treasury and Finance [Vic], 2007). The updated version of the guide includes: • a methodology for measuring material changes in the administrative burden • information on the Charter of Human Rights and Responsibilities • new consultation and reporting requirements where local government is expected to administer or enforce state legislation • new guidance material on assessing the regulatory impact on small business • identification of areas where guidance material needs to be 'clarified or augmented' (Department of Treasury and Finance [Vic], 2007, p. 10).	Noting that it is a statement of fact, it is the COAG Reform Council's assessment that this action item was completed.
<u>Reducing the Regulatory Burden</u> Offsetting simplifications required for any proposals imposing new or additional regulatory burdens. Standard Costing Model (SCM) assessment of administrative burdens must be included in RIS cost/benefit analysis of regulatory burdens on business. Specific assessment of application of SCM added to Victorian Competition and Efficiency Commission (VCEC) independent scrutiny of RISs. The administrative burdens in other regulatory instruments (e.g. enforceable codes issued by Ministers) will be assessed by VCEC in the same manner as is done under the RIS process for disallowable statutory rules.	In sequence: From 1 July 2006 From 1 January 2007 From 1 January 2007 From 1 January 2007	This action item is a statement of fact. The Victorian Government announced its in-principle objective of offsetting simplifications for any new or additional regulatory burdens in its 2006–07 budget as part of its 'Reducing the Regulatory Burden' initiative (Department of Treasury and Finance [Vic], 2007, p. 4.34). The *Victorian Guide to Regulation* states that the in-principle objective is for the administrative burden to be offset 'by a simultaneous reduction in the administrative burden of an existing regulation in the same portfolio.' The guide outlines circumstances where it may not be possible for the offset to be included in the same set of regulations and	Noting that it is a statement of fact, it is the COAG Reform Council's assessment that this action item was completed.

Action	Completion Date	Progress Report	Progress Assessment
		sets out that in those cases previous or future offsets may be used (Department of Treasury and Finance [Vic], 2007, p. 4.34). The current version of the *Victorian Guide to Regulation* provides that the Standard Costing Model must be used as the measurement of all material changes in the administrative burden. However, the guide states that this measurement may take place within the regulatory impact statement or business impact assessments or it may also occur outside this process. This latter option may occur either where the information available at the regulatory impact stage is insufficient to allow measurement or for regulatory instruments which are not subject to regulatory impact or business impact assessment process (Department of Treasury and Finance [Vic], 2007, p. 4.32). Similarly, the Victorian Competition and Efficiency Commission now assesses the application of the Standard Costing Model, but this is a separate assessment process from its assessment of regulatory impact statements (Victorian Competition & Efficiency Commission, 2009, p. 1; Victorian Competition & Efficency Commission, 2007a).The Victorian Guide to Regulation states that, for the purposes of its program of reducing the administrative burden on business, regulation is '… any legally enforceable obligation on business imposed by, or under the authority of, state legislation' (Department of Treasury and Finance [Vic], 2007, p. ii). The Victorian Government (2009b, pp. 67–68) reported on a series of further actions it will take to improve regulatory efficiency including better identification of objectives	

Action	Completion Date	Progress Report	Progress Assessment
		and regulatory options during policy development; post-implementation evaluation of regulation; broadening the role of the Victorian Competition and Efficiency Commission; streamlining the Business Impact Assessment and Regulatory Impact Assessment processes; and reviewing the Victorian Guide to Regulation.	

Table B.4: Regulation making and review—progress report and assessment for Queensland

Action	Completion Date	Progress Report	Progress Assessment
Establishing a Cabinet Committee to direct and drive the national and State regulatory reform agenda at a whole-of-Government level.	2007	The Queensland Treasurer, the Hon Andrew Fraser MP, has responsibility for leading and directing the national and State regulatory reform agenda in Queensland (Queensland Office for Regulatory Efficiency, n.d.). The Queensland Government (2009a) reported that the Treasurer assumed this responsibility in early 2008. Mr Fraser has been supported in this role by the Queensland Office for Regulatory Efficiency since 1 April 2008 (Fraser, 2008, pp. 3–266). On 23 September 2009, the Queensland Government advised in its report to the COAG Reform Council that, in this role, the Treasurer is performing the functions proposed for the Cabinet Committee in the *Regulatory Reform Plan* (Queensland Government, 2009a, p. 53).	It is the COAG Reform Council's assessment that an alternative course of action has been completed for this item. The alternative course—to have a lead minister on regulatory reform issues rather than a cabinet committee—is comparable in effect to the action specified in the *Regulatory Reform Plan* and also to actions taken by other jurisdictions. This arrangement took effect from 1 April 2008—later than the deadline set in the *Regulatory Reform Plan*.

Action	Completion Date	Progress Report	Progress Assessment
Enhancing current gate keeping arrangements and impact assessment processes.	Late 2007	The Queensland Office for Regulatory Efficiency (2009) released the *Regulatory Impact Statement Procedures and Requirements* in June 2009, which incorporated a new regulation impact statement assessment form. The procedures and requirements are explicitly aimed at improving regulatory impact assessment processes (Queensland Office for Regulatory Efficiency, 2009, p. 4). The Queensland Office for Regulatory Efficiency will introduce streamlined processes for improving the quality of legislation and regulation, providing better measures for understanding the impact of regulations on business and the community. It is expected that the new processes will be in place in early 2010 (Queensland Government, 2009a, p. 53).	It is the COAG Reform Council's assessment that this action item was completed before 30 June 2009, although not in accordance with the original completion date.
Implementing strategies for improving consultation arrangements with respect to legislation development and review.	Late 2007	The Queensland Government (2009a, p. 53) has established the Get Involved: Have Your Say website for consultation on policy, legislative and regulatory proposals. The new *Regulatory Impact Statement Procedures and Requirements* released in June 2009 include guidance on consultation arrangements for regulatory proposals including a minimum period of 28 days for public comments (Queensland Office for Regulatory Efficiency, 2009, pp. 11–12).	It is the COAG Reform Council's assessment that this action item was completed before 30 June 2009, although not in accordance with the original completion date.
Developing more robust and user friendly guidelines to regulatory agencies on regulatory development, implementation and review.	Late 2007	As noted above, new regulation impact statement guidelines were introduced in June 2009 and further enhancements are expected to be introduced in early 2010.	It is the COAG Reform Council's assessment that this action item was completed before 30 June 2009, although not in accordance with the original completion date.

Table B.5: Regulation making and review—progress report and assessment for Western Australia

Action	Completion Date	Progress Report	Progress Assessment
Enhance gatekeeping arrangements by broadening the scope of gatekeeping reviews to ensure all Bills and new regulations are reviewed (in accordance with principles of Best Practice Regulation) where there potentially is a significant impact on either business or the community more broadly.	From 1 July 2007	The Western Australian Government established a Regulatory Gatekeeping Unit in 2008 (Department of Treasury and Finance [WA], 2009b). However, the new regulatory impact analysis process will begin on 1 December 2009 (Western Australian Government, 2009b, p. 54). The Western Australian Government (2009b, p. 54) reported that the regulatory impact analysis process will apply to all cabinet submissions and then, over an 18 month period, it will be rolled out to oversee all regulatory proposals. The Regulatory Gatekeeping Unit is responsible for administering a new best practice process of regulatory impact assessment. A Preliminary Impact Assessment must be undertaken for all new and amending regulatory proposals. If the impacts of the proposal are found to be adverse and significant, a regulatory impact statement process is triggered (Department of Treasury and Finance [WA], 2009b).	It is the COAG Reform Council's assessment that this action item has only been partially completed
Improve transparency of gatekeeping reviews by making these reviews publicly available.	From 1 July 2007	The WA gatekeeping reviews are not currently publicly available (Western Australian Government, 2009b, p. 54). The Western Australian Government reported that a database and website will be publicly available in the future.	It is the COAG Reform Council's assessment that this action item has not been completed.

Action	Completion Date	Progress Report	Progress Assessment
Enhance the quality of gatekeeping reviews by revising Western Australia's *Public Interest Guidelines For Legislation Review*, so that there is a common template for review of legislation and regulations.	From 1 July 2007	Western Australia's *Legislation Review Guidelines* released in April 1997 were replaced by the *Public Interest Guidelines for Legislation Review* in November 2001 (Department of Treasury and Finance [WA], 2001). The 2001 guidelines set out the process for undertaking a legislation review and make it mandatory for all reviews to explicitly take account of public interest objectives when assessing costs and benefits. The Western Australian Government (2009b, p. 54) reported that the Regulatory Gatekeeping Unit has been created and will soon publish the Regulatory Impact Assessment Guidelines for Western Australia, which will replace the Public Interest Guidelines for Legislation Review.	It is the COAG Reform Council's assessment that this action item has not been completed
Improve the quality of gatekeeping reviews by: • providing assistance to agencies to undertake regulatory reviews; • auditing agencies compliance with the standards of best-practice regulation review; and • reporting, in agencies annual reports, the level of compliance with best-practice regulation review.	From 1 July 2007	In 2008 the Western Australian government established the Regulatory Gatekeeping Unit. This unit is the primary contact for assisting government departments comply with best practice guidelines on regulatory impact assessments and monitors and reports on agencies compliance with the best practice guidelines (Department of Treasury and Finance [WA], 2009b). The Western Australian Government (2009b, p. 54) reported that the Regulatory Impact Assessment Guidelines for Western Australia, which have not yet been publicly released, will address the three issues identified as reforms to improve the quality of gatekeeping reviews.	It is the COAG Reform Council's assessment that this action item has been partially completed.

Action	Completion Date	Progress Report	Progress Assessment
Undertake regular targeted reviews of existing laws and subordinate laws in accordance with national hotspot priority areas or matters Western Australia considers are of economic significance.	From 1 January 2007	Western Australia has undertaken a number of reviews of existing legislation, including a review of ports and related infrastructure, grain marketing arrangements, developer charges for water services and competition in the water and waste water services sectors. (Office of Best Practice Regulation [Cwlth], 2008, p. 72). The Western Australian Government (2009b, p. 54) reported that its Red Tape Reduction Group is currently reviewing existing laws and subordinate laws that have been identified as potential areas of reform.	It is the COAG Reform Council's assessment that this ongoing action item is being met.

Table B.6: Regulation making and review—progress report and assessment for South Australia

Action	Completion Date	Progress Report	Progress Assessment
All submissions to Cabinet require an assessment of regulatory, business, regional, environmental, family and social impacts		This action item is a statement of fact—the requirements are included in the South Australian Department of the Premier and Cabinet's (2006, pp. 21–32) *Preparing Cabinet Submissions*, which was released in August 2006.	Noting that it is a statement of fact, it is the COAG Reform Council's assessment that this action item was completed.
Use of the Business Cost Calculator is mandated for assessing all regulatory proposals and any other proposals with an impact on business	From 10 August 2006	This action item is a statement of fact—the requirements are included in the South Australian Department of the Premier and Cabinet's (2006, pp. 28–29) *Preparing Cabinet Submissions*, which was released in August 2006. This requirement remains current (South Australia Competitiveness Council, 2009).	Noting that it is a statement of fact, it is the COAG Reform Council's assessment that this action item was completed.
Sign-off is required on the assessment of the business compliance costs associated with regulatory and other proposals	From 10 August 2006	This action item is a statement of fact—the requirements are included in the South Australian Department of the Premier and Cabinet's (2006, pp. 28–29) *Preparing Cabinet Submissions*, which was released in August 2006.	Noting that it is a statement of fact, it is the COAG Reform Council's assessment that this action item was completed.
Where the regulatory impact is significant, a Regulatory Impact Statement (RIS) must be attached to the submission		This action item is a statement of fact—the requirements are included in the South Australian Department of the Premier and Cabinet's (2006, p. 24) *Preparing Cabinet Submissions*, which was released in August 2006.	Noting that it is a statement of fact, it is the COAG Reform Council's assessment that this action item was completed.
Where there is a proposed restriction on competition the assessment must demonstrate that the objectives can only be achieved by restricting competition		This action item is a statement of fact—the requirements are included in the South Australian Department of the Premier and Cabinet's (2006, p. 24) *Preparing Cabinet Submissions*, which was released in August 2006.	Noting that it is a statement of fact, it is the COAG Reform Council's assessment that this action item was completed.

Action	Completion Date	Progress Report	Progress Assessment
Options for publishing RISs are currently being considered within the South Australian Government	From 1 July 2007	The South Australian Government (2009a, p. 46) reported that the publication of regulation impact statements is currently at the discretion of the responsible Minister.	Noting that it is a statement of fact, it is the the COAG Reform Council's assessment is that this ongoing milestone is being met.
A Minister Assisting the Premier in Cabinet Business has been appointed, with a role that includes improving the quality of regulatory proposals submitted to Cabinet.	From April 2006	This action item is a statement of fact. The South Australian ministry includes a Minister Assisting the Premier in Cabinet Business and Public Sector Management.	Noting that it is a statement of fact, it is the COAG Reform Council's assessment that this action item was completed.

Table B.7: Regulation making and review—progress report and assessment for Tasmania

Action	Completion Date	Progress Report	Progress Assessment
In Tasmania the Legislation Review Program (LRP) requires the review of all State legislation that restricts competition to ensure that only those restrictions that are fully justified in the public benefit are retained. The LRP also contains gatekeeper arrangements for new or amending legislation that restricts competition or has a significant impact on business.		This action item is a statement of fact. The requirements are set out in the Department of Treasury and Finance's (2006, pp. 4–5) *Legislation Review Program: Procedures and Guidelines Manual*, released in March 2006. The Legislation Review Program is administered by the Economic Reform Unit of Tasmania's Treasury Department (Tasmanian Government, 2009b, p. 54).	Noting that this action item is a statement of fact, it is the COAG Reform Council's assessment that this action item was completed.
All Cabinet submissions in Tasmania require a Legislative and Regulatory Impact Statement that must address whether the agency has complied with the Legislative Review Program.		This action item is a statement of fact. The requirements are set out in the Department of Treasury and Finance's (2006, p. 14) *Legislation Review Program: Procedures and Guidelines Manual*, released in March 2006.	Noting that this action item is a statement of fact, it is the COAG Reform Council's assessment that this action item was completed.
At this stage, Tasmania is assessing how the State's existing gatekeeping arrangements compare to the Commonwealth's arrangements administered by the Office of Best Practice Regulation. As part of this process, Tasmania is investigating the adoption of an appropriate business cost model, including how and when it will be incorporated into current regulation review arrangements and understanding the resource implications.		The Tasmanian Government (2009b, pp. 54–55) reported against this milestone that it has established a Business Tax and Regulation Reference Group to operate as a forum and consider proposals for reform. The terms of reference for the Business Tax and Regulation Reference Group are broad and generally cover regulatory reform matters and Tasmania's obligations under COAG agreements (Aird, 2008). However, this milestone is specifically about Tasmania assessing its gatekeeping arrangements against those of the Commonwealth's Office of Best Practice Regulation. The Tasmanian Government (2009b) reported that the Business Tax and Reference Group is not likely to consider the adoption of an appropriate business cost model until its first meeting in 2010.	It is the COAG Reform Council's assessment that this milestone has not been completed.

Table B.8: Regulation making and review—progress report and assessment for the Australian Capital Territory

Action	Completion Date	Progress Report	Progress Assessment
The ACT requires RISs for all new or amending policy that has a regulatory impact. Policy proposals are monitored by ACT Treasury for a regulatory impact through the Cabinet Submission process. In addition, under the Legislation Act 2001, RISs are required for subordinate legislation where the proposed subordinate law is likely to impose appreciable cost on the community, or a part of the community.	From mid 2007 – to enable the outcomes of the Regulatory Reform Implementation Plan to be incorporated into ACT reforms.	This action item is a statement of fact. The requirement for a regulation impact statement to accompany all new or amending regulatory proposals was already in place in 2003 under the *Best Practice Guide for Preparing Regulatory Impact Statements* (Department of Treasury [ACT], 2003, p. 12). The Regulation Policy Unit within the Department of Treasury is responsible for offering assistance to departments and agencies in the development of regulatory impact analysis and in assessing all cabinet submissions for compliance with the regulatory impact processes (Australian Capital Territory Government, 2009b, p. 52).	Noting that this action item is a statement of fact, it is the COAG Reform Council's assessment that this action item was completed.
The ACT will examine ways to reform the broader processes around regulatory impact assessment and regulation making and enhance the effectiveness of the requirements for post-implementation review. As part of these reforms, the Government will update the Regulation Impact Statement guidelines, enhance training measures for agencies, examine the Commonwealth's gatekeeping arrangements and draw on Commonwealth reforms as appropriate.		The *Best Practice Guide for Preparing Regulatory Impact Statements* (Department of Treasury [ACT], 2003) has not been revised since its release in December 2003. The Australian Capital Territory Government (2009b, p. 52) reported that the guidelines are in the process of being updated and are close to completion.	It is the COAG Reform Council's assessment that this action item was not completed by the end of the reporting period.

Table B.9: Regulation making and review—progress report and assessment for the Northern Territory

Action	Completion Date	Progress Report	Progress Assessment
The Northern Territory introduced a formal regulatory review framework in 2003, which is titled the Competition Impact Analysis (CIA) process. The CIA process is administered by an inter-agency committee comprised of Northern Territory Treasury and Departments of the Chief Minister, Justice and Business, Economic and Regional Development officials.	1 March 2007	This action item is a statement of fact. The Competition Impact Analysis process was introduced by the Northern Territory Government (2004, pp. 24–25) in August 2003.	Noting that this action item is a statement of fact, it is the COAG Reform Council's assessment that this action item was completed.
Under the Territory's regulatory review framework, agencies are required to demonstrate that all new and amending legislation that restricts competition and business conduct confers net benefits on the community prior to Cabinet consideration. The CIA committee assists agencies in conducting regulatory reviews and provide authorisation that proposed legislation meets public benefit criteria.		This action item is a statement of fact. This requirement was introduced as part of the Competition Impact Analysis process introduced in August 2003 (Northern Territory Government, 2004, pp. 24–25).	Noting that this action item is a statement of fact, it is the COAG Reform Council's assessment that this action item was completed.
Under the Regulatory reform Plan, the CIA framework is to be revised to incorporate National Reform Agenda best practice regulation principles, including: • new guidelines and procedures aimed at encouraging agencies to more closely integrate best practice regulation principles as part of policy and legislative development processes; • increased focus on cost benefit analysis, including use of the Commonwealth Government *Business Cost Calculator* to assist in determining the impact of regulation on business compliance costs; and • strengthened public consultation and post implementation monitoring requirements.		The review of the competition impact analysis was completed in June 2007 and findings were approved by the Northern Territory Government in September 2007. These findings led to the new Regulation Making Framework which commenced on 1 January 2008 (Office of Best Practice Regulation [Cwlth], 2008, pp. 73–74). The Regulation Making Framework involves a two-staged process of preliminary assessment and, if required, a regulation impact statement. The Northern Territory Government (2009, pp. 58–59) reported that the use of the Commonwealth's Business Cost Calculator is encouraged.	It is the COAG Reform Council's assessment that this action item was completed, although not on time.

Bibliography

Access Economics 2006 *The Costs and Benefits of Personal Property Securities (PPS) Reform*, 6 July. Retrieved 14 September 2009, from Personal Property Securities Reform Web Site: http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(CFD7369FCAE9B8F32F341DBE097801FF)~PPS+-+Access+Economics+Report+-+Final+-+Personal+Property+Securities.pdf/$file/PPS+-+Access+Economics+Report+-+Final+-+Personal+Property+Securities.pdf

Aird MLC, Michael 2008 *Business Tax and Regulation Reference Group Meet*, Media Release, Treasurer [Tasmania], 11 November. Retrieved 12 October 2009, from Department of Premier and Cabinet Web Site: http://www.media.tas.gov.au/print.php?id=25235

Allen Consulting Group 2008 *Evaluation of COAG initiatives for full and effective Mutual Recognition*, July. Retrieved 16 September 2009, from LicenceRecognition Web Site: http://www.licencerecognition.gov.au/LR%20pdf%20files/Evaluation%20Report%20%20-%20Final%20July%202008.pdf

Applied Economics 2006 *The annual cost of foodborne illness in Australia, prepared for the Department of Health and Ageing [Cwlth]*, March. Retrieved 18 September 2009, from OzFoodNet Web Site: http://www.ozfoodnet.org.au/internet/ozfoodnet/publishing.nsf/Content/7F6D9DE21AB6F102CA2571650027861F/$File/cost-foodborne.pdf

Attorney-General's Department [Cwlth] 1980 *Offshore constitutional settlement: A milestone in co-operative federalism.* Retrieved 10 August 2009, from Attorney-General's Department Web Site: http://www.ag.gov.au/www/agd/agd.nsf/Page/InternationalLaw_TheOffshoreConstitutionalSettlement

——2006 *Review of Personal Property Securities: Information Sheet*, November. Retrieved 14 September 2009, from Personal Property Securities Reform Web Site: http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(4341200FE1255EFC59DB7A1770C1D0A5)~PPSreforminformationsheetNovember2006.PDF.pdf/$file/PPSreforminformationsheetNovember2006.PDF.pdf

——2008 *PPS Reform Newsletter - November 2008.* Retrieved 14 September 2009, from Personal Property Securities Web Site: http://www.ag.gov.au/www/agd/agd.nsf/Page/Consultations_reforms_and_reviewspersonal_property_securities_reform

——2009a *ComLaw Act Compilations - Attachment - National Trade Measurement Regulations 2009*, 9 September. Retrieved 14 October 2009, from ComLaw: Commonwealth of Australia Law - incorporating the Federal Register of Legislative Instruments: http://www.comlaw.gov.au/comlaw/Legislation/LegislativeInstrument1.nsf/0/71BC253F21548A01CA25762D0008CFD7/$file/0901970A090824EV.pdf

——2009b *ComLaw Act Compilations - Attachment - Public Service Act 1999*, 13 July. Retrieved 10 September 2009, from ComLaw: Commonwealth of Australia Law - incorporating the Federal Register of Legislative Instruments: http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/framelodgmentattachments/50FDF864C8486C35CA2575F400233FED

——2009c *ComLaw Act Compilations - Attachment - Safe Work Australia Act 2008, No. 84 of 2009.* Retrieved 10 October 2009, from ComLaw: Commonwealth of Australia Law, incorporating the Federal Register of Legislative Instruments: http://www.comlaw.gov.au/ComLaw/Legislation/Act1.nsf/asmade/bynumber/41C6080A2ABBBC51CA25763A007C3556?OpenDocument

——2009d *ComLaw Act Compilations - Australian Energy Market Amendment (AEMO and Other Measures) Act 2009, No. 17 of 2009.* Retrieved 20 October 2009, from ComLaw: Commonwealth of Australia Law Web Site, incorporating the Federal Register of Legislative Instruments: http://www.comlaw.gov.au/ComLaw/Legislation/Act1.nsf/0/1A009C0AD8FC9D96CA2575E7000FCE99/$file/0172009.pdf

——2009e *Council of Australian Governments (COAG) National Legal Profession Reform.* Retrieved 9 October 2009, from Attorney-General's Web Site: http://www.ag.gov.au/www/agd/agd.nsf/Page/Consultationsreformsandreviews_CouncilofAustralianGovernments(COAG)NationalLegalProfessionReform

——2009f *FAQs on Personal Property Securities Reform*, 10 September. Retrieved 14 September 2009, from Personal Property Securities Reform Web Site: http://www.ag.gov.au/www/agd/agd.nsf/Page/Consultationsreformsandreviews_personalpropertysecuritiesreform_FAQsonPersonalPropertySecuritiesReform

——2009g *PPS Reform Newsletter*, September. Retrieved 14 September 2009, from Personal Property Securities Reform Web Site: http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(4CA02151F94FFB778ADAEC2E6EA8653D)~PPS+Newsletter+Aug+09.pdf/$file/PPS+Newsletter+Aug+09.pdf

Australasian Parliamentary Counsel's Committee 2008 *Protocol on Drafting National Uniform Legislation: Third Edition*, July. Retrieved 29 September 2009, from Australasian Parliamentary Counsel's Committee Web Site: http://www.pcc.gov.au/uniform/uniformdraftingprotocol4-print-complete.pdf

——2009 *About the Australasian Parliamentary Counsel's Committee.* Retrieved 15 September 2009, from Australasian Parliamentary Counsel's Committee Web Site: http://www.pcc.gov.au/about.htm

Australian Building Codes Board 2007 *Australian Building Codes Board - A Profile of the Australian Building Codes Board - 2007*. Retrieved 17 September 2009, from Australian Building Codes Board Web Site: http://www.abcb.gov.au/index.cfm?objectid=CEE0D2BB-19B9-DD2D-C9374A3A37F7ED71

——2008a *Australian Building Codes Board - Annual Business Plan 2007–08.* Retrieved 21 September 2009, from Australian Building Codes Board Web Site: http://www.abcb.gov.au/index.cfm?objectid=EF0FF564-06B1-9271-9610B8C766648A8A

——2008b *Australian Building Codes Board - Impacts on Housing Affordability - Local Government Regulatory Measures that Exceed the Requirements of the Building Code of Australia: Results of Preliminary Analysis - 2008.* Retrieved 21 September 2009, from Australian Building Codes Board Web Site: http://www.abcb.gov.au/index.cfm?objectid=1789CC1B-B32B-7244-8B7D94B35B9CDBF3

——2009a *About the Building Code of Australia.* Retrieved 17 September 2009, from Australian Building Codes Board Web Site: http://www.abcb.gov.au/go/thebca/aboutbca

——2009b *Australian Building Codes Board.* Retrieved 17 September 2009, from Australian Building Codes Board Web Site: http://www.abcb.gov.au/go/home

——2009c *Variation Reduction Strategy*, 26 February. Retrieved 1 October 2009, from Australian Building Codes Board Web Site: http://www.abcb.gov.au/go/whatweredoing/workprogram/projectsuz/variation

Australian Bureau of Statistics 2009 *Measures of Australia's Progress: Summary Indicators, 2009*, 30 April. Retrieved 18 December 2009, from Australian Bureau of Statistics Web Site: http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/1383.0.55.001Main+Features132009

Australian Capital Territory Government 2008 *Payroll Tax Amendment Bill 2007*, 17 March. Retrieved 21 September 2009, from A.C.T. Legislation Register Web Site: http://www.legislation.act.gov.au/b/db_31580/20071206-35520/pdf/db_31580.pdf

——2009a *ACT's Comments in Relation to the COAG Reform Council's National Partnership Agreement to Deliver a Seamless National Economy: Report on Performance 2008–09*, 2 December.

——2009b *Australian Capital Territory Government 2008–09 Progress Report to the COAG Reform Council: National Partnership Agreement to Deliver a Seamless National Economy*, 30 September.

Australian Competition and Consumer Commission 2008a *Notice of inquiry into grocery prices – 30 January 2008*, 30 January. Retrieved 16 October 2009, from Australian Competition and Consumer Commission Web Site: http://www.accc.gov.au/content/item.phtml?itemId=809231&nodeId=70a177076a6e491e588918710b50c2a6&fn=Notice%20of%20inquiry%E2%80%9430%20Jan%2008.pdf

——2008b *The Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries*, July. Retrieved 16 October 2009, from Australian Competition and Consumer Commission Web Site: http://www.accc.gov.au/content/item.phtml?itemId=838251&nodeId=ada0fb93c16b68d5a78ac665943b688d&fn=Grocery%20inquiry%20report,%20overview.pdf

Australian Energy Market Commission 2008a *Review of the Effectiveness of Competition in the Electricity and Gas Markets - 29 February 2008*, 29 February. Retrieved 12 October 2009, from Australian Energy Market Commission: http://www.aemc.gov.au/Market-Reviews/Completed/Review-of-the-Effectiveness-of-Competition-in-the-Electricity-and-Gas-Retail-Markets-Victoria.html

——2008b *Review of the Effectiveness of Competition in Electricity and Gas Markets in South Australia - First Final Report*, 19 September. Retrieved 4 September 2009, from Australian Energy Market Commission Web Site: http://www.aemc.gov.au/Media/docs/First%20Final%20Report%20-%20Main%20Body-add1d023-cb5b-43d8-a011-208e9d359b28-0.pdf

——2008c *Review of the Effectiveness of Competition in Electricity and Gas Retail Markets in South Australia - Second Final Report*, 18 December. Retrieved 4 September 2009, from Australian Energy Market Commission Web Site: http://www.aemc.gov.au/Media/docs/Second%20Final%20Report-a427d665-c559-459b-9775-b091afa3c6bb-0.PDF

——2009a *Framework and Issues Paper: Review into the role of hedging contracts in the existing NEM prudential framework*, 26 March. Retrieved 18 September 2009, from Australian Energy Market Commission Web Site: http://www.aemc.gov.au/Media/docs/Framework%20and%20Issues%20Paper-0ce73f1b-165f-4ee1-820d-c7fc82078897-0.pdf

——2009b *Market Reviews: Completed: Review of the Effectiveness of Competition in the Electricity and Gas Retail Markets - Victoria.* Retrieved 13 October 2009, from Australian Energy Market Commission Web Site: http://www.aemc.gov.au/Market-Reviews/Completed/Review-of-the-Effectiveness-of-Competition-in-the-Electricity-and-Gas-Retail-Markets-Victoria.html

——2009c *Review into the role of hedging contracts in the existing NEM prudential framework*, 16 April 2009. Retrieved 18 September 2009, from Australian Energy Market Commission Web Site: http://www.aemc.gov.au/Media/docs/AEMC%20Summary%20of%20Discussion-2afb02b7-e09f-4b26-8953-a67e31bd9b0b-0.pdf

Australian Energy Market Operator 2009 *About AEMO.* Retrieved 1 October 2009, from Australian Energy Market Operator Web Site: http://www.aemo.com.au/aboutaemo.html

Australian Health Workforce Ministerial Council 2008 *Ministerial Statement: National registration and accreditation scheme for health professions: Health Ministers outline consultation arrangements*, 4 September. Retrieved 28 August 2009, from National Health Workforce Taskforce Web Site: http://www.nhwt.gov.au/documents/National%20Registration%20and%20Accreditation/Ministerial%20Statement.pdf

——2009a *Guide to the exposure draft of the Health Practitioner Regulation National Law 2009*, 12 June. Retrieved 9 September 2009, from National Health Workforce Taskforce Web Site: http://www.nhwt.gov.au/documents/National%20Registration%20and%20Accreditation/Communiqué%20-%20Ministers%20release%20draft%20legislation%20for%20National%20Registration%20and%20Accreditation%20Scheme.pdf

——2009b *Health Practitioner Regulation National Law - exposure draft bill*, 12 June. Retrieved 9 September 2009, from National Health Workforce Taskforce Web Site: http://www.nhwt.gov.au/documents/National%20Registration%20and%20Accreditation/Exposure%20draft%20of%20Health%20Practitioner%20Regulation%20National%20Law%202009%20(Bill%20B).pdf

Australian Law Reform Commission 2002 *ALRC 95 Principled Regulation: Federal Civil and Administrative Penalties in Australia.* Retrieved 3 September 2009, from Australian Law Reform Commission Web Site: http://www.austlii.edu.au/au/other/alrc/publications/reports/95/

Australian Prudential Regulation Authority 2007 *APRA Insight, Issue 2 - A recent history of superannuation in Australia.* Retrieved 1 December 2009, from http://www.apra.gov.au/insight/upload/history-of-superannuation.pdf

Australian Safety and Compensation Council 2005 *National OHS Strategy 2002–2012.* Retrieved 17 August 2009, from Safe Work Australia Web Site: http://www.safeworkaustralia.gov.au/NR/rdonlyres/E8D707CF-9E69-4C61-A063-F04519170EF7/0/NationalOHSStrategy200212.pdf

Australian Securities and Investments Commission 2009a *How to register a company*, 19 June. Retrieved 26 August 2009, from Australian Securities and Investments Commission Web Site: http://www.asic.gov.au/asic/asic.nsf/byheadline/Starting+a+company+or+business?openDocument

——2009b *Margin Loans*, 6 February. Retrieved 15 September 2009, from fido: Australian Securities and Investments Commission - financial tips and safety checks Web Site: http://www.fido.gov.au/fido/fido.nsf/byHeadline/borrowing%20money%20to%20invest%20margin%20lending

Australian Taxation Office 2007 *Tax basics for non-profit organisations.* Retrieved 9 October 2009, from Australian Taxation Office Website: http://www.ato.gov.au/nonprofit/content.asp?doc=/content/33732.htm

——2008 *State and territory government requirements – Fundraising*, 30 September. Retrieved 15 October 2009, from Australian Taxation Office Website: http://www.ato.gov.au/nonprofit/content.asp?doc=/content/56555.htm

——2009 *ABN Essentials.* Retrieved 27 August 2009, from Australian Taxation Office Web Site: http://www.ato.gov.au/businesses/pathway.asp?pc=001/003/021&mfp=001&mnu=44670#001_003_021

Australian Transport Council 1997 *Australian Transport Council - Communiqué – 10 September 1997, Melbourne.* Retrieved 28 September 2009, from Australian Transport Council Web Site: http://www.atcouncil.gov.au/communiqué/atc4.aspx

——2005 *Joint Communiqué - 3 June 2005, Alice Springs*. Retrieved 28 September 2009, from Australian Transport Council Web Site: http://www.atcouncil.gov.au/communiqué/atc21.aspx

——2006 *Joint Communiqué - 2 June 2006, Sydney.* Retrieved 3 September 2009, from Australian Transport Council Web Site: http://www.atcouncil.gov.au/communiqué/atc23.aspx#1

——2008a *Joint Communiqué - 2 May 2008, Canberra.* Retrieved 27 August 2009, from Australian Transport Council Web Site: http://www.atcouncil.gov.au/communiqué/files/27thATC-Communiqué.pdf

——2008b *Joint Communiqué - 7 November 2008.* Retrieved 10 August 2009, from Australian Transport Council Web Site: http://www.atcouncil.gov.au/communiqué/files/ATCCommuniqué_1108.pdf

——2008c *Joint Communiqué - 29 February 2008, Canberra.* Retrieved 22 September 2009, from Australian Transport Council Web Site: http://www.ntc.gov.au/filemedia/News/26thATCMeetingJointCommuniqFeb08.pdf

——2009a *COAG Road Reform Plan Phase I Report: Australian Transport Council Report to the Council of Australian Governments*, May. Retrieved 16 September 2009, from Australian Transport Council Web Site: http://www.atcouncil.gov.au/documents/pubs/COAG_road_reform_plan.pdf

——2009b *Joint Communiqué - 22 May 2009.* Retrieved 22 September 2009, from Australian Transport Council Web Site: http://www.atcouncil.gov.au/communiqué/files/ATCCommuniqué_0509.pdf

Australian Transport Ministers 2008 *Australian Transport Ministers' Meeting - 25 July 2008 - Sydney - Record of Outcomes.* Retrieved 10 August 2009, from Australian Transport Council Web Site: http://www.atcouncil.gov.au/files/Transport_ministers_meeting_250708.pdf

Bartlett MP, David 2009 *Speech to Tasmanian SES*, Premier [Tas], 27 February. Retrieved 11 September 2009, from David Bartlett, Premier of Tasmania, Australia Web Site: http://www.premier.tas.gov.au/media_room/speeches/speech_to_tasmanian_ses

Better Regulation Office [NSW] 2008a *Annual Update: Removing Red Tape in NSW*, October. Retrieved 14 September 2009, from Department of Premier and Cabinet, Better Regulation Office Web Site: http://www.betterregulation.nsw.gov.au/reporting_on_progress/annual_update_removing_red_tape_in_nsw

——2008b *Guide to Better Regulation*, April. Retrieved 14 September 2009, from Department of Premier and Cabinet, Better Regulation Office Web Site: http://www.betterregulation.nsw.gov.au/__data/assets/pdf_file/0009/16848/01_Better_Regulation_eGuide_April_2008.pdf

——2009a *$500 million Red Tape Target.* Retrieved 14 September 2009, from Department of Premier and Cabinet, Better Regulation Office Web Site: http://www.betterregulation.nsw.gov.au/reporting_on_progress/$500_million_red_tape_target

——2009b *About Us*, 7 May. Retrieved 21 September 2009, from Department of Premier and Cabinet, Better Regulation Office Web Site: http://www.betterregulation.nsw.gov.au/about_us

——2009c *Better Regulation Office Report: Licensing of Selected Occupations*, April. Retrieved 22 September 2009, from Department of Premier and Cabinet, Better Regulation Office Web Site: http://www.betterregulation.nsw.gov.au/__data/assets/pdf_file/0003/45228/Final_Report_Licensing_of_Selected_Occupations1.pdf

——2009d *Role of the Minister*. Retrieved 14 September 2009, from Department of Premier and Cabinet, Better Regulation Office Web Site: http://www.betterregulation.nsw.gov.au/minister_for_regulatory_reform/role_of_the_minister

Better Regulation Office & Office of Industrial Relations [NSW] 2009 *Options Paper: Review of the Entertainment Industry Act 1989*, July. Retrieved 22 September 2009, from Department of Premier and Cabinet, Better Regulation Office Web Site: http://www.betterregulation.nsw.gov.au/__data/assets/pdf_file/0019/51913/Review_of_the_Entertainment_Industry_Act_-_Options_Paper_-_Final.pdf

Booz Allen & Hamilton 1999 *Independent Review of Rail Safety Arrangements in Australia: Report to the Standing Committee on Transport*, September. Retrieved 28 September 2009, from Australian Transport Council Web Site: http://www.atcouncil.gov.au/documents/pubs/finalrpt.pdf

Bowen MP, The Hon Chris 2009a *Joint Media Release with Minister for Home Affairs No. 021: Productivity Commission Inquiry into Australia's Anti-dumping and Countervailing System*, 23 March, Assistant Treasurer and Minister for Competition Policy and Consumer Affairs [Cwlth]. Retrieved 1 September 2009, from Treasury Portfolio Ministers Web Site: http://www.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2009/021.htm&pageID=003&min=ceb&Year=&DocType=

——2009b *Media Release No. 017 - Productivity Commission to Review the Contribution of the Not-For-Profit Sector*, 17 March, Minister for Competition Policy and Consumer Affairs [Cwlth]. Retrieved 7 October 2009, from Treasury Portfolio Ministers Web Site: http://www.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2009/017.htm&pageID=003&min=ceb&Year=&DocType=

——2009c *Media Release of 17/09/2009: Consumer Credit Reforms - Senate Amendments*, Minister for Financial Services, Superannuation and Corporate Law [Cwlth]. Retrieved 29 September 2009, from Treasury Portfolio Ministers Web Site: http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2009/017.htm&pageID=003&min=ceba&Year=&DocType

——2009d *Press Release No. 003: Corporations Legislation Amendment (Financial Services Modernisation) Bill 2009*, 25 June, Minister for Financial Services, Superannuation and Corporate Law [Cwlth]. Retrieved 15 September 2009, from Treasury Portfolio Ministers Web Site: http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2009/003.htm&pageID=003&min=ceba&Year=&DocType

——2009e *Press Release No. 036: Extension for Reporting of the Productivity Commission Reviews into Gambling and Parallel Importation of Books in Australia*, Assistant Treasurer and Minister for Competition Policy and Consumer Affairs [Cwlth]. Retrieved 16 September 2009, from Treasury Portfolio Ministers Web Site: http://www.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2009/036.htm&pageID=003&min=ceb&Year=&DocType=

——2009f *Reforms to Streamline the National Access Regime*, Assistant Treasurer, 7 April. Retrieved 2 September 2009, from Treasury Portfolio Ministers Web Site: http://assistant.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2009/025.htm&pageID=003&min=ceb&Year=&DocType=0

Brumby MLA, The Hon John & Costa MLC, The Hon Michael 2007 *NSW and Victorian Governments Cut Red Tape with Historic Pay-roll Tax Reform*, Treasurers [Vic & NSW], 26 February. Retrieved 31 August 2009, from Office of State Revenue Web Site: http://www.osr.nsw.gov.au/lib/doc/media/prt_harmonise_media_release.pdf

Building Ministers' Forum 2006 *An Agreement between the Governments of the Commonwealth of Australia, the States and the Territories to continue the existence and provide for the operation of the Australian Building Codes Board - 26 April 2006.* Retrieved 17 September 2009, from Australian Building Codes Board Web Site: http://www.abcb.gov.au/index.cfm?objectid=FCA0687E-04FA-DF85-B5D908D36A2EB6CD

Business Council of Australia 2008 *Towards A Seamless Economy - modernising the regulation of Australian business*, 17 March. Retrieved 7 December 2009, from Business Council of Australia web site: http://www.bca.com.au/Content/101371.aspx

——2009 *Groundwork for Growth: Building the infrastructure that Australia needs.* Retrieved 28 October 2009, from Business Council of Australia Web Site: http://www.bca.com.au/DisplayFile.aspx?FileID=576

Buswell MLA, The Hon Troy 2009a *Western Australia reserves position on OHS harmonisation*, Minister for Commerce [WA], 18 May. Retrieved 6 August 2009, from Government Media Office: Ministerial Media Statements Web Site: http://www.mediastatements.wa.gov.au/Pages/WACabinetMinistersSearch.aspx?ItemId=131893&minister=Buswell&admin=Barnett

——2009b *Western Australian Government to have final say on OHS mirror legislation*, Minister for Commerce [WA], 19 May. Retrieved 6 August 2009, from Government Media Office: Ministerial Media Statements Web Site: http://www.mediastatements.wa.gov.au/Pages/WACabinetMinistersSearch.aspx?ItemId=131902&minister=Buswell&admin=Barnett

Carr, Senator The Hon Kim 2008 *Speech: Built Environment Meets Parliament*, Minister for Innovation, Industry, Science and Research [Cwlth], 2 September. Retrieved 21 September 2009, from Ministers for Innovation, Industry, Science and Research Web Site: http://minister.innovation.gov.au/Carr/Pages/BUILTENVIRONMENTMEETSPARLIAMENT.aspx

Charities Commission [UK Government] 2009 *Home - about us*. Retrieved 13 October 2009, from Charities Commission Web Site: http://www.charity-commission.gov.uk/

COAG 1992a *Council of Australian Governments' Communiqué, 7 December 1992.* Retrieved 23 September 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/1992-12-07/index.cfm#environment

——1992b *Intergovernmental Agreement on the Environment*, 1 May. Retrieved 1 September 2009, from Department of the Environment, Water, Heritage and the Arts Web Site: http://www.environment.gov.au/esd/national/igae/index.html

——1992c *Mutual Recognition Agreement*, 11 May. Retrieved 16 September 2009, from COAG Web Site: http://www.coag.gov.au/mutual_recognition/docs/mra_text.pdf

——1994 *Council of Australian Governments' Meeting - 25 February 1994 - Hobart - Communiqué.* Retrieved 25 September 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/1994-02-25/index.cfm

——1995 *Agreement to Implement the National Competition Policy and Related Reforms*, 11 April. Retrieved 3 September 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/1995-04-11/docs/attachment_a.cfm

——1997 *Heads of agreement on Commonwealth and State roles and responsibilities for the Environment*, November. Retrieved 21 September 2009, from Department of the Environment, Water, Heritage and the Arts Web Site: http://www.environment.gov.au/epbc/publications/coag-agreement/index.html

——1999 *Intergovernmental Agreement on Reform of Commonwealth-State Financial Relations – 1 July 1999.* Retrieved 25 September 2009, from COAG Web Site: http://www.coag.gov.au/intergov_agreements/docs/reform_of_comm-state_financial_relations.pdf

——2000 *Council of Australian Governments' Meeting - Canberra - 3 November 2000 - Communiqué.* Retrieved 17 September 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/2000-11-03/docs/coag031100.pdf

——2001 *Council of Australian Governments' Meeting - Canberra - 8 June 2001 – Communiqué.* Retrieved 7 September 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/2001-06-08/docs/coag080601.pdf

——2002a *Council of Australian Governments - Corporations Act Agreement 2002.* Retrieved 25 September 2009, from COAG Web Site: http://www.coag.gov.au/intergov_agreements/docs/corporationsagreement.pdf

——2002b *Council of Australian Governments' Meeting - Canberra - 6 December 2002 Communiqué.* Retrieved 20 September 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/2002-12-06/docs/communiqué061202.pdf

——2004 *Australian Energy Market Agreement - 30 June 2004.* Retrieved 4 September 2009, from Department of Energy, Resources and Tourism Web Site: http://www.ret.gov.au/Documents/mce/_documents/IGA_FINAL_%2830JUNE2004%29200407131003232004111216284 9.pdf

——2005a *Corporations Agreement 2002 - As Amended - 16 November 2005.* Retrieved 25 September 2009, from The Treasury Web Site: http://www.treasury.gov.au/documents/495/PDF/Corporations_Agreement_2002_as_amended.pdf

——2005b *Council of Australian Governments' Meeting - Canberra - 3 June 2005 - Communiqué*. Retrieved 24 September 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/2005-06-03/docs/coag030605.pdf

——2006a *Competition and Infrastructure Reform Agreement - 10 February 2006.* Retrieved 2 September 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/2006-02-10/docs/attachments_a-h.pdf

——2006b *Council of Australian Governments' Meeting - 10 February 2006 - Attachment A - National Reform Agenda: Human Capital Stream.* Retrieved 10 September 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/2006-02-10/docs/attachments_a-h.pdf

——2006c *Council of Australian Governments' Meeting - 10 February 2006 - Attachment B: National Competition Policy Review.* Retrieved 1 September 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/2006-02-10/docs/attachment_b_ncp_review.pdf

——2006d *Council of Australian Governments' Meeting - 10 February 2006 - Communiqué.* Retrieved 13 August 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/2006-02-10/docs/coag100206.pdf

——2006e *Council of Australian Governments' Meeting - 14 July 2006 - Communiqué - Attachment E: Priority Regulatory Reform Areas.* Retrieved 25 September 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/2006-07-14/docs/attachment_e_reform_regulatory_burden.pdf

——2006f *Council of Australian Governments' Meeting - Canberra - 14 July 2006 - Communiqué*. Retrieved 10 September 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/2006-07-14/docs/coag140706.pdf

——2007a *COAG National Reform Agenda - COAG Regulatory Reform Plan April 2007*. Retrieved 1 September 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/2007-04-13/docs/coag_nra_regulatory_reform.pdf

——2007b *COAG National Reform Agenda - Competition Reform April 2007*, 13 April. Retrieved 7 September 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/2007-04-13/docs/coag_nra_competition_reforms.pdf

——2007c *Council of Australian Governments - Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies - October 2007.* Retrieved 11 September 2009, from COAG Web Site: http://www.coag.gov.au/ministerial_councils/docs/COAG_best_practice_guide_2007.pdf

——2007d *Council of Australian Governments - Competition Principles Agreement – 11 April 1995: As Amended to 13 April 2007.* Retrieved 21 September 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/2007-04-13/docs/competition_principles_agreement_amended_2007.pdf

——2007e *Council of Australian Governments' Meeting - Canberra - 13 April 2007 - Communiqué*. Retrieved 27 August 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/2007-04-13/docs/coag130407.pdf

——2008a *Agreement on Murray-Darling Basin Reform*, 3 July. Retrieved 4 September 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/2008-07-03/docs/Murray_Darling_IGA.pdf

——2008b *Agreement on Standard Business Reporting Arrangements for Payroll Tax*, 19 June. Retrieved 19 November 2009, from Ministerial Council on Federal Financial Relations Web Site: http://www.federalfinancialrelations.gov.au/content/national_partnership_agreements/Other/SBR_ST_ML_Agreement.pdf

——2008c *COAG response to the Productivity Commission's recommendations for Chemicals and Plastics Regulatory Reform from its report of July 2008*, November. Retrieved 15 September 2009, from http://www.coag.gov.au/coag_meeting_outcomes/2008-11-29/docs/Business_Regulation_and_Competition_Working_Group-Attachment_B.pdf

——2008d *Council of Australian Governments' Business Regulation and Competition Working Group (BRCWG): Commonwealth-State Implementation Plan and Forward Work Program*, 26 March. Retrieved 10 August 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/2008-03-26/docs/brcwg_implementation_plan.pdf

——2008e *Council of Australian Governments' Meeting - 29 November 2008 - Business Regulation and Competition Working Group.* Retrieved 13 September 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/2008-11-29/docs/Business_Regulation_and_Competition_Working_Group.pdf

——2008f *Council of Australian Governments' Meeting - 3 July 2008 - Business Regulation and Competition Working Group.* Retrieved 4 September 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/2008-07-03/docs/business_regulation_competition_working_group.pdf

——2008g *Council of Australian Governments' Meeting - 3 July 2008 - COAG Ministerial Taskforce on Chemicals and Plastics Regulatory Reform - 'Early Harvest' Reforms.* Retrieved 16 September 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/2008-07-03/docs/COAG_taskforce_regulatory_reform.pdf

——2008h *Council of Australian Governments' Meeting - Adelaide - 26 March 2008 - Communiqué.* Retrieved 4 September 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/2008-03-26/docs/communiqué20080326.pdf

——2008i *Council of Australian Governments Meeting - Canberra - 29 November 2008 - Communiqué.* Retrieved 15 September 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/2008-11-29/docs/communiqué_20081129.pdf

——2008j *Council of Australian Governments Meeting - Perth - 2 October 2008 - Communiqué.* Retrieved 27 August 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/2008-10-02/docs/communiqué20081002.pdf

——2008k *Council of Australian Governments' Meeting - Sydney - 3 July 2008 - Communiqué.* Retrieved 27 August 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/2008-07-03/docs/communiqué20080703.pdf

——2008l *Governance Structure for Chemicals and Plastics Regulation*, 29 November. Retrieved 15 September 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/2008-11-29/docs/Business_Regulation_and_Competition_Working_Group-Attachment_A.pdf

——2008m *Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions*, 26 March. Retrieved 9 September 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/2008-03-26/docs/iga_health_workforce.pdf

——2008n *Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety,* 3 July. Retrieved 13 September 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/2008-07-03/docs/OHS_IGA.pdf

——2008o *Personal Property Securities Law Agreement 2008,* 2 October. Retrieved 14 September 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/2008-10-02/docs/personal_property_securities_IGA.pdf

——2008p *Supplementary information to that contained in the Communqiue: Commonwealth-State Financial Relations - Reform of Specific Purpose Payments (SPPs),* 26 March. Retrieved 9 September 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/2008-03-26/docs/supplementary_information_communiqué.pdf

——2009a *Australian Energy Market Agreement - Notice of Amendment - 2 July 2009.* Retrieved 15 September 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/2009-07-02/docs/energy_market_agreement.pdf

——2009b *Business Online Services Heads of Agreement.* Retrieved 27 August 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/2009-07-02/docs/business_online_service.pdf

——2009c *Business Regulation and Competition Working Group - Status of early harvest reforms agreed at July 2008,* 29 November. Retrieved 26 September 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/2008-11-29/docs/Business_Regulation_and_Competition_Working_Group-Attachment_C.pdf

——2009d *COAG Reform Council Recommendations to COAG - Attachment to Council of Australian Governments Meeting - Hobart - 30 April 2009 - Communiqué.* Retrieved 3 September 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/2009-04-30/docs/CRC_response_recommendations.pdf

——2009e *Council of Australian Governments' meeting - 2 July 2009 - Business Regulation and Competition Working Group Report Card.* Retrieved 13 September 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/2009-07-02/docs/business_regulation.pdf

——2009f *Council of Australian Governments' Meeting - Darwin - 2 July 2009 - Communiqué.* Retrieved 4 September 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/2009-07-02/docs/20090702_communiqué.pdf

——2009g *Council of Australian Governments Meeting - Hobart - 30 April 2009 - Communiqué.* Retrieved 4 September 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/2009-04-30/docs/20090430_communiqué.pdf

——2009h *Implementation Plan for a National Construction Code: Report to Australian Government Department of Innovation, Industry, Science and Research,* March. Retrieved 6 October 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/2009-04-30/docs/NCC_Implementation_Plan.pdf

——2009i *Intergovernmental Agreement for a National Licensing System for Specified Occupations,* 30 April. Retrieved 13 August 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/2009-04-30/docs/National_Licensing_System_IGA.pdf

——2009j *Intergovernmental Agreement for Business Names Agreement*, 2 July. Retrieved 26 August 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/2009-07-02/docs/IGA_business_names.pdf

——2009k *Intergovernmental Agreement for the Australian Consumer Law*, 2 July. Retrieved 9 September 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/2009-07-02/docs/IGA_australian_consumer_law.pdf

——2009l *Intergovernmental Agreement on Federal Financial Relations.* Retrieved 4 September 2009, from COAG Web Site: http://www.coag.gov.au/intergov_agreements/federal_financial_relations/index.cfm

——2009m *Intergovernmental Agreement on Federal Financial Relations - Schedule C: Public Accountability and Performance Reporting*, 31 July. Retrieved 21 October 2009, from COAG Web Site: http://www.coag.gov.au/intergov_agreements/federal_financial_relations/docs/IGA_FFR_ScheduleC_Public_accountability_and_performance_reporting.pdf

——2009n *National Partnership Agreement to Deliver a Seamless National Economy*, 29 November. Retrieved 27 August 2009, from COAG Web Site: http://www.coag.gov.au/intergov_agreements/federal_financial_relations/docs/national_partnership/seamless_national_economy_np.pdf

——2009o *National Partnership Agreement to Deliver a Seamless National Economy: Implementation Plan*, 29 November. Retrieved 10 March 2009, from COAG Web Site (no longer available at this URL): http://www.coag.gov.au/intergov_agreements/federal_financial_relations/docs/national_partnership/seamless_national_economy_implementation_plan.pdf

——2009p *National Partnership Agreement to Deliver a Seamless National Economy: Implementation Plan, as revised by COAG on 2 July 2009.* Retrieved 27 August 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/2009-07-02/docs/implementation_plan_seamless_national_economy.pdf

——2009q *National Strategy on Energy Efficiency*, July. Retrieved 21 September 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/2009-07-02/docs/Energy_efficiency_measures_table.pdf

——2009r *Regulation Impact Statement for a National Construction Code - Consultation RIS*, 30 April. Retrieved 6 October 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/2009-04-30/docs/NCC_regulation_impact_statement.pdf

——2009s *Special Council of Australian Governments Meeting - Nation Building and Jobs Plan - Canberra - 5 February 2009 - Communiqué.* Retrieved 4 September 2009, from COAG Web Site: http://www.coag.gov.au/coag_meeting_outcomes/2009-02-05/docs/20090205_communiqué.pdf

COAG Energy Market Review 2002 *Towards a Truly National and Efficient Energy Market – 20 December 2002.* Retrieved 23 October 2009, from Department of Resources, Energy and Tourism Web Site: http://www.ret.gov.au/Documents/mce/_documents/FinalReport20December200220050602124631.pdf

COAG National Licensing Steering Committee 2009a *National Licensing System: Frequently Asked Questions, July 2009.* Retrieved 13 August 2009, from GovDex COAG National Licensing Web Site: https://www.govdex.gov.au/confluence/download/attachments/76416871/NLS+Frequently+Asked+Questions+July+2009.doc?version=1

——2009b *National Licensing Update - July 2009*. Retrieved 14 August 2009, from GovDex COAG National Licensing Web Site: https://www.govdex.gov.au/confluence/display/COAGNL/Home;jsessionid=B3127AE0B3A056E9F58257E8B23B0C9E

COAG Reform Council 2008 *Council of Australian Governments Reform Council Report to the Council of Australian Governments,* March. Retrieved 24 September 2009, from COAG Reform Council Web Site: http://www.coag.gov.au/coag_meeting_outcomes/2008-03-26/docs/CRC_report_to_COAG_2008.pdf

——2009a *COAG Reform Council,* 29 July. Retrieved 28 August 2009, from COAG Reform Council Web Site: http://www.coag.gov.au/crc/

——2009b *Report to the Council of Australian Governments on Implementation of the National Reform Agenda,* March. Retrieved 24 August 2009, from COAG Reform Council Web Site: http://www.coag.gov.au/coag_meeting_outcomes/2009-04-30/docs/CRC_report_NRA.pdf

COAG Skills Recognition Steering Committee 2008 *Evaluation of Improvements to Mutual Recognition Arrangements for Occupational Licenses,* July. Retrieved 16 September 2009, from LicenceRecognition Web Site: http://www.licencerecognition.gov.au/LR%20pdf%20files/Steering%20Committee%20response%20to%20evaluation%20report%20-%20July%202008.pdf

Commissioners of State and Territory Revenue Offices 2008 *A Protocol for maintatining Payroll Tax Harmonisation between States and Territories: Attachment to Victorian Government 2008–09 Progress Report to the COAG Reform Council,* 11 July. Published on the COAG Reform Council Web Site: http://www.coag.gov.au/crc

Committee on Uniformity of Plumbing and Drainage Regulations in NSW 2006 *NSW Code of Practice: Plumbing and Drainage - Produced by Committee on Uniformity of Plumbing and Drainage Regulations in NSW (CUPDR) - 1 July 2006.* Retrieved 21 September 2009, from NSW Department of Water and Energy Web Site: http://www.dwe.nsw.gov.au/water_urban/pdf/plumbing_nsw_code_of_practice_plumbing_drainage_2006.pdf

Commonwealth Government 2000 *Environment Protection and Biodiversity Conservation Act,* 16 July. Retrieved 21 September 2009, from Department of the Environment, Water, Heritage and the Arts Web Site: http://www.environment.gov.au/epbc/about/index.html

——2008 *Commonwealth Government Response to the Productivity Commission Inquiry: The Market for Retail Tenancy Leases in Australia,* 27 August. Retrieved 16 October 2009, from Department of Innovation, Industry, Science and Research Web Site: http://www.innovation.gov.au/Section/SmallBusiness/Documents/Commonwealth%20Government%20Response%20to%20the%20Productivity%20Commission%20Inquiry%20-%20The%20Market%20for%20Retail%20Tenancy%20Leases%20in%20Australia.pdf

——2009a *Australian Government Response to the Productivity Commission Annual Review of Regulatory Burdens on Business: Manufacturing and Distributive Trades,* March. Retrieved 8 December 2009, from Department of Finance and Deregulation Web Site: http://www.finance.gov.au/publications/response-to-the-pc-manufacturing-and-distributive-trades-review/docs/pc-manufacturing-and-distributive-trades.pdf

——2009b *Commonwealth Government 2008–09 Progress Report to the COAG Reform Council: National Partnership Agreement to Deliver a Seamless National Economy*, 30 September.

——2009c *Specific Comments provided by Commonwealth Departments: Attachment C to Commonwealth comments on the consultation draft National Partnership Agreement to Deliver a Seamless National Economy: 2008–09 Report on Performance*, 4 December.

——2009d *Status of Deregulation Priorities and Competition Reforms: Attachment A to Commonwealth comments on consultation draft National Partnership Agreement to Deliver a Seamless National Economy: 2008–09 Report on Performance,* 4 December.

Commonwealth of Australia 2007a *2007–08 Budget Paper No. 2, Part 2: Budget Measures*, 8 May. Retrieved 10 September 2009, from Budget 2007–08 Web Site: http://www.budget.gov.au/2007-08/bp2/download/bp2.pdf

——2007b *Australian Government National Competition Policy Report 2005–07.* Retrieved 2 September 2009, from Commonwealth Treasury Web Site: http://www.treasury.gov.au/documents/1306/PDF/Australian_Government_National_Competition_Policy_Report.pdf

——2009a *Budget Paper No. 3: Australia's Federal Relations 2009–10*, 12 May. Retrieved 4 September 2009, from Budget 2009–10 Web Site: http://www.budget.gov.au/2009-10/content/bp3/download/bp3.pdf

——2009b *Mutual recognition of occupational licences.* Retrieved 15 September 2009, from LicenceRecognition Web Site: http://www.licencerecognition.gov.au/backgroundinfo.aspx

——2009c *National Approach to Maritime Safety Reform: Consultation regulation impact statement: Round 2, April 2009.* Retrieved 27 September 2009, from Marine Safety Victoria Web Site: http://www.marinesafety.vic.gov.au/DOI/DOIElect.nsf/$UNIDS+for+Web+Display/B9EF31D4218F36CCCA257590001F5D6D/$FILE/2nd%20Round%20RISsmaller.pdf

——2009d *Updated Economic and Fiscal Outlook,* February. Retrieved 24 September 2009, from Budget 2008–09 Web Site: http://www.budget.gov.au/2008-09/content/uefo/download/Combined_UEFO.pdf

Commonwealth of Australia & Australian Capital Territory 2009 *An Agreement between the Commonwealth and the Australian Capital Territory*, 4 June. Retrieved 1 September 2009, from Department of the Environment, Water, Heritage and the Arts Web Site: http://www.environment.gov.au/epbc/assessments/bilateral/pubs/act-bilateral-agreement.pdf

Commonwealth of Australia & State of Victoria 2009 *An Agreement between the Commonwealth and the State of Victoria*, 20 June. Retrieved 1 September 2009, from Department of the Environment, Water, Heritage and the Arts Web Site: http://www.environment.gov.au/epbc/assessments/bilateral/pubs/vic-bilateral-agreement.pdf

Concept Economics 2008 *National Approach to Maritime Safety Reform: Consultation Regulation Impact Statement, September 2008.* Retrieved 10 August 2009, from Australian Maritime Safety Authority Web Site: http://www.amsa.gov.au/Shipping_Safety/Consultation%20RIS%20-%20FINAL%203%20Sept%202008.pdf

Conlon, The Hon Patrick 2009 *South Australian Minister for Energy - Letter to the Australian Energy Market Commission*, Minister for Energy [SA],16 April. Retrieved 16 September 2009, from Australian Energy Market Commission Web Site: http://www.aemc.gov.au/Media/docs/Minister%20for%20Energy's%20Response-f1e594e0-a706-42f2-8259-43ef8a49a807-0.pdf

Corporations and Market Advisory Committee 2006 *Personal Liability for Corporate Fault: Report*, September. Retrieved 3 September 2009, from Corporations and Market Advisory Committee Web Site: http://www.camac.gov.au/camac/camac.nsf/byHeadline/PDFFinal+Reports+2006/$file/Personal_Liability_for_Corporate_Fault.pdf

Costa, M; Stirling, S; Brumby, J; Ripper, E; Bligh, A; Foley, K; Stanhope, J & Aird, M 2007 *Joint Media Release - State and Territory Treasurers Agree to Historic Payroll Tax Refom*, 29 March. Retrieved 17 September 2009, from South Australian Ministers Web Site: http://www.ministers.sa.gov.au/news.php?id=1446&print=1

Costello MP, The Hon Peter 2004 *Government Response to Productivity Commission Report on the Review of the National Access Regime*, Treasurer [Cwlth], 20 February. Retrieved 24 September 2009, from The Treasury Web Site: http://www.treasurer.gov.au/DisplayDocs.aspx?pageID=010&doc=publications/FinalReport_NationalAccessRegime.htm&min=phc

——2006 *Productivity Commission Inquiry into Australia's Consumer Policy Framework*, Treasurer [Cwlth], 11 December. Retrieved 9 September 2009, from The Treasury Web Site: http://www.treasurer.gov.au/DisplayDocs.aspx?pageID=&doc=pressreleases/2006/133.htm&min=phc

Council for the Australian Federation 2006 *13 October 2006, Council for the Australian Federation Communiqué.* Retrieved 17 September 2009, from Council for the Australian Federation Web Site: http://www.caf.gov.au/Documents/CAF%20Communiqué%2013%20Oct%202006.PDF

Creighton, B & Stewart, A 2005 *Labour Law, 4th Edition.* Sydney: The Federation Press.

Department of Energy Infrastructure and Resources [Tas] 2009 *Rail Safety Unit News No 3*, July. Retrieved 29 September 2009, from Department of Energy Infrastructure and Resources Web Site: http://www.transport.tas.gov.au/__data/assets/pdf_file/0008/45179/Newsletter_Jul_09.pdf

Department of Families, Housing, Community Services and Indigenous Affairs [Cwlth] 2009 *A national compact with the Third Sector*, September. Retrieved 13 October 2009, from Social Inclusion Web Site: http://www.socialinclusion.gov.au/Compact/Pages/default.aspx

Department of Foreign Affairs and Trade 2009 *Australian Treaties Database*. Retrieved 19 August 2009, from Department of Foreign Affairs and Trade Web Site: http://www.dfat.gov.au/treaties/index.html

Department of Infrastructure and Planning [Qld] 2009 *Queensland Plumbing and Wastewater Code - 17 June 2009.* Retrieved 21 September 2009, from Department of Infrastructure and Planning Web Site: http://www.dip.qld.gov.au/resources/laws/plumbing/current/queensland-plumbing-and-wastewater-code.pdf

Department of Innovation, Industry, Science and Research [Cwlth] 2009a *Australian Business Number (ABN) Business Names Registration Project*,18 August. Retrieved 27 August 2009, from Department of Innovation, Industry, Science and Research Web Site: http://www.innovation.gov.au/General/Corp-MC/Documents/ABN_factsheet.pdf

——2009b *Register your business name*. Retrieved 26 August 2009, from business.gov.au - Your business gateway to government information and services: http://www.business.gov.au/Business+Entry+Point/Business+Topics/Registration+and+licences/Register+your+business+or+company/Register+your+business+name.htm

Department of Justice [Tas] 2006 *Tasmanian Plumbing Code 2006.* Retrieved 21 September 2009, from Department of Justice Web Site: http://www.wst.tas.gov.au/__data/assets/pdf_file/0020/75242/TPC_06.pdf

Department of Resources, Energy and Tourism [Cwlth] 2008 *Upstream Petroleum*, 19 December. Retrieved 11 September 2009, from Department of Resources, Energy and Tourism Web Site: http://www.ret.gov.au/RESOURCES/UPSTREAM_PETROLEUM/Pages/UpstreamPetroleum.aspx

——2009a *Australian Energy Market Operator.* Retrieved 18 September 2009, from Department of Resources, Energy and Tourism Web Site: http://www.ret.gov.au/energy/energy_markets/energy_market_institutions/operator/Pages/default.aspx

——2009b *National Mine Safety Framework*, 13 August. Retrieved 22 September 2009, from Department of Resources, Energy and Tourism Web Site: http://www.ret.gov.au/resources/mining/national_mine_safety_famework/Pages/default.aspx

Department of Sustainability and Environment [Vic] 2007 *Land Exchange EC News – November 2007.* Retrieved 15 September 2009, from Land Exchange Web Site: http://www.landexchange.vic.gov.au/ec/download/news/ECExpressNov2007.pdf

——2008 *Land Exchange EC News - May 2008.* Retrieved 15 September 2009, from Land Exchange Web Site: http://www.landexchange.vic.gov.au/ec/download/news/ECNewsMay2008.pdf

——2009 *About EC: Electronic Conveyancing.* Retrieved 15 September 2009, from Department of Sustainability and Environment Web Site: http://www.landexchange.vic.gov.au/ec/a_about.html

Department of the Chief Minister [NT] 2009 *Trade Measurement (Pre-Packed Articles) Regulations*, 11 March. Retrieved 28 September 2009, from Department of the Chief Minister Web Site: http://notes.nt.gov.au/dcm/legislat/legislat.nsf/64117dddb0f0b89f482561cf0017e56f/db12d6bf8bc760fe69257576000ae8d7?OpenDocument

Department of the Environment, Water, Heritage and the Arts [Cwlth] 2009a *Bilateral agreements*, 18 August. Retrieved 23 September 2009, from Department of the Environment, Water, Heritage and the Arts Web Site: http://www.environment.gov.au/epbc/assessments/bilateral/index.html

——2009b *Independent review of the Environment Protection and Biodiversity Conservation Act 1999*, 5 August. Retrieved 21 September 2009, from Department of the Environment, Water, Heritage and the Arts Web Site: http://www.environment.gov.au/epbc/review/index.html

——2009c *Independent Review of the Environment Protection and Biodiversity Conservation Act 1999: Interim Report*, June. Retrieved 23 September 2009, from Department of the Environment, Water, Heritage and the Arts Web Site: http://www.environment.gov.au/epbc/review/publications/pubs/interim-report.pdf

Department of the Premier and Cabinet [SA] 2006 *Preparing Cabinet Submissions: Premier and Cabinet Circular No 19*, August. Retrieved 24 September 2009, from South Australia. A brilliant blend. Web Site: http://www.southaustralia.biz/library/CabinetCircular19.pdf

Department of the Premier and Cabinet [Vic] 2009 *Annual Statement of Government Intentions - Part 3: Victoria's Plan to Accelerate Development - February 2009.* Retrieved 17 September 2009, from Department of the Premier and Cabinet Web Site: http://www.premier.vic.gov.au/state-of-government-intentions/statement-of-government-intentions.html

Department of Transport [Vic] 2009 *Discussion Paper: Improving Marine Safety in Victoria - Review of the Marine Act 1988*, July. Retrieved 28 September 2009, from Department of Transport Web Site: http://www.transport.vic.gov.au/DOI/DOIElect.nsf/$UNIDS+for+Web+Display/5460881CA8C73613CA25760400237256/$FILE/MarineActDiscussionPaperFinal.pdf

Department of Transport [WA] 2009a *National Rail Safety Bill*, 13 July. Retrieved 29 September 2009, from Department of Transport Web Site: http://www.dpi.wa.gov.au/rail/19948.asp

——2009b *Sea freight and ports*, 29 June. Retrieved 25 September 2009, from Department of Transport Web Site: http://www.transport.wa.gov.au/imarine/19119.asp

Department of Transport and Regional Services [Cwlth] 2004 *AusLink White Paper - Canberra – June 2004.* Retrieved 20 October 2009, from Department of Infrastructure, Transport, Regional Development and Local Government Web Site: http://www.infrastructure.gov.au/transport/publications/files/whitepaper.pdf

Department of Treasury [ACT] 2003 *Best Practice Guide for Preparing Regulatory Impact Statements*, December. Retrieved 24 September 2009, from Department of Treasury Web Site: http://www.treasury.act.gov.au/documents/regulatory_impact_statement_guide.pdf

Department of Treasury and Finance [Tas] 2006 *Legislation Review Program: Procedures and Guidelines Manual*, March. Retrieved 24 September 2009, from Department of Treasury and Finance Web Site: http://www.tenders.tas.gov.au/domino/dtf/dtf.nsf/e548c2dc89c759634a256819001d744f/4d2b5c94e6899aa1ca256ce800826986?OpenDocument

Department of Treasury and Finance [Vic] 2007 *Victorian Guide to Regulation - incorporating: Guidelines made under the Subordinate Legislation Act 1994 and Guidelines for the measurement of changes in administrative burden - Second edition - April 2007.* Retrieved 15 September 2009, from Department of Treasury and Finance Web Site: http://www.dtf.vic.gov.au/CA25713E0002EF43/WebObj/VictorianGuidetoRegulation2007/$File/Victorian%20Guide%20to%20Regulation%202007.pdf

Department of Treasury and Finance [WA] 2001 *Public Interest Guidelines for Legislation Review - November 2001*. Retrieved 24 September 2009, from Department of Treasury and Finance Web Site: http://www.dtf.wa.gov.au/cms/uploadedFiles/NCP_Guidelines_Legislation_Review(1).pdf

——2009a *2009–10 Budget Measures – Pay-roll Tax*, May. Retrieved 31 August 2009, from Department of Treasury and Finance Web Site: http://www.dtf.wa.gov.au/cms/content.aspx?id=2944

——2009b *Regulatory Gatekeeping.* Retrieved 15 September 2009, from Department of Treasury and Finance Web Site: http://www.dtf.wa.gov.au/cms/content.aspx?id=2171

Development Assessment Forum 2005 *Leading Practice Model for Development Assessment*, August. Retrieved 4 September 2009, from Development Assessment Forum Web Site: http://www.daf.gov.au/reports_documents/doc/DAF_LPM_AUGUST_2005.doc

Emerson MP, The Hon Dr Craig 2009 *Introducing more competition and empowering consumers in grocery retailing - policy paper*, Minister for Competition Policy and Consumer Affairs [Cwlth], 18 September. Retrieved 19 October 2009, from Ministers for Innovation, Industry, Science and Research Web Site: http://minister.innovation.gov.au/Emerson/Documents/CompetitioninGroceryRetailingstatement.pdf

Emmery, M 1999 *Parliamentary Library Research Paper - Australian Manufacturing: A Brief History of Industry Policy and Trade Liberalisation - 19 October 1999.* Retrieved 25 September 2009, from Parliament of Australia Web Site: http://www.aph.gov.au/library/Pubs/RP/1999-2000/2000rp07.htm

Essential Services Commission [Vic] 2009 *Welcome to Grain*, 2 October. Retrieved 20 October 2009, from Essential Services Commission Web Site: http://www.esc.vic.gov.au/public/Grain/

Exports and Infrastructure Taskforce 2005 *Australia's Export Infrastructure, Report to the Prime Minister, Canberra*, May. Retrieved 28 September 2009, from Abare Economics Web Site: http://www.abareconomics.com/infrastructure/pdf/Report.pdf

Ferguson AM MP, The Hon Martin 2009 *Improved National Safety in Mining*, 12 May. Retrieved 9 June 2009, from Minister for Resources and Energy, Minister for Tourism Web Site: http://minister.ret.gov.au/TheHonMartinFergusonMP/Pages/improved_national_safety_in_mining.aspx

Food Regulation Review Committee 1998 *Report of the Food Regulation Review.* Retrieved 18 September 2009, from Food Standards Australia New Zealand Web Site: http://www.foodstandards.gov.au/_srcfiles/2006_Final%20FRR%20_Blair_%20report.pdf

Food Standards Australia New Zealand 1999 *Food Safety Standards - Costs and Benefits.* Retrieved 18 September 2009, from Food Standards Australia New Zealand Web Site: http://www.foodstandards.gov.au/newsroom/publications/foodsafetystandardscostsandbenefits/executivesummary.cfm

Ford, HAJ; Austin, RP; Ramsay IM (2009). *Ford's Principles of Corporations Law - Service 67 - September 2009 - Part 1 - Chapter 2.*

Fraser, The Hon Andrew 2008 *State Budget 2008–09: Service Delivery Statements - Book 1*, 3 June. Retrieved 23 September 2009, from Queensland State Budget Web Site: http://www.budget.qld.gov.au/budget-papers/2008-09/bp5-2008-09.pdf

French, J 2003 *The referral of state powers - cooperative federalism lives?* February. Retrieved 15 September 2009, from Speeches of Former Judges, Federal Court of Australia Web Site: http://www.fedcourt.gov.au/aboutct/judges_papers/speeches_frenchj6.rtf

Gallop AC, Professor Geoff 2001 'The Federation' in R. Manne (Ed.), *Dear Mr Rudd: Ideas for a better Australia*. Melbourne: Black Inc. Agenda.

Gillard MP, The Hon Julia 2008a *House of Representatives - Safe Work Australia Bill 2008 - Second Reading Speech*, Minister for Employment and Workplace Relations [Cwlth], 4 September. Retrieved 10 September 2009, from Parliament of Australia Web Site: http://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/2008-09-04/0005/hansard_frag.pdf;fileType=application%2Fpdf

——2008b *Media Release: Gillard Launches National OHS Review*, Minister for Employment and Workplace Relations [Cwlth], 4 April. Retrieved 5 August 2009, from Ministers' Media Centre: Education, Employment and Workplace Relations portfolio: http://www.deewr.gov.au/Ministers/Gillard/Media/Releases/Pages/Article_081022_150228.aspx

——2009a *House of Representatives - Second Reading Speech*, Minister for Employment and Workplace Relations [Cwlth], 13 May. Retrieved 10 September 2009, from Parliament of Australia Web Site: http://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/2009-05-13/0015/hansard_frag.pdf;fileType=application%2Fpdf

——2009b *Media Release - Workplace Relations Ministerial Council Meeting*, Minister for Employment and Workplace Relations [Cwlth], 13 February. Retrieved 22 May 2009, from Ministers' Media Centre: Education, Employment and Workplace Relations portfolio Web Site: http://www.deewr.gov.au/Ministers/Gillard/Media/Releases/Pages/Article_090213_175125.aspx

House of Representatives Economics, Finance and Public Administration Committee 2007 *Economics, Finance and Public Administration Committee Report: Speech*, 17 September. Retrieved 6 October 2009, from Parliament of Australia Web Site: http://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/2007-09-17/0031/hansard_frag.pdf;fileType%3Dapplication%2Fpdf

House of Representatives Standing Committee on Environment and Heritage 2007 *Managing the Flow - Regulating Plumbing Product Quality - House of Representatives Standing Committee on Environment and Heritage - September 2007*, September. Retrieved 17 September 2009, from Parliament of Australia Web Site: http://www.aph.gov.au/house/committee/environ/regulation/report/fullreport.pdf

House of Representatives Standing Committee on Industry, Science and Technology 1997 *House of Representatives Standing Committee on Industry, Science and Technology - Finding a Balance: Towards Fair Trading in Australia*, May. Retrieved 19 October 2009, from Parliament of Australia Web Site: http://www.aph.gov.au/house/committee/isr/Fairtrad/report/contents.htm

Independent Transport Safety and Reliability Regulator [NSW] 2009 *Rail Safety Reform*, 30 April. Retrieved 29 September 2009, from Independent Transport Safety and Reliability Regulator Web Site: http://www.transportregulator.nsw.gov.au/rules/rail_safety_reform.html

Industry Commission 1995a *Charitable Organisations in Australia*, 16 June. Retrieved 13 October 2009, from Productivity Commission Web Site: http://www.pc.gov.au/__data/assets/pdf_file/0007/6991/45charit.pdf

——1995b *Work, Health and Safety: an inquiry into occupational health and safety.* Retrieved 28 August 2009, from Productivity Commission Web Site: http://www.pc.gov.au/__data/assets/pdf_file/0010/6994/47workhev1.pdf

IP Australia 2009 *Business names, company names and domain names*. Retrieved 26 August 2009, from IP Australia Web Site: http://www.ipaustralia.gov.au/trademarks/what_names.shtml

Johnstone, R 2009 'Harmonising occupational health and safety regulation in Australia: the first report of the National OHS Review' *Journal of Applied Law and Policy* , *1*, pp. 35–58.

Kelly, P 1992 *The end of certainty - the story of the 1980's.* Sydney: Allen & Unwin Pty Ltd.

KPMG 2009 *Review of Government Port Reviews: KPMG Final Report for COAG Reform Council*, October. Published on the COAG Reform Council Web Site: http://www.coag.gov.au/crc

Law Council of Australia 1994 *Blueprint for the Structure of the Legal Profession: A National Market for Legal Services*, July. Retrieved 9 October 2009, from Law Council of Australia Web Site: http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uuid=01EC7524-1C23-CACD-2246-19EA9EE1D7B3&siteName=lca

Legislative Council [SA] 2009 *Legislative Council Index to Bills and Acts, Third Session, Fifty-first Parliament, 2008–09*, 2 October. Retrieved 11 October 2009, from Parliament of South Australia Web Site: http://www.parliament.sa.gov.au/NR/rdonlyres/AF886C82-F720-421A-B148-91CF6FE45952/14893/CopyofIndex_to_Bills_2008091.htm

LexisNexis Australia 2004 *LexisNexis Australia - Encylopaedic Australian Legal Dictionary*, 9 September.

Local Government and Planning Ministers' Council 2009 *LGPMC Sub-Group on Development Assessment Reform - Attachment A to Eighth Meeting - Sydney - 8 May 2009*. Retrieved 1 June 2009, from Local Government and Planning Ministers' Council Web Site (no longer available at this URL): http://www.lgpmcouncil.gov.au/publications/doc/LGPMC_8_May_2009_Attachment_A.pdf

Lundie, R 2009 *Background Note: Australian elections timetable*, 25 June. Retrieved 11 September 2009, from Parliament of Australia: Parliamentary Library Web Site: http://www.aph.gov.au/library/pubs/BN/2008-09/aust_elections.htm#_Toc233688419

Management Advisory Committee [Cwlth] 2007 *Reducing Red Tape in the Australian Public Service*. Retrieved 1 October 2009, from Australian Public Service Commission Web Site: http://www.apsc.gov.au/mac/redtape.pdf

McClelland MP, The Hon Robert 2009 *House of Representatives - Personal Property Securities Bill 2009: Second Reading Speech*, Attorney-General [Cwlth], 24 June. Retrieved 14 September 2009, from Parliament of Australia Web Site: http://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/2009-06-24/0046/hansard_frag.pdf;fileType=application%2Fpdf

McGauran MP, The Hon Peter & Pyne MP, The Hon Christopher 2007 *Joint Media Release: Review to look at ways to streamline food regulation - 15 January*, Minister for Agriculture, Fisheries and Forestry & Parliamentary Secretary for Health [Cwlth]. Retrieved 20 September 2009, from Department of Health and Ageing Web Site: http://www.sport.gov.au/internet/ministers/publishing.nsf/Content/BF852A4896DF3B63CA257264001E0674/$File/pyn001.pdf

McLucas, Senator The Hon Jan 2008 *Media Release: Rudd Government Acts to Ease Food Regulation Burden - 28 September 2008*, Parliamentary Secretary to the Minister for Health and Ageing [Cwlth]. Retrieved 20 September 2009, from Department of Health and Ageing Web Site: http://www.health.gov.au/internet/ministers/publishing.nsf/Content/2AE1C90E36EC6E4DCA2574D20081372D/$File/jm012.pdf

Ministerial Council on Consumer Affairs 2006 *Discussion Paper: Review of the National Trade Measurement System*, June. Retrieved 9 September 2009, from Ministerial Council on Consumer Affairs Web Site: http://www.consumer.gov.au/html/download/TradeMR_DP.pdf

——2007 *Joint Communiqué - Ministerial Council on Consumer Affairs Meeting – 18 May 2007*. Retrieved 9 September 2009, from Ministerial Council on Consumer Affairs Web Site: http://www.consumer.gov.au/html/download/MCCA_Meetings/Meeting_18_18_May_07.pdf

——2008 *Joint Communiqué - Ministerial Council on Consumer Affairs Meeting - Friday 23 May 2008*. Retrieved 19 August 2009, from Ministerial Council on Consumer Affairs Web Site: http://www.consumer.gov.au/html/download/MCCA_Meetings/Meeting_19_23_May_08.pdf

——2009 *Joint Communiqué - Ministerial Council on Consumer Affairs Meeting - Friday 8 May 2009*. Retrieved 9 September 2009, from Ministerial Council on Consumer Affairs Web Site: http://www.consumer.gov.au/html/download/MCCA_Meetings/Meeting_21_8_May_09.pdf

Ministerial Council on Energy 2008 *Ministerial Council on Energy - Smart Meter Decision Paper - MCE - 13 June 2008*. Retrieved 1 December 2009, from National Smart Metering Program Web Site: http://share.nemmco.com.au/smartmetering/Document%20library/Smart%20meter%20background%20info/Background%20-%20MCE%20smart%20meter%20decision%20paper%20-%2013%20Jun%202008.pdf

——2009a *Energy Market Reform - Bulletin No.160 - Financial Markets Working Group - Release of papers on a Shorter NEM Settlement Cycle and a Survey of Second Tier Retailers*, 17 July. Retrieved 30 October 2009, from Department of Resources Energy and Tourism Web Site: http://www.ret.gov.au/Documents/mce/_documents/2009%20Bulletins/Bulletin%20No.160-Shorter%20NEM%20Settlement%20Cycle.pdf

——2009b *Ministerial Council on Energy - Communiqué - Canberra - 6 February 2009*. Retrieved 16 September 2009, from Ministerial Council on Energy Web Site: http://www.ret.gov.au/Documents/mce/_documents/Final%20Communiqué%206%20February%20200920090206155233.pdf

——2009c *Ministerial Council on Energy - Communiqué - Darwin - 10 July 2009*. Retrieved 7 September 2009, from Ministerial Council on Energy Web Site: http://www.ret.gov.au/Documents/mce/_documents/20th%20Meeting%20Communiqué%2010%20July%202009.pdf

——2009d *Ministerial Council on Energy - Standing Committee of Officials Bulletin No 157 – 9 July 2009*. Retrieved 7 September 2009, from Ministerial Council on Energy Web Site: http://www.ret.gov.au/Documents/mce/_documents/2009%20Bulletins/BulletinNo157.pdf

——2009e *Smart meters*. Retrieved 7 September 2009, from Ministerial Council on Energy Web Site: http://www.ret.gov.au/Documents/mce/emr/smart_meters/default.html

Ministerial Council on Energy Standing Committee of Officials 2008a *Cost Benefit Analysis of options for a National Smart Meter Roll-Out (Phase 2 - Regional and Detailed Analyses) Regulatory Impact Statement for Decision - June 2008*. Retrieved 1 December 2009, from Ministerial Council on Energy Web Site: http://www.ret.gov.au/Documents/mce/_documents/Decison_RIS20080915090204.pdf

——2008b *Regulation Impact Statement - A National Framework for Regulating Electricity and Gas (Energy) Distribution and Retail Services to Customers.* Retrieved 23 October 2009, from Department of Resources, Energy and Tourism Web Site: http://www.ret.gov.au/Documents/mce/emr/rpwg/ris-submissions.html

Ministerial Council on Mineral and Petroleum Resources 2002 *Summary of Ministerial Council Meeting, 4 March 2002.* Retrieved 22 September 2009, from Ministerial Council on Mineral and Petroleum Resources Web Site: http://www.ret.gov.au/resources/Documents/mcmpr/Final_Communiqué_MCMPR1_4_March_2002.pdf

——2009 *MCMPR 9 Communiqué: Summary of Ministerial Council Meeting, 9 July 2009, Darwin.* Retrieved 22 September 2009, from Ministerial Council on Mineral and Petroleum Resources Web Site: http://www.ret.gov.au/resources/Documents/mcmpr/9_July_2009.pdf

National Competition Council 1998 *Compendium of National Competition Policy Agreements Second Edition*, June. Retrieved 24 September 2009, from National Competition Council Web Site: http://www.ncc.gov.au/images/uploads/PIAg-001.pdf

——2006 *National Competition Council - Annual Report 2005–2006.* Retrieved 25 September 2009, from National Competition Council Web Site: http://www.ncc.gov.au/images/uploads/AR0506-001.pdf

——2009a *About the National Competition Policy.* Retrieved 24 September 2009, from National Competition Council Web Site: http://ncp.ncc.gov.au/pages/about

——2009b *Certification of State and Territory Access Regimes*, May. Retrieved 24 September 2009, from National Competition Council Web Site: http://www.ncc.gov.au/images/uploads/Certification_Guide.pdf

——2009c *Declaration of Services*, August. Retrieved 24 September 2009, from National Competition Council Web Site: http://www.ncc.gov.au/images/uploads/Declaration_Guide.pdf

——2009d *The National Competition Council.* Retrieved 25 September 2009, from National Competition Council Web Site: http://ncp.ncc.gov.au/pages/about_ncc

National Competition Policy Review Committee of Inquiry 1993 *National Competition Policy Review.* Retrieved 21 September 2009, from National Competition Council Web Site: http://ncp.ncc.gov.au/docs/Hilmer-001.pdf

National Electronic Conveyancing Office 2007a *Draft National Business Model for the establishment of a National Electronic Conveyancing System*, June. Retrieved 15 September 2009, from National Electronic Conveyancing System Web Site: http://www.necs.gov.au/NECS-Roadmap-Documents/default.aspx

——2007b *Draft National Governance Arrangements for the establishment and operation of a National Electronic Conveyancing System*, 9 June. Retrieved 15 September 2009, from National Electronic Conveyancing System Web Site: http://www.necs.gov.au/NECS-Roadmap-Documents/default.aspx

——2009 *NECS National Steering Committee.* Retrieved 15 September 2009, from National Electronic Conveyancing System Web Site: http://www.necs.gov.au/National-Steering-Committee/default.aspx

National Legal Profession Reform Consultative Group 2009 *National Legal Profession Reform Consultative Group - Background Paper - 4 August 2009.* Retrieved 9 October 2009, from Commonwealth Attorney-General's Department Web Site: http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(966BB47E522E848021A38A20280E2386)~Consultative_Group_Paper_Background_Information.pdf/$file/Consultative_Group_Paper_Background_Information.pdf

National Legal Profession Reform Taskforce 2009 *National Legal Reform Taskforce - National Legal Profession Reform Paper for Consultative Group - The Regulatory Framework: A National Legal Profession*, 16 September. Retrieved 13 October 2009, from Commonwealth Attorney-General's Department Web Site: http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(966BB47E522E848021A38A20280E2386)~National+Legal+Profession+Reform+Taskforce+paper+-+regulatory+framework+-+16+September+2009.pdf/$file/National+Legal+Profession+Reform+Taskforce+paper+-+regulatory+framework

National Marine Safety Committee 2009 *About Us*. Retrieved 10 August 2009, from National Marine Safety Committee Web Site: http://www.nmsc.gov.au/nmsc_and_you/index.php?MID=11&COMID=1&CID=11

National Measurement Institute 2008a *Consultation Paper: National Trade Measurement Legislation Proposal to Amend the National Measurement Regulations 1999 (Cth)*, December. Retrieved 9 September 2009, from National Measurement Institute Web Site: http://www.nmi.gov.au/assets/documents/nmiinternet/Consultation%20Paper%20on%20NM%20Regulations%20Dec%200820081224101708.pdf

——2008b *Consultation Paper: National Trade Measurement Public Weighbridge Licensing* November. Retrieved 9 September 2009, from National Measurement Institute Web Site: http://www.nmi.gov.au/assets/documents/nmiinternet/Public%20Weighbridge%20Licensing%20Consultation%20Paper-Nov%2008%20%282%2920081125113610.pdf

——2008c *Consultation Paper: National Trade Measurement Servicing Licensing*, September. Retrieved 9 September 2009, from National Measurement Institute Web Site: http://www.measurement.gov.au/assets/documents/nmiinternet/Servicing%20Licensing%20Consultation%20Paper20081224095943.pdf

——2008d *Participation in global markets depends on international measurement transparency*, 28 October. Retrieved 9 September 2009, from National Measurement Institute Web Site: http://www.measurement.gov.au/assets/documents/nmiinternet/NMI0120051220112943.pdf

——2009 *Australia's measurement system: Trade measurement*, 4 August. Retrieved 10 September 2009, from National Measurement Institute Web Site: http://www.nmi.gov.au/index.cfm?event=object.showContent&objectID=C3EB158B-BCD6-81AC-1DC5A41E29837C8C

National Mine Safety Framework Steering Group 2008 *National Mine Safety Framework: implementation report, October 2008.* Retrieved 17 August 2009, from Commonwealth Department of Resources, Energy and Tourism Web Site: Report no longer available online.

National Plumbing Regulators Forum 2002 *Draft Regulation Impact Statement on the draft Plumbing Code of Australia.* Retrieved 17 September 2009, from Department of Infrastructure and Planning [Qld] Web Site: http://www.dip.qld.gov.au/docs/planning/building_codes/issues_projects/plumbing_code/draft_ris_2aug02.pdf

——2009a *About us.* Retrieved 17 September 2009, from National Plumbing Regulators Forum Web Site: http://www.plumbingregulators.org/about/

——2009b *Plumbing Code of Australia.* Retrieved 17 September 2009, from National Plumbing Regulators Forum Web Site: http://www.plumbingregulators.org/plumbing-code-australia/

National Review into Model OHS Laws 2008a *National Review into Model Occupational Health and Safety Laws: First Report to the Workplace Relations Ministers' Council,* October. Retrieved 17 August 2009, from National Review into Model OHS Laws Web Site: http://www.nationalohsreview.gov.au/NR/rdonlyres/4D6607CB-5BD4-40F1-A2F8-A48F4D2A55C8/0/NationalReviewintoModelOHSLawsFirstreport.pdf

——2008b *National Review into Model Occupational Health and Safety Laws: Issues Paper,* May. Retrieved 31 August 2009, from National Review into Model OHS Laws Web Site: http://www.nationalohsreview.gov.au/NR/rdonlyres/A1B01EBB-7938-4016-96E3-0BB8F917B28B/0/NationalOHSReviewIssuesPaper30May2008.pdf

——2009 *National Review into Model Occupational Health and Safety Laws: Second Report to the Workplace Relations Ministers' Council,* 30 January. Retrieved 9 September 2009, from National Review into Model OHS Laws Web Site: http://www.nationalohsreview.gov.au/NR/rdonlyres/792F9862-B7DA-4F76-B462-17E341D1CF5A/0/NationalReviewintoModelOHSLawssecondreport.pdf

National Stakeholder Steering Committee 2009 *National Smart Metering Program - National Stakeholder Steering Committee - Pilots and Trials 2008 Status Report to the Ministerial Council on Energy - 12 June 2009.* Retrieved 21 September 2009, from National Smart Metering Program Web Site: http://share.aemo.com.au/smartmetering/Document%20library/Work%20Stream%20documentation/PTWG/NSMP%20Pilots%20and%20Trials%202008%20Status%20Report%20V1.0%20-%2012%20June%202009.pdf

National Transport Commission 2006 *Improving the Regulatory Framework for Transport Productivity in Australia,* February. Retrieved 21 September 2009, from National Transport Commission Web Site: http://www.ntc.gov.au/filemedia/Reports/RegFramwrkTransProdFeb2006.pdf

——2008a *Economic Framework for Efficient Transportation Marketplace Working Group,* December. Retrieved 16 September 2009, from National Transport Commission Web Site: http://www.ntc.gov.au/viewpage.aspx?documentid=1766

——2008b *National Transport Policy Framework: A new beginning,* February. Retrieved 28 August 2009, from National Transport Commission Web Site: http://www.ntc.gov.au/filemedia/Publications/NationalTransportPlanVol1Mar2008.pdf

——2009 *Safety & Compliance - Model Law,* 24 March. Retrieved 3 September 2009, from National Transport Commission Web Site: http://www.ntc.gov.au/viewpage.aspx?documentid=1667

National Transport Commission & Booz and Company 2009 *Single, National Rail Safety Regulatory and Investigation Framework: Regulatory Impact Statement - Volume 1,* July. Retrieved 19 October 2009, from National Transport Commission Web Site: http://www.ntc.gov.au/DocView.aspx?DocumentId=01881

New South Wales Government 2007a *Policy Statement - Final Government Response to IPART's Investigation into the Burden of Regulation and Improving Regulatory Efficiency: Recommendations 1–16 - 13 February 2007*. Retrieved 14 September 2009, from Department of Premier and Cabinet Web Site: http://www.dpc.nsw.gov.au/__data/assets/pdf_file/0015/11508/GovtFinalResponseIPARTrecs1_16.pdf

——2007b *Policy Statement - Final Government Response to IPART's Investigation into the Burden of Regulation and Improving Regulatory Efficiency: Recommendations 17–74 – August 2007*. Retrieved 14 September 2009, from Department of Premier and Cabinet Web Site: http://www.dpc.nsw.gov.au/__data/assets/pdf_file/0019/12646/Webpage_-_Government_Response_to_IPART_17-74_-_230807.pdf

——2009a *Attachment B to New South Wales comments on consultation draft National Partnership Agreement to Deliver a Seamless National Economy: 2008–09 Report on Performance*.

——2009b *National Partnership Agreement to Deliver a Seamless National Economy: Report on Performance 2008–09—NSW Comments*, 3 December.

——2009c *New South Wales Government 2008–09 Progress Report to the COAG Reform Council: National Partnership Agreement to Deliver a Seamless National Economy*, 30 September.

Northern Territory Government 2004 *Northern Territory of Australia: Annual Report on the Implementation of National Competition Policy, 2004*. Retrieved 24 September 2009, from National Competition Policy Web Site: http://ncp.ncc.gov.au/docs/NT%20NCP%20Annual%20Report%202004.pdf

——2007 August *In Your Parliament - NT Legislative Assembly - Legislation and Ministerial Statements and Reports*. Retrieved 21 September 2009, from Department of the Chief Minister Web Site: http://www.dcm.nt.gov.au/__data/assets/file/0008/43676/200708_in_your_parliament.pdf

——2009 *Northern Territory Government 2008–09 Progress Report to the COAG Reform Council*, 8 October.

Office of Best Practice Regulation [Cwlth] 2007a *Best Practice Regulation Handbook – August 2007*. Retrieved 14 September 2009, from Department of Finance and Deregulation Web Site: http://www2.finance.gov.au/obpr/docs/handbook.pdf

——2007b *Quickstart to Regulatory Impact Analysis: Step-by Step Guide*. Retrieved 14 September 2009, from Department of Finance and Deregulation Web Site: http://www2.finance.gov.au/obpr/docs/quickstart.pdf

——2007c *Users Guide to the Best Practice Regulation Handbook - August 2007*. Retrieved 14 September 2009, from Department of Finance and Deregulation Web Site: http://www2.finance.gov.au/obpr/docs/userguide.pdf

——2008 *Best Practice Regulation Report: 2007–08*. Retrieved 24 September 2009, from Department of Finance and Deregulation Web Site: http://www.finance.gov.au/obpr/reporting-publications/report-07-08/docs/bestpracticeregulation0708.pdf

Office of Parliamentary Counsel [SA] 2008a *Rail Safety Act 2007*, 29 September. Retrieved 29 September 2009, from South Australian Legislation Web Site: http://www.legislation.sa.gov.au/LZ/C/A/RAIL%20SAFETY%20ACT%202007/CURRENT/2007.46.UN.PDF

——2008b *Trade Measurement (Pre-Packed Articles) Regulations 1993*, 31 August. Retrieved 28 September 2009, from South Australian Legislation Web Site: http://www.legislation.sa.gov.au/LZ/C/R/TRADE%20MEASUREMENT%20(PRE-PACKED%20ARTICLES)%20REGULATIONS%201993/2008.08.31/1993.217.UN.PDF

——2008c *Trade Measurement (Pre-Packed Articles) Regulations 2008*, 1 September. Retrieved 28 September 2009, from South Australian Legislation Web Site: http://www.legislation.sa.gov.au/LZ/C/R/TRADE%20MEASUREMENT%20(PRE-PACKED%20ARTICLES)%20REGULATIONS%202008/CURRENT/2008.224.UN.PDF

——2009 *National Electricity (South Australia) (Smart Meters) Amendment Bill 2009*, 9 September. Retrieved 12 October 2009, from South Australian Legislation Website: http://www.legislation.sa.gov.au/LZ/B/CURRENT/NATIONAL%20ELECTRICITY%20(SOUTH%20AUSTRALIA)%20(SMART%20METERS)%20AMENDMENT%20BILL%202009/B_AS%20INTRODUCED%20IN%20HA/NATIONAL%20METERS%20AMENDMENT%20BILL%202009.UN.PDF

Office of Parliamentary Counsel [Tas] 2009 *Trade Measurement (Pre-packed Articles) Amendment Regulations 2009 (S.R. 2009, No. 63)*, 26 June. Retrieved 28 July 2009, from Tasmanian Legislation Online Web Site: http://www.legislation.tas.gov.au/tocview/index.w3p;cond=;doc_id=%2B63%2B2009%2BAT%40EN%2B20090928160000;histon=;prompt=;rec=;term=

Office of State Revenue [NSW] 2007 *Harmonised Pay-roll Tax Systems between NSW and Victoria*, 26 February. Retrieved 21 September 2009, from Office of State Revenue Web Site: http://www.osr.nsw.gov.au/lib/doc/media/prt_harmonise_media_release_info.pdf

Office of State Revenue [Qld] 2008 *e-revenue Qld Issue 04 - May 2008 - Pay-roll tax harmonisation receives Royal Assent*, May. Retrieved 29 September 2009, from Office of State Revenue Web Site: http://www.osr.qld.gov.au/historical-information/erevenue-qld/erevqld-may-2008.shtml

Office of the Chief Parliamentary Counsel [Vic] 2008a *Plumbing Regulations 2008 (Vic).* Retrieved 21 September 2009, from http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubLawToday.nsf/8d7b8bff8129f677ca256da50082e1c7/795367b448633752ca257507007ae106!OpenDocument&Highlight=0,plumbing

——2008b *Trade Measurement Regulations 2007, S.R. No. 48/2007*, 25 November. Retrieved 28 September 2009, from Victorian Legislation and Parliamentary Documents Web Site: http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubLawToday.nsf/7e27929611f1d5c2ca256dac00186f32/4F8B6F9E529141DECA25750C001822A1/$FILE/07-48sr003.pdf

——2009a *Personal Property Securities (Commonwealth Powers) Bill 2009.* Retrieved 11 October 2009, from Victorian Legislation and Parliamentary Documents Web Site: http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/PubPDocs.nsf/ee665e366dcb6cb0ca256da400837f6b/0867e8842c3f6060ca25760f001f8de8!OpenDocument

——2009b *Rail Safety Act 2006, No. 9 of 2006*, 31 July. Retrieved 29 September 2009, from Victorian Legislation and Parliamentary Documents Web Site: http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubLawToday.nsf/a12f6f60fbd56800ca256de500201e54/F90FC8489AE0F583CA2576020027ED73/$FILE/06-9a011.pdf

Office of the Queensland Parliamentary Counsel 2008a *Health Practitioner Regulation (Administrative Arrangements) National Law Act 2008 (Qld).* Retrieved 9 September 2009, from Queensland Legislation Web Site: http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/H/HealthPracRAA08.pdf

——2008b *Trade Measurement (Prepacked Articles) Regulation 1991*, 12 December. Retrieved 28 September 2009, from Queensland Legislation Web Site: http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/T/TradeMeasPAR91.pdf

——2009a *Bills introduced to the 53rd Parliament*, 4 September. Retrieved 14 September 2009, from Queensland Legislation Web Site: http://www.legislation.qld.gov.au/Bill_Pages/Bill_53_09.htm

——2009b *Cumulative weekly update from 2 July 2009 to 6 September 2009.* Retrieved 11 September 2009, from Office of the Queensland Parliamentary Counsel Web Site: http://www.legislation.qld.gov.au/Leg_Info/current_annotations/01Table1_curr_alpha.pdf

O'Neill, S & Thomas, J 2005 *Bills Digest No. 38 2005–06: National Occupational Health and Safety Commission (Repeal, Consequential and Transitional Provisions) Bill 2005*, 8 September. Retrieved 5 September 2009, from Parliament of Australia: Parliamentary Library Web Site: http://www.aph.gov.au/library/Pubs/bd/2005-06/06bd038.htm

Organisation for Economic Cooperation and Development 2008 *Policy Brief: Economic Survey of Australia, 2008*, October. Retrieved 24 September 2009, from Organisation for Economic Cooperation and Development Web Site: http://www.oecd.org/dataoecd/40/39/41411272.pdf

Parliament of Australia 2009a *Corporations Legislation Amendment (Financial Services Modernisation) Bill 2009: Bill home page.* Retrieved 11 October 2009, from Parliament of Australia Web Site: http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22legislation%2Fbillhome%2Fr4181%22;rec=0

——2009b *Employment law*. Retrieved 25 September 2009, from Parliament of Australia, Parliamentary Library Web Site: http://www.aph.gov.au/library/intguide/LAW/industriallaw.htm

——2009c *Inquiry into the Disclosure regimes for charities and not-for-profit organisations*, 25 June. Retrieved 13 October 2009, from Parliament of Australia Web Site: http://www.aph.gov.au/SENATE/COMMITTEE/economics_ctte/charities_08/

——2009d *National Consumer Credit Protection Bill 2009: Bill Home Page.* Retrieved 28 September 2009, from Parliament of Australia Web Site: http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22legislation%2Fbillhome%2Fr4180%22;rec=0

——2009e *National Consumer Credit Protection Bill 2009: Explanatory Memoranda.* Retrieved 29 September 2009, from Parliament of Australia Web Site: http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr4180_ems_668afa2a-603f-4c9c-ba71-f405d60faad3%22

——2009f *Personal Property Securities Bill 2009 - Bill Home Page.* Retrieved 14 September 2009, from Parliament of Australia Web Site: http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22legislation%2Fbillhome%2Fr4162%22;rec=0

——2009g *Safe Work Australia Bill 2008, Bill Home Page.* Retrieved 10 September 2009, from Parliament of Australia Web Site: http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22legislation%2Fbillhome%2Fr3058%22;rec=0

——2009h *Safe Work Australia Bill 2008 (No. 2) - Bill Home Page.* Retrieved 10 September 2009, from Parliament of Australia Web Site: http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22legislation%2Fbillhome%2Fr4112%22;rec=0

——2009i *Trade Practices Amendment (Australian Consumer Law) Bill 2009,* 7 September. Retrieved 9 October 2009, from Parliament of Australia Web Site: http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr4154%22

Parliament of New South Wales 2009 *Personal Property Securities (Commonwealth Powers) Bill 2009,* 21 July. Retrieved 14 September 2009, from Parliament of New South Wales Web Site: http://www.parliament.nsw.gov.au/prod/parlment/nswbills.nsf/1d436d3c74a9e047ca256e690001d75b/5aec9444216b3714ca2575d700336551!OpenDocument

Parliament of South Australia 2009 *Bill - Personal Property Securities (Commonwealth Powers): Bill Number 129.* Retrieved 11 October 2009, from Parliament of South Australia: SA Legislation Tracking System Web Site: http://www.parliament.sa.gov.au/forms/iframe.aspx?m=i&h=1800&JTitle=SA%20Legislation%20Tracking%20System&url=http%3a%2f%2fwww3moss.parliament.sa.gov.au%2fsalt%2fdefault.aspx

Parliament of Western Australia 2008a *National Gas Access (Western Australia) Bill 2008 - Explanatory Memorandum,* 10 June. Retrieved 23 October 2009, from Parliament of Western Australia Web Site: http://www.parliament.wa.gov.au/parliament/bills.nsf/8783CCD60CD16EE4C825746C002F261E/$File/EM+294.pdf

——2008b *Pay-roll Tax Assessment Amendment Bill 2008,* 12 August. Retrieved 17 September 2009, from Parliament of Western Australia Web Site: http://www.parliament.wa.gov.au/web/newwebparl.nsf/pgFrameset?openpage&fcontent=http://www.parliament.wa.gov.au/Parliament/commit.nsf/(EvidenceOnly)/2901F8B6E9AEAE77C825746D0029E0E0?opendocument

Parliamentary Counsel's Office [ACT] 2009 *Trade Measurement (Prepacked Articles) Amendment Regulation 2009 (No 1),* 18 June. Retrieved 28 September 2009, from a.c.t. legislation register Web Site: http://www.legislation.act.gov.au/sl/2009-30/20090623-39810/pdf/2009-30.pdf

Parliamentary Counsel's Office [NSW] 2009a *Occupational Licensing Legislation Amendment (Regulatory Reform) Act 2009 No. 61,* 17 September. Retrieved 21 September 2009, from NSW Legislation Web Site: http://www.legislation.nsw.gov.au/maintop/view/inforce/act+61+2009+cd+0+N

——2009b *Personal Property Securities (Commonwealth Powers) Act 2009 No 35,* 19 June. Retrieved 14 September 2009, from NSW Legislation Web Site: http://www.legislation.nsw.gov.au/maintop/view/inforce/act+35+2009+cd+0+N

——2009c *Trade Measurement Regulation 2007,* 17 July. Retrieved 28 September 2009, from NSW Legislation Web Site: http://www.legislation.nsw.gov.au/maintop/view/inforce/subordleg+191+2007+cd+0+N

Productivity Commission 1999a *Microeconomic reforms and Australian Productivity: Exploring the Links - Volume 1 - November 1999.* Retrieved 24 September 2009, from Productivity Commission Web Site: http://www.pc.gov.au/__data/assets/pdf_file/0016/8206/meraap1.pdf

——1999b *Progress in Rail Reform, Inquiry report no. 6,* 5 August. Retrieved 28 September 2009, from Productivity Commission Web Site: http://www.pc.gov.au/__data/assets/pdf_file/0020/34526/rail.pdf

——2002 *Review of the National Access Regime - Inquiry Report No 17,* 17 September. Retrieved 3 September 2009, from Productivity Commission Web Site: http://www.pc.gov.au/__data/assets/pdf_file/0020/18173/access.pdf

——2003 *Evaluation of the Mutual Recognition Schemes, Research Report,* 8 October. Retrieved 15 September 2009, from Productivity Commission Web Site: http://www.pc.gov.au/__data/assets/pdf_file/0003/16194/mra.pdf

——2004a *Inquiry Report: National Workers' Compensation and Occupational Health and Safety Frameworks,* 16 March. Retrieved 5 September 2009, from Productivity Commission Web Site: http://www.pc.gov.au/__data/assets/pdf_file/0006/18546/workerscomp.pdf

——2004b *Productivity Commission inquiry report - Review of the Gas Access Regime,* 11 June. Retrieved 23 October 2009, from Productivity Commission Web Site: http://www.pc.gov.au/__data/assets/pdf_file/0006/51585/gas1.pdf

——2004c *Research Report: Reform of Building Regulation,* 17 November. Retrieved 6 October 2009, from Productivity Commission Web Site: http://www.pc.gov.au/__data/assets/pdf_file/0016/16009/building.pdf

——2005 *Review of National Competition Policy Reforms- Inquiry Report,* 28 February. Retrieved 25 September 2009, from Productivity Commission Web Site: http://www.pc.gov.au/__data/assets/pdf_file/0016/46033/ncp.pdf

——2006a *Australia's Health Workforce,* 19 January. Retrieved 9 September 2009, from Productivity Commission Web Site: http://www.pc.gov.au/projects/study/healthworkforce/docs/finalreport

——2006b *Potential benefits of the National Reform Agenda - Productivity Commission Research Paper: Report to the Council of Australian Governments,* December. Retrieved 24 September 2009, from Productivity Commission Web Site: http://www.pc.gov.au/__data/assets/pdf_file/0003/61158/nationalreformagenda.pdf

——2006c *Review of the Australian Consumer Product Safety System,* 16 January. Retrieved 11 September 2009, from Productivity Commission Web Site: http://www.pc.gov.au/__data/assets/pdf_file/0008/9998/productsafety.pdf

——2006d *Road and Rail Freight Infrastructure Pricing, Report no. 41, Canberra,* December. Retrieved 21 September 2009, from Productivity Commission Web Site: http://www.pc.gov.au/__data/assets/pdf_file/0003/47532/freight.pdf

——2007 *Annual Review of Regulatory Burdens on Business: Primary Sector,* 5 November. Retrieved 11 September 2009, from Productivity Commission Web Site: http://www.pc.gov.au/projects/study/regulatoryburdens/primarysector/?a=74115

——2008a *Annual Review of Regulatory Burdens on Business: Manufacturing and Distributive Trade*. Retrieved 7 December 2009, from Productivity Commission Web Site: http://www.pc.gov.au/__data/assets/pdf_file/0003/83028/manufacturing-regulatory-burdens.pdf

——2008b *Chemicals and Plastics Regulation Research Report*, July. Retrieved 15 September 2009, from Productivity Commission Web Site: http://www.pc.gov.au/__data/assets/pdf_file/0017/82331/chemicals-plastics-regulation.pdf

——2008c *The Market for Retail Tenancy Leases in Australia*, 27 August. Retrieved 16 October 2009, from Productivity Commission Web Site: http://www.pc.gov.au/__data/assets/pdf_file/0009/82746/retail-tenancy-market.pdf

——2008d *Review of Australia's Consumer Policy Framework, Final Report*, 30 April. Retrieved 14 September 2009, from Productivity Commission Web Site: http://www.pc.gov.au/__data/assets/pdf_file/0008/79172/consumer2.pdf

——2009a *Annual Review of Regulatory Burdens on Business: Commissioned Study*. Retrieved 29 October 2009, from Productivity Commission Web Site: http://www.pc.gov.au/projects/study/regulatoryburdens

——2009b *Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services - Productivity Commission Research Report*, August. Retrieved 29 October 2009, from Productivity Commission Web Site: http://www.pc.gov.au/__data/assets/pdf_file/0003/91344/social-economic-infrastructure.pdf

——2009c *Anti-Dumping and Countervailing System: Productivity Commission Circular - No. AD1*, 1 April. Retrieved 24 September 2009, from Productivity Commission Web Site: http://www.pc.gov.au/__data/assets/pdf_file/0007/87334/circular1.pdf

——2009d *Australia's Anti-dumping and Countervailing System - Draft inquiry report*, 10 September. Retrieved 22 September 2009, from Productivity Commission Web Site: http://www.pc.gov.au/__data/assets/pdf_file/0010/91288/anti-dumping-draft.pdf

——2009e *Chemicals and Plastics Regulation: Lessons for National Approaches to Regulation*, January. Retrieved 15 September 2009, from Productivity Commission Web Site: http://www.pc.gov.au/__data/assets/pdf_file/0004/85297/chemicals-plastics-supplement.pdf

——2009f *Contribution of the Not for Profit Sector*. Retrieved 9 October 2009, from Productivity Commission Web Site: http://www.pc.gov.au/projects/study/not-for-profit

——2009g *Contribution of the Not for Profit Sector - Issues Paper*, April. Retrieved 13 October 2009, from Productivity Commission Web Site: http://www.pc.gov.au/__data/assets/pdf_file/0008/87551/not-for-profit-issues.pdf

——2009h *Parallel Importation of Books: Productivity Commission Circular 4 - Completion of study*, 1 July. Retrieved 1 July 2009, from Email Distribution.

——2009i *Performance Benchmarking of Australian Business Regulation: Food Safety - Issues Paper*. Retrieved 18 September 2009, from Productivity Commission Web Site: http://www.pc.gov.au/__data/assets/pdf_file/0010/87562/Food-safety-issues.pdf

——2009j *Research Report: Restrictions on the Parallel Importation of Books*, June. Retrieved 6 October 2009, from Productivity Commission Web Site: http://www.pc.gov.au/__data/assets/pdf_file/0004/90265/books.pdf

——2009k *Restrictions on the Parallel Importation of Books: Supplement to Research Report*, September. Retrieved 17 September 2009, from Productivity Commission Web Site: http://www.pc.gov.au/__data/assets/pdf_file/0005/91436/supplement.pdf

——2009l *Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector*, 30 April. Retrieved 14 September 2009, from Productivity Commission Web Site: http://www.pc.gov.au/__data/assets/pdf_file/0011/87923/upstream-petroleum.pdf

Queensland Government 2009a *Queensland Government 2008–09 Progress Report to the COAG Reform Council: National Partnership Agreement to Deliver a Seamless National Economy*, 23 September 2009.

——2009b *Queensland's additional information for inclusion in the final 2008–09 Progress Report: Attachment 2 to Queensland Government response to the consultation draft report*, 15 December.

——2009c *Reassessment of Queesnland's performance: Attachment 1 to Queensland Government's response to consultation draft report*, 15 December.

Queensland Office for Regulatory Efficiency 2009 *Regulatory Impact Statement Procedures and Requirements*, June. Retrieved 23 September 2009, from Queensland Treasury Web Site: http://www.treasury.qld.gov.au/office/knowledge/docs/regulatory-impact-statement/ris-guidelines-2009.pdf

——n.d. *Smart Regulation Annual Report, 2007–08: A Queensland Government Initiative in the Smart Regulation Reform Agenda*. Retrieved 23 September 2009, from Queensland Treasury, Queensland Office for Regulatory Efficiency Web Site: http://www.treasury.qld.gov.au/office/knowledge/docs/smart-reg-annual-report/smart-reg-annual-report-2007-08.pdf

Queensland Parliament 2009 *Record of Proceedings, First Session of the Fifty-third Parliament, Thursday, 17 September 2009*. Retrieved 11 October 2009, from Queensland Parliament Web Site: http://www.parliament.qld.gov.au/view/legislativeAssembly/hansard/documents/2009.pdf/2009_09_17_WEEKLY.pdf

Regulation Taskforce 2006 *Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business*. Retrieved 27 August 2009, from Regulation Taskforce Web Site: http://www.regulationtaskforce.gov.au/__data/assets/pdf_file/0007/69721/regulationtaskforce.pdf

Reith MP, The Hon Peter 1997 *Media Release: Joint Communiqué From Commonwealth, State and Territory Labour Ministers, 20 May 1997*, Minister for Employment, Workplace Relations and Small Business [Cwlth]. Retrieved 5 September 2009, from Royal Commission into the Building Industry Web Site: http://www.royalcombci.gov.au/snapshot/images/031/0274/0401/0004.pdf

RevenueSA 2009 *Payroll Tax Harmonisation*, 11 June. Retrieved 29 September 2009, from RevenueSA Web Site: http://www.revenuesa.sa.gov.au/index.html?http://www.revenuesa.sa.gov.au/taxes/payroll_harmonisation.html

Ripper MLA, The Hon Eric 2008 *State Budget 2008–09: Building WA -Tax relief slashes nearly $3,000 from cost of average home*, Treasurer [WA], 8 May. Retrieved 17 September 2009, from Government Media Office - Ministerial Media Statements Web Site: http://www.mediastatements.wa.gov.au/ArchivedStatements/Pages/CarpenterLaborGovernmentSearch.aspx?ItemId=130110&minister=Ripper&admin=Carpenter

Rudd MP, The Hon Kevin & McClelland MP, The Hon Robert 2009 *Joint Media Release: Prime Minister and Attorney General - National Legal Profession Reform - 30 April 2009*, Prime Minister & Attorney-General [Cwlth]. Retrieved 9 October 2009, from Attorney-General Department Web Site: http://www.attorneygeneral.gov.au/www/ministers/robertmc.nsf/Page/MediaReleases_2009_SecondQuarter_30April2009-NationalLegalProfessionReform

Safe Work Australia Council 2009a *Safe Work Australia Council Meeting One Communiqué – 10 June 2009.* Retrieved 14 September 2009, from Safe Work Australia Web Site: http://www.safeworkaustralia.gov.au/NR/rdonlyres/F5E0DAE8-74F4-47F4-B98D-DE085B583592/0/Safe_Work_Australia_Meeting_Communiqué_10June09.pdf

——2009b *Safe Work Australia Council Strategic Plan 2009–2012.* Retrieved 14 September 2009, from Safe Work Australia Web Site: http://www.safeworkaustralia.gov.au/NR/rdonlyres/EF56F4D2-44AF-459B-9EB0-20F82D4B4AF5/0/SWAStrategicPlan_20092012_SWACounci_Jun09.pdf

Safe Work Australia 2009a *Model Legislation Public Comment*, 30 September. Retrieved 30 September 2009, from Safe Work Australia Web Site: http://www.safeworkaustralia.gov.au/swa/ModelLegislation/Public+Comment.htm

——2009b *Model OHS Legislation Fact Sheet*, August. Retrieved 10 September 2009, from Safe Work Australia Web Site: http://www.safeworkaustralia.gov.au/NR/rdonlyres/F28DE065-AACC-4253-8AD9-74C80E2786CA/0/Model_OHS_Leg_fact_sheet.pdf

——2009c *Safe Work Act 2009 (Model Safe Work Provisions)*, 25 September. Retrieved 21 October 2009, from Safe Work Australia Web Site: http://www.safeworkaustralia.gov.au/NR/rdonlyres/EA78038F-6BF1-41D6-83A2-EA3234EFCED2/0/SafeWorkAct2009_PDF.pdf

Senate Community Affairs Legislation Committee 2009 *National registration and accreditation scheme for doctors and other health workers - August 2009.* Retrieved 27 October 2009, from Parliament of Australia Web Site: http://www.aph.gov.au/Senate/committee/clac_ctte/registration_accreditation_scheme/index.htm

Senate Economics Legislation Committee 2009a *Report on the National Consumer Credit Protection Bill 2009 and related bills [provisions]*, September. Retrieved 28 September 2009, from Parliament of Australia Web Site: http://www.aph.gov.au/Senate/committee/economics_ctte/consumer_credit_09/report/report.pdf

——2009b *Report on the Trade Practices Amendment (Australian Consumer Law) Bill 2009 [Provisions]*, 7 September. Retrieved 9 October 2009, from Parliament of Australia Website: http://www.aph.gov.au/senate/Committee/economics_ctte/tpa_consumer_law_09/report/report.pdf

Senate Legal and Constitutional Affairs Committee 2009 *Personal Property Securities Bill 2009 [Provisions]*, 20 August. Retrieved 14 September 2009, from Parliament of Australia Web Site: http://www.aph.gov.au/Senate/committee/legcon_ctte/pps_2009/report/report.pdf

Sheppard, I; Fitzgerald, R & Gonski, D 2000 *Report of the Inquiry into the Definition of Charities and Related Organisations*, June. Retrieved 13 October 2009, from Charities Definition Inquiry Website: http://www.cdi.gov.au/report/pdf/Charities_final.pdf

Sherry, Senator The Hon Nick 2009a *National Regulation of Trustee Companies*, Minister for Superannuation and Corporate Law [Cwlth], 7 May. Retrieved 25 September 2009, from Treasury Portfolio Ministers Web Site: http://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/UA5U6/upload_binary/ua5u60.pdf;fileType%3Dapplication%2Fpdf

——2009b *Press Release No. 034: Commonwealth to conduct audit of laws impacting on directors' liability*, Minister for Superannuation and Corporate Law, 17 April. Retrieved 2 September 2009, from Treasury Portfolio Ministers Web Site: http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2009/034.htm&pageID=003&min=njs&Year=&DocType=0

——2009c *Public Exposure of National Consumer Credit Protection Bill 2009*, Minister for Superannuation and Corporate Law, 27 April. Retrieved 24 September 2009, from Treasury Portfolio Ministers Web Site: http://minscl.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2009/037.htm&pageID=003&min=njs&Year=&DocType=

Small Business Deregulation Taskforce 1996 *Time for Business - Report of the Small Business Deregulation Taskforce*, November. Retrieved 21 September 2009, from Development Assessment Forum Web Site: http://www.daf.gov.au/reports_documents/pdf/time_for_business.pdf

Small Business Ministerial Council 2008 *Small Business Ministerial Council - Christchurch New Zealand - 23 May 2008 - Communiqué*. Retrieved 7 August 2009, from Ministers for Innovation, Industry, Science and Research Web Site: http://minister.innovation.gov.au/Emerson/Pages/SMALLBUSINESSMINISTERIALCOUNCILCOMMUNIQUE.aspx

South Australia Competitiveness Council 2009 *Inside Government.* Retrieved 15 September 2009, from Competitive South Australia Web Site: http://www.competitivesa.biz/insideGovernment.htm

South Australian Government 2009a *South Australian Government 2008–09 Progress Report to the COAG Reform Council: National Partnership Agreement to Deliver a Seamless National Economy*, 30 September.

——2009b *South Australia's comments to the CRC regarding the draft Progress Report on the National Partnership to Deliver a Seamless National Economy dated 4 November 2009*, 3 December.

Standing Committee of Attorneys-General 2006a *Legal Profession-model laws project- Model Bill (Model Provisions) - 2nd Edition - August 2006.* Retrieved 8 October 2009, from Commonwealth Attorney-General's Department Web Site: http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(3A6790B96C927794AF1031D9395C5C20)~SCAG+Model_Bill+August+2006.PDF/$file/SCAG+Model_Bill+August+2006.PDF

——2006b *Review of the law on Personal Property Securities*, April. Retrieved 14 September 2009, from Personal Property Securities Reform Web Site: http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(CFD7369FCAE9B8F32F341DBE097801FF)~Review+of+the+Law+on+Personal+Property+Securities.pdf/$file/Review+of+the+Law+on+Personal+Property+Securities.pdf

——2007a *Review of the law on Personal Property Securities: Discussion Paper 2: Extinguishment, Priorities, Conflict of Laws, Enforcement, Insolvency*, March. Retrieved 14 September 2009, from Personal Property Securities Reform Web Site: http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(1E76C1D5D1A37992F0B0C1C4DB87942E)~Personal+property+securities+discussion+paper+2+pdf.pdf/$file/Personal+property+securities+discussion+paper+2+pdf.pdf

——2007b *Review of the law on Personal Property Securities: Discussion Paper 3: Possessory Security Interests*, April. Retrieved 14 September 2009, from Personal Property Securities Reform Web Site: http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(3A6790B96C927794AF1031D9395C5C20)~Personal+Properties+Security+Paper.pdf/$file/Personal+Properties+Security+Paper.pdf

——2007c *Summary of Decisions - Standing Committee of Attorneys-General - 26–27 July 2007, Hobart.* Retrieved 14 September 2009, from Standing Committee of Attorneys-General Web Site: javascript:OpenAttachmentWithFullPath('/lawlink/scag/ll_scag.nsf/vwFiles/Summary_of_Decisions_July_07.doc/$file/Summary_of_Decisions_July_07.doc')

——2008 *SCAG Summary of Decisions - March 2008.* Retrieved 14 September 2009, from Standing Committee of Attorneys-General Web Site: javascript:OpenAttachmentWithFullPath('/lawlink/SCAG/ll_scag.nsf/vwFiles/SCAG_Summary_of_Decisions_March_08.doc/$file/SCAG_Summary_of_Decisions_March_08.doc')

State Law Publisher [WA] 2008 *Trade Measurement Regulations 2007*, 24 December. Retrieved 28 September 2009, from Western Australian Legislation Web Site: http://www.slp.wa.gov.au/pco/prod/FileStore.nsf/Documents/MRDocument:13382P/$FILE/TradeMeasurementRegs2007_00-c0-00.pdf?OpenElement

State Revenue Office [Tas] 2008 *Employers Guide to Payroll Tax - 22 July 2008.* Retrieved 29 September 2009, from Tasmanian Government Online Web Site: http://www.tenders.tas.gov.au/domino/dtf/dtf.nsf/v-sro/F2078DA7D1560837CA25702D001AF8D0/$file/EmpGuideToPTX.pdf

State Revenue Office [Vic] 2009a *Payroll Tax - Harmonisation.* Retrieved 30 September 2009, from State Revenue Office Web Site: http://www.sro.vic.gov.au/SRO/sronav.nsf/childdocs/-3A87315B22BC23FFCA2575A100441F59-11C80F203927331FCA2575A100441F65-2EA9E764540E9E25CA2575C8000F56C3?open

——2009b *Payroll Tax - Overview.* Retrieved 30 September 2009, from State Revenue Office Web Site: http://www.sro.vic.gov.au/SRO/sronav.nsf/childdocs/-3A87315B22BC23FFCA2575A100441F59-11C80F203927331FCA2575A100441F65-4A3612D369BD1603CA2575A100445E2E?open

State Revenue Offices [NSW & Vic] 2007 *A harmonised payroll tax system for NSW and Victoria factsheet - July 2007.* Retrieved 30 September 2009, from Office of State Revenue [NSW] Web Site: http://www.osr.nsw.gov.au/lib/doc/factsheets/ofs_pt4.pdf

Stevens, Glenn 2006 *Capital flows and monetary policy - Remarks by Mr Glenn Stevens, Deputy Governor of the Reserve Bank of Australia - Investor Insights: ANZ Asia Pacific 2006 Seminar*, 17 September. Retrieved 29 October 2009, from Bank for International Settlements Web Site: http://www.bis.org/review/r060919e.pdf

Tan, P 2008 *National Measurement Amendment Bill 2008, Bills Digest No. 50, 2008–09*, 27 October. Retrieved 11 September 2009, from Parliament of Australia, Parliamentary Library Web Site: http://parlinfo.aph.gov.au/parlInfo/download/legislation/billsdgs/0ZXR6/upload_binary/0zxr63.pdf;fileType=application%2Fpdf#search=%22r3088%22

Tanner MP, The Hon Lindsay 2008 *House of Representatives Ministerial Statements: Best Practice Regulation Requirements Speech*, Minister for Finance and Deregulation, 17 March. Retrieved 14 September 2009, from Parliament of Australia Web Site: http://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/2008-03-17/0066/hansard_frag.pdf;fileType%3Dapplication%2Fpdf

Tasmanian Government 2009a *Submission from the Tasmanian Government: COAG Reform Council Draft Report on the National Partnership Agreement to Deliver a Seamless National Economy Report on Performance 2008–09*, 26 November.

——2009b *Tasmanian Government 2008–09 Progress Report to the COAG Reform Council: National Partnership Agreement to Deliver a Seamless National Economy*, 28 September.

Treasury [Cwlth] 1997 *Directors' Duties and Corporate Governance: Facilitating innovation and protecting investors - Corporate Law Economic Reform Program Paper No 3: Proposals for Reform*, 1 April. Retrieved 3 September 2009, from The Treasury Web Site: http://www.treasury.gov.au/contentitem.asp?NavId=013&ContentID=283

——2001 *Commonwealth Treasury Economic Roundup Centenary Edition 2001 - Towards higher retirement incomes for Australians: a history of the Australian retirement income system since Federation*, 14 May. Retrieved 1 December 2009, from The Treasury Web Site: http://www.treasury.gov.au/documents/110/PDF/round4.pdf

——2007 *Review of Sanctions in Corporate Law*, 5 March. Retrieved 8 September 2009, from The Treasury Web Site: http://www.treasury.gov.au/contentitem.asp?NavId=013&ContentID=1182

——2008 *Green Paper on Financial Services and Credit Reform*, June. Retrieved 15 September 2009, from The Treasury Web Site: http://www.treasury.gov.au/contentitem.asp?NavId=037&ContentID=1381

——2009a *An Australian Consumer Law: Fair Markets - Confident Consumers - Consultation Paper*, 17 February. Retrieved 9 September 2009, from The Treasury Web Site: http://www.treasury.gov.au/contentitem.asp?NavId=014&ContentID=1484

——2009b *Corporations Legislation Amendment (Financial Services Modernisation) Bill 2009*, 7 May. Retrieved 9 October 2009, from The Treasury Web Site: http://www.treasury.gov.au/contentitem.asp?NavId=&ContentID=1533

——2009c *In Brief: Benefits to Business*, 25 February. Retrieved 8 September 2009, from Standard Business Reporting Web Site: http://www.sbr.gov.au/content/downloads/Business%20Benefits%20Factsheet%20v2.pdf

——2009d *In Brief: SBR Background and Milestones*, August. Retrieved 8 September 2009, from Standard Business Reporting Web Site: http://www.sbr.gov.au/content/downloads/SBR_Program_and_Milestones_August_2009.pdf

——2009e *International SBR*. Retrieved 8 September 2009, from Standard Business Reporting Web Site: http://www.sbr.gov.au/content/international_sbr.htm

——2009f *SBR Program*. Retrieved 8 September 2009, from Standard Business Reporting Web Site: http://www.sbr.gov.au/content/standard_business_reporting_program.htm

——2009g *Senate Standing Committee on Economics - Treasury Submission: Corporations Legislation Amendment Bill 2009*, August. Retrieved 15 September 2009, from Parliament of Australia Web Site: https://senate.aph.gov.au/submissions/comittees/viewdocument.aspx?id=d9011fbd-c33d-438f-b4f7-aa1f4bb7bd88

——2009h *Session 2 SBR Update*, May. Retrieved 8 September 2009, from Standard Business Reporting Web Site: http://www.sbr.gov.au/content/downloads/May_SBR_update.pdf

——2009i *Standard Business Reporting: Milestones Calendar*. Retrieved 9 September 2009, from Standard Business Reporting Web Site: http://www.sbr.gov.au/content/downloads/SBR_Milestone_calendar_software_developers.pdf

Tripodi MP, The Hon Joseph 2008 *Trade licence review to encourage free flow of skills*, Minister for Regulatory Reform [NSW], 29 October. Retrieved 16 September 2009, from Department of Premier and Cabinet, Better Regulation Office Web Site: http://www.betterregulation.nsw.gov.au/__data/assets/pdf_file/0009/31986/Trade_Licence_Review_to_Encourage_Free_Flow_of_Skills_-_29_October_2008.pdf

Urban Congestion Working Group 2009 *Australian Capital City Congestion Management Case Studies*, May. Retrieved 24 September 2009, from Bureau of Infrastructure, Transport and Regional Economics Web Site: http://www.bitre.gov.au/publications/08/Files/UC_Compilation_of_Case_Studies_FINAL.pdf

UTML Review Committee 2001 *Review Committee Report on the National Competition Policy Review of the Uniform Trade Measurement Legislation - Stage I - Scoping Study*, December. Retrieved 11 September 2009, from Ministerial Council on Consumer Affairs Web Site: http://www.consumer.gov.au/html/ncp_trade_review/downloads/ReviewCom.pdf

Victorian Competition & Efficency Commission 2007a *SCM Initial Assessment Checklist - as at May 2007*. Retrieved 15 May 2009, from Victorian Competition & Efficiency Commission Web Site: http://www.vcec.vic.gov.au/CA256EAF001C7B21/0/6ED09B34E5FDEC26CA256EC9000CB0F3?OpenDocument

——2007b *Simplifying the Menu: Food Regulation in Victoria*. Retrieved 18 September 2009, from Victorian Competition & Efficiency Commission Web Site: http://www.vcec.vic.gov.au/CA256EAF001C7B21/WebObj/SimplifyingTheMenu-FinalReport822008/$File/Simplifying%20The%20Menu%20-%20Final%20Report%208%202%202008.pdf

——2009 *Commission Conventions for the Regulatory Reviews Function - 18 March 2009*. Retrieved 15 September 2009, from Victorian Competition & Efficiency Commission Web Site: http://www.vcec.vic.gov.au/CA256EAF001C7B21/WebObj/CommissionConventionsforReviews-FINAL17March2009/$File/Commission%20Conventions%20for%20Reviews%20-%20FINAL%2017%20March%202009.pdf

Victorian Government 2009a *COAG Reform Council 2008–09 Draft Report on the NP Agreement to Deliver a Seamless National Economy: Victorian Response*, 3 December.

——2009b *Victorian Government 2008–09 Progress Report to the COAG Reform Council: National Partnership Agreement to Deliver a Seamless National Economy*, 30 September.

Webb, R 2009 *Research Paper No. 19 2008–09: Commonwealth involvement in reform of the rail freight industry*, 7 January. Retrieved 19 December 2009, from Parliament of Australia Web Site: http://www.aph.gov.au/library/pubs/RP/2008-09/09rp19.htm#_ftnref3

Western Australian Government 2009a *National Partnership Agreement to Deliver a Seamless National Economy: Report on Performance 2008–09 - Consultation Draft: Response from Western Australia to the COAG Reform Council*, 3 December.

——2009b *Western Australia Government 2008–09 Progress Report to the COAG Reform Council: National Partnership Agreement to Deliver a Seamless National Economy*, 7 October.

——2009c *Western Australian Government 2008–09 Progress Report to the COAG Reform Council: National Partnership Agreement to Deliver A Seamless National Economy: Attachment—Smart Meters Policy Statement*, 7 October.

Wilkins, R 2009 *National Regulation of the Legal Profession: an agenda for reform - NSW Law Society Journal article - August 2009.* Retrieved 8 October 2009, from Commonwealth Attorney-General's Department Web Site: http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(3A6790B96C927794AF1031D9395C5C20)~Wilkins+Article+for+NSW+Law+Society+Journal+090701.pdf/$file/Wilkins+Article+for+NSW+Law+Society+Journal+090701.pdf

Workplace Relations Ministers' Council 2002 *Joint Communiqué from Commonwealth, State and Territory Workplace Relations Ministers*, 24 May. Retrieved 5 September 2009, from Workplace Relations Ministers' Council Web Site: http://www.workplace.gov.au/NR/rdonlyres/40FD4BAB-F136-489E-BA31-2FFC6F49F1A4/0/WRMCJointCommuniqué240502.pdf

——2009a *Communiqué from Australian, State, Territory and New Zealand Workplace Relations Ministers' Council*, 11 June. Retrieved 14 September 2009, from Workplace Relations Ministers' Council Web Site: http://www.workplace.gov.au/NR/rdonlyres/3AD19B07-BE30-402D-A296-7703638F9791/0/110609.pdf

——2009b *WRMC Response to Recommendations of the National Review into Model OHS Laws, Attachment to 18 May 2009 Communiqué from Australian, State, Territory and New Zealand Workplace Relations Ministers' Council.* Retrieved 14 September 2009, from Workplace Relations Ministers' Council Web Site: http://www.workplace.gov.au/NR/rdonlyres/CDC4AF38-5ADB-4296-97CB-18C9AEF8BEED/0/18May2009.pdf

World Wine Trade Group 2003a *Mission Statement.* Retrieved 19 August 2009, from World Wine Trade Group Web Site: http://www.wwtg-gmcv.org/EnglishPages/missionstatement.htm

——2003b *Participants.* Retrieved 19 August 2009, from World Wine Trade Group Web Site: http://www.wwtg-gmcv.org/EnglishPages/participants.htm

——2007 *World Wine Trade Group Agreement on Requirements for Wine Labelling.* Retrieved 18 August 2009, from http://www.ita.doc.gov/td/ocg/WWTGlabel.pdf