



**MINERALS COUNCIL OF AUSTRALIA**  
**SUBMISSION TO INQUIRY INTO NATIONAL FREIGHT**  
**AND SUPPLY CHAIN PRIORITIES**

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## EXECUTIVE SUMMARY

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The Minerals Council of Australia welcomes the opportunity to provide a submission to the Australian Government's inquiry into freight and supply chain priorities. Australian minerals companies are involved in all aspects of the supply chain – road, rail and sea transport.

### **Contribution of mining to economic growth and employment**

The Australian mining industry remains a pillar of the Australian economy. Australia's resources sector remains the nation's largest source of export revenue – accounting for 73 per cent of Australia's merchandise trade in 2016-17. Iron ore and coal are Australia's top two exports by value.

A report by Deloitte Access Economics (commissioned by the MCA) found that the total economic contribution of Australia's mining and mining equipment, technology and services (METS) sector was \$236.8 billion in 2015-16, equivalent to around 15 per cent of the Australia's gross domestic product (GDP). Mining and METS activities support a total of 1.1 million jobs across Australia, representing approximately 10 per cent of total employment. (Deloitte's estimates include exploration, minerals extraction and metal refining, but exclude oil and gas.)

Because mining in Australia is capital-intensive, the industry's capital productivity has a large bearing on its multifactor productivity (i.e., the growth of output above the growth of labour and capital combined). Between 2006-07 and 2015-16, the resources sector (including oil and gas) undertook unparalleled investment in new mines, equipment and infrastructure with a corresponding net capital stock of \$841 billion in June 2016.

The resources sector workforce has benefitted from substantial investments made over the past decade. The expanded capital stock has underpinned average weekly earnings of resource sector workers increasing 66 per cent over the past decade to \$2,635, 77 per cent higher than the average for other industries.

### **Importance of competitive infrastructure markets and efficient regulation**

Australian minerals companies operate in a global industry where prices are highly transparent and there is intense competition – both from other commodity exporters and from domestic suppliers in customer countries. The timely provision of export infrastructure is critical to the future growth and competitiveness of Australia's minerals industry. Governments have a responsibility to foster open, transparent and competitive infrastructure markets. Regulation should only be used where a market failure is evident and there is evidence that government intervention can effectively and efficiently remedy that failure.

At the same time, governments must be alert to differing industry characteristics that give rise to differing regulatory challenges and economic consequences. In the Australian minerals industry, an example relates to the structural differences that characterise the vertically integrated, privately owned single-user systems in west coast iron ore operations, in contrast to the multi-owner, multi-user rail and port facilities in the east coast coal industry.

Bottleneck challenges associated with the recent mining investment boom point to greater risk of inefficient outcomes in the case of multi-user, multi-owner infrastructure networks as compared to single-user, single-owner, integrated infrastructure. This underlines the need for careful analysis of the role competition policy can and should play in promoting efficient outcomes.

The Hunter Valley Coal Chain Coordinator (HVCCC) exemplifies how cooperation in the operation of multi-user supply chain infrastructure can enhance efficiency and exports where participants have differing interests. The HVCCC emerged as a voluntary solution to a complex coordination problem by all participants and had to be authorised by the Australian Competition and Consumer Commission. It has achieved significant positive outcomes for the coal industry in the Hunter Valley by ensuring a reliable and efficient supply chain (Box 5).

A considered approach is also required in the case of formerly government-owned, multi-user assets that have been corporatised or privatised. There is evidence to suggest these risks are greatest where inadequate regulatory systems could buttress the market power of infrastructure providers (often former government monopoly providers) within multi-user networks, providing incentives to restrict access and/or raise access prices unreasonably. The minerals industry's experience of other infrastructure privatisations, notably in Queensland, reinforces the case for government hastening slowly and evaluating carefully.

As the largest user of coastal shipping services, the Australian minerals industry has a strong interest in competitive and cost-effective coastal shipping. The participation of foreign ships is a longstanding feature of Australia's coastal shipping trade and is essential to the efficient and timely movement of freight. However, the *Coastal Trading (Revitalising Australian Shipping) Act 2012* made retrograde changes to competition rules by replacing single and continuous voyage permits with a tiered licensing system that discriminates against foreign ships. In addition, the Act gives Australian ships the power to contest voyages proposed by foreign ships.

The Coastal Trading Act has increased domestic transport and administration costs and made it more difficult for Australian minerals companies to source coastal shipping services when they are needed. The previous government sought to solve this problem by redefining the objectives of the Act as fostering a competitive coastal shipping services industry that supports the Australian economy, and maximising the use of available shipping capacity on the Australian coast. The previous government also sought to afford Australian and foreign ships equal access rights to carry coastal goods or passengers. Both of these reforms would have improved the efficiency of the Coastal Trading Act and should be reconsidered.<sup>1</sup>

Delays and uncertainty in project approval processes pose a significant risk to the industry's global competitiveness. In a survey of MCA members, 90 per cent of respondents ranked reforming approval processes as 'very important' or 'important' to improving productivity. Unnecessarily complex and duplicative processes contribute to lengthy approval timeframes and delays. The Productivity Commission has concluded that overlap and duplication between federal and state processes can be greatly reduced without lowering the quality of environmental outcomes. Parliament should approve a One-Stop Shop for environmental approvals.<sup>2</sup>

Further, it is important that urban development takes adequate account of existing and planned export infrastructure. MCA members have noted that in some cases, the approval of new residential housing near existing coal infrastructure has created problems in renewing mining leases.

## Recommendations

1. The National Freight and Supply Chain Strategy should enshrine the principle that commercial operations should be run by the private sector, except in cases where there is a strong policy rationale for public ownership.
2. The National Freight and Supply Chain Strategy should carefully consider the role competition policy can and should play in promoting efficient outcomes, noting the unique voluntary solution to multi-user complexity provided by the Hunter Valley Coal Chain Coordinator.
3. Before privatising public monopolies involved in infrastructure service provision, governments should consider carefully whether access arrangements or other regulatory provisions take proper account of long-term efficiency objectives relating to Australia's export competitiveness.
4. The Australian Government should continue to prosecute the sensible and pragmatic national interest reforms that were advanced in the Shipping Legislation Amendment Bill 2015; namely, replacing the current tiered licensing system with a single coastal trading permit and requiring

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<sup>1</sup> Minerals Council of Australia, [Submission on Coastal Shipping reforms discussion paper](#), MCA, 12 May 2017.

<sup>2</sup> Minerals Council of Australia, [Submission to Senate Select Committee on red tape inquiry into environmental approvals](#), MCA, 18 August 2017.

foreign ships operating predominantly in Australia to adhere to domestic workplace relations arrangements.

5. State processes should be fully accredited under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) to create a single assessment and approval process. Also, governments should place greater emphasis on the implementation of risk-based approaches when determining both the assessment pathway and in setting information requirements appropriate to the action proposed.
6. State governments should play a greater role in ensuring that key infrastructure corridors are maintained and urban development in adjacent areas is managed effectively.
7. A risk-based approach should be central to the regulation and broader management of port activities to ensure that limited government resources are appropriately focused on the management of key threats.
8. Companies should not be burdened with reporting on government-determined infrastructure metrics. However, should KPIs be publicly available we recommend the information be used equitably to benefit the entire supply chain. The minerals industry also cautions against adopting a single KPI.

## 1. ECONOMIC CONTEXT

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- The Australian mining industry remains a pillar of the Australian economy. Australia's resources sector remains the nation's largest source of export revenue – accounting for 73 per cent of Australia's merchandise trade.
- Australian minerals companies operate in a global industry where prices are highly transparent and there is intense competition – both from other commodity exporters and from domestic suppliers in customer countries. Global barriers to trade are low compared with other sectors.
- Australian minerals companies are involved in all aspects of the supply chain – road, rail and sea transport. Differing industry configurations give rise to differing regulatory issues with important consequences for economic efficiency.

### Economic contribution of mining and competitive challenges

Australia's economy has undergone a far-reaching transformation over recent decades. Among the factors that have underpinned profound structural change are economic reform, technological change and new patterns of work, changing demographics, increased demand for services and rapid growth and industrialisation in emerging Asian economies (in particular, China and India). Nothing in Australia's contemporary economic history suggests that the pace of change will slow.

The Australian mining industry remains a pillar of the Australian economy. Australia's resources sector remains the nation's largest source of export revenue – accounting for 73 per cent of Australia's merchandise trade in 2016-17. Iron ore and coal are Australia's top two exports by value.<sup>3</sup>

A report by Deloitte Access Economics (commissioned by the MCA) found that the combined economic contribution of mining (excluding oil and gas but including metal refining) and mining equipment, technology and services (METS) is 15 per cent of GDP. Mining and METS activities support a total of 1.1 million jobs across Australia, representing approximately 10 per cent of total employment (Box 1).

Australian minerals companies operate in a global industry where prices are highly transparent and there is intense competition – both from other commodity exporters and from domestic suppliers in customer countries. Global barriers to trade are low compared with other sectors. The industry is highly capital intensive and characterised by high-risk exploration outlays, large upfront capital commitments, long-life assets, sophisticated technologies and long lead times to profitability. Its capital, people and technology are globally mobile.

Because mining in Australia is capital-intensive, the industry's capital productivity has a large bearing on its multifactor productivity (i.e. the growth of output above the growth of labour and capital combined).

Between 2006-07 and 2015-16, the resources sector (including oil and gas) undertook unparalleled investment in new mines, equipment and infrastructure, with a corresponding net capital stock of \$841 billion in June 2016.<sup>4</sup> Measured productivity in mining declined during this period owing to the lag between investment and production, rapid workforce expansion with constrained labour markets, and increased mining of lower grade ores that are more costly to extract. However, as the mining boom

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<sup>3</sup> Australian Bureau of Statistics, [International Trade in Goods and Services, Australia, Jun 2017](#), ABC cat no. 5368.0, released on 3 August 2017, Tables 3 and 12b.

<sup>4</sup> Australian Bureau of Statistics, [Australian System of National Accounts, 2015-16](#), ABC Cat No. 5204, released 28 October 2016

moved from the investment phase to the production phase, multifactor productivity growth turned positive, recording 7.0 per cent growth in 2014-15 and 2.4 per cent in 2015-16 (Chart 1).<sup>5</sup>

The resources sector workforce has benefitted from substantial investments made over the past decade (Chart 2). The expanded capital stock has underpinned average weekly earnings of resource sector workers increasing 66 per cent over the past decade to \$2,635 – 77 per cent higher than the average for other industries.<sup>6</sup>

### **Box 1: Mining and METS sector accounts for 15 per cent of GDP**

A report by Deloitte Access Economics (commissioned by the MCA) reveals that the total economic contribution of Australia's mining and mining equipment, technology and services (METS) sector was \$236.8 billion in 2015-16 – equivalent to around 15 per cent of the Australia's gross domestic product (GDP).

Mining and METS activities supports 484,100 full-time-equivalent jobs directly and a further 655,700 indirectly – amounting to approximately 10 per cent of total employment

While the benefits of mining and METS activities are distributed across Australia, there are a number of regional areas where the sector makes a particularly significant economic contribution:

- The Pilbara region (Western Australia), with a total economic contribution of \$37.8 billion (88 per cent of total regional economic activity) and 93,800 jobs (direct and indirect)
- The Bowen-Surat region (Queensland), with a total economic contribution of \$18.6 billion, which represented (63 per cent of total regional economic activity) and 99,700 jobs (direct and indirect)
- The Hunter region (New South Wales), with a total economic contribution of \$15.2 billion (34 per cent of total regional economic activity) and 93,600 jobs (direct and indirect).

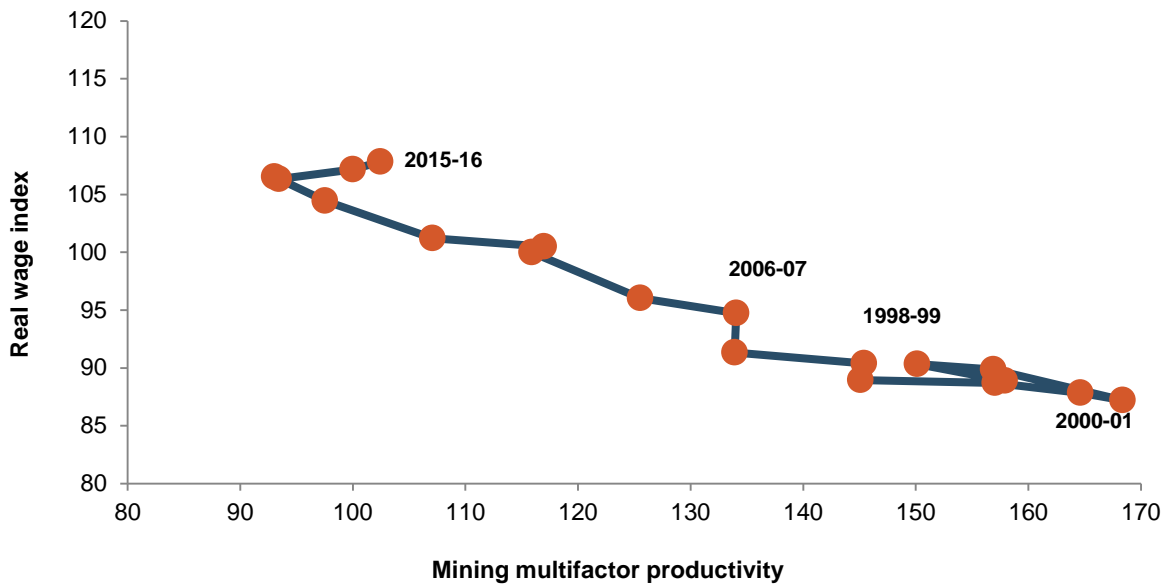
Deloitte Access Economics further points out that Australia's comparative advantage in mining and METS not only hinges on innovation; it also depends on policies that strengthen competition, support the accumulation of skills and capital, and enable firms to respond flexibly to changing market conditions.<sup>7</sup>

<sup>5</sup> See Productivity Commission, [PC Productivity Update 2016](#), Canberra, released on 26 April 2016, p. 7

<sup>6</sup> Australian Bureau of Statistics, [Average Weekly Earnings, Australia, Nov 2016](#), ABS cat. no. 6302.0, released on 23 February 2017.

<sup>7</sup> Deloitte Access Economics, [Mining and METS: engines of economic growth and prosperity for Australians](#), 29 March 2017.

**Chart 1: Mining real wages and multifactor productivity, 2000-01 and 2015-16**



Source: ABS

Highly populated developing countries have levels of income, urbanisation and resource consumption per capita that are well below those of OECD nations. As developing nations, particularly in Asia, converge towards advanced economies, the world’s metal and energy needs are projected to continue growing in the 21<sup>st</sup> century.<sup>8</sup> What remain uncertain are the rates of growth in emerging economies which will underpin the growth in resources consumption and their future sources of supply.

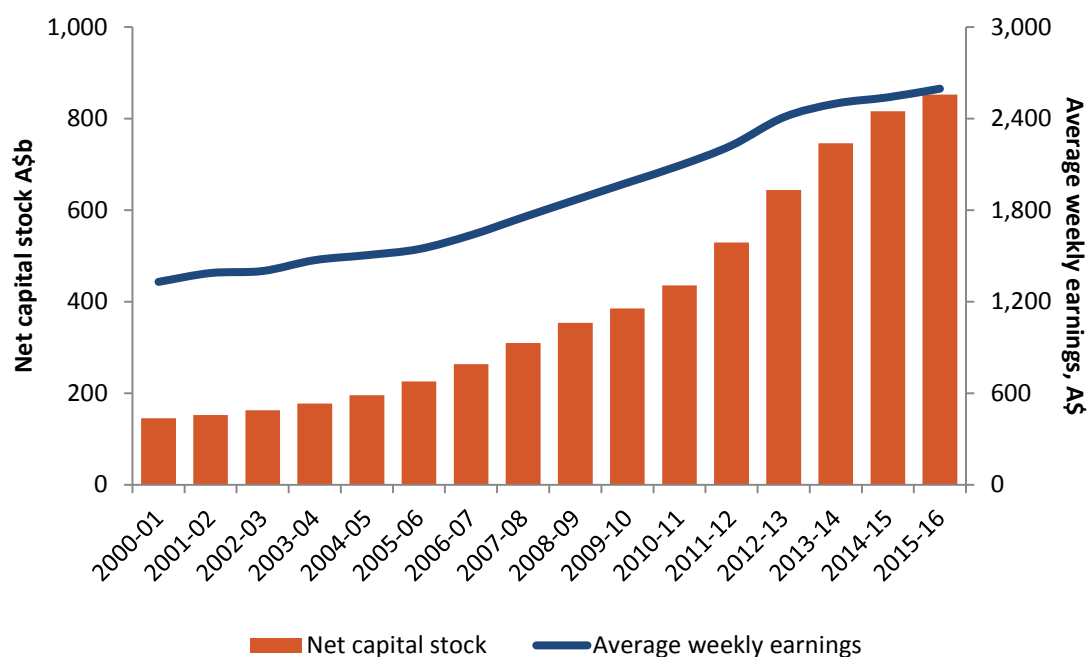
Owing to its large resource endowments and close proximity to the main economic growth areas, Australia has the opportunity to continue to be a leading global supplier of commodities. However, this opportunity is far from guaranteed. There is already substantial competition from other emerging mining regions with high grade deposits for both investment and trade deals.

Australia has not been the only country to enjoy the benefits of the investment phase of the mining boom and countries across South America, Asia and Africa have also attracted substantial investment to initiate or increase production of iron ore, base and precious metals as well as energy commodities such as coal. Many of these new mines have very low operating costs that make them highly competitive with Australian miners.

<sup>8</sup> Department of Industry, Innovation and Science, [Resources and Energy Quarterly – March 2016](#)



**Chart 2: Australian mining industry – net capital stock and average weekly earnings**



Source: Australian Bureau of Statistics, [Australian System of National Accounts](#), ABS cat. No 5204.0, 2015-16, released on 28 October 2016 (net capital stock); [Labour Force, Australia, Detailed, Quarterly, May 2017](#), ABS cat. no. 6291.0.55.003, released on 22 June 2017 (average weekly earnings).

### The long minerals supply chain

Australian minerals companies are involved in all aspects of the supply chain – road, rail and sea transport. Differing industry configurations give rise to differing regulatory issues with important consequences for economic efficiency. A singular example relates to the structural differences that characterise the vertically-integrated, privately owned, single user systems in west coast iron ore operations when compared with multi-user, multi-owner rail and port facilities in the east coast coal industry.

These differences relate to ownership structures, public sector involvement, planning arrangements and the form of regulation, as well as reflecting particular geographic factors. Moreover, there are several variants within multi-user systems that encompass track (below rail), trains (above rail) and ports. They in turn underline the need for careful analysis of the role competition policy can and should play in promoting efficient outcomes.

In the east coast coal networks, the major regulatory issues have been with the management of open-access arrangements for previously government-owned natural monopoly assets, including the setting of the terms and conditions of access. In the west coast iron ore operations, the major issues have been whether third party access should be provided at all over historically private-owned, vertically integrated facilities

MCA member New Hope exports coal via the South Western Rail system which is maintained by Queensland Rail and regulated by the Queensland Competition Authority. New Hope considers that the recent process to approve an Access Undertaking demonstrated failures in economic regulation.

## Box 2: Queensland Rail South West Rail System

The Queensland Rail (QR) South Western system runs over 610km from Toowoomba to Thallon via Warwick, with branch lines.<sup>9</sup>

- QR submitted and withdrew several voluntary access undertakings, resulting in significant delay, before the Queensland Competition Authority invoked its mandatory process powers. New Hope and other interested parties incurred significant costs in participating in the process and providing submissions.
- Additionally the current declarations of the West Moreton system (and that of the Central Queensland Coal Network) expire in 2020 and need to be extended to provide certainty to all stakeholders.

A further area of concern is that the current declarations of the West Moreton system (and that of the Central Queensland Coal Network) expire in 2020 and need to be extended to provide certainty to all stakeholders.

Bottleneck challenges associated with the recent mining investment boom point to greater risk of inefficient outcomes in the case of multi-user, multi-owner infrastructure networks as compared with single-user, owner-operated and integrated infrastructure. These risks are likely to be exacerbated where formerly government-owned, multi-user assets have been corporatised or privatised without careful consideration of appropriate regulatory frameworks. New Hope has expressed concern that proposed Inland Rail Project and Cross River Rail project have lacked integrated planning and coordination.

## Box 3: Inland Rail Project

The Treasurer announced in the 2017 Budget that an additional \$8.4 billion would be equity investment would be provided to ARTC for the Melbourne to Brisbane Inland Rail.<sup>10</sup>

- The business case for Inland Rail assumes West Moreton mines would be diverted from railing through the Brisbane passenger network, instead taking the longer route to use the Inland Rail.
- MCA member New Hope is concerned that unless all necessary upgrades are undertaken the benefits will not be realised for Western System users. We note the importance of the Inland Rail connection point be upgraded or, users of the Western System will need to continue using existing track and will not be able to user bigger trains and modern rolling stock. This would result in additional costs caused by increased distance and congestion at the port without the commensurate benefit of bigger trains and modern rolling stock.
- We also note additional complexity and costs associated with the new requirement to interface with two below rail access providers (QR and Inland Rail).

In other regions where mines are situated more closely together, there is a stronger case for a coordinated, multi-user approach. For example, coal mines in the Hunter Valley region work together through the Hunter Valley Coal Chain Coordinator (HVCCC) mechanism to ensure that their products are exported efficiently (Box 7).

<sup>9</sup> [South Western System](#), *Queensland Rail*, accessed 14 August 2017

<sup>10</sup> Budget 2017-18, [Budget Overview](#), 9 May 2017, p 13

## 2. OPEN, TRANSPARENT AND COMPETITIVE INFRASTRUCTURE MARKETS

- Commercial operations should be run by the private sector, except in cases where there is a strong policy rationale for public ownership, and effective competition policy is vital to ensuring that monopoly owners cannot restrict access and/or raise access prices unreasonably.
- Revenue from asset sales can blind governments to the potential long-term risks to competition and national welfare. Suboptimal privatisations can impose a tax on future generations of Australians and hinder Australia's competitiveness in the world market.
- At the same time, governments must be alert to differing industry characteristics that give rise to differing regulatory challenges and economic consequences. The Hunter Valley Coal Chain Coordinator (HVCCC) is a unique solution (authorised by the Australian Competition and Consumer Commission) that exemplifies how cooperation in the operation of multi-user supply chain infrastructure can enhance efficiency and exports where participants have differing interests.

### Importance of minimum effective regulation and effective competition policy

The minerals industry agrees with the Australian Competition and Consumer Commission (ACCC) that commercial operations should be run by the private sector, except in cases where there is a strong policy rationale for public ownership. The MCA advocates a four-part approach to regulation:

- The primacy of the market should be the first policy choice – there should be a general presumption that free and transparent markets will deliver efficient outcomes
- Market failure alone is insufficient to justify government intervention – there must be *prima facie* evidence that regulation can efficiently and effectively remedy market failure
- Where regulation is warranted, the presumption should be in favour of light-handed regulation
- More intrusive regulation should only be used where light-handed approaches and non-regulatory options have demonstrably failed.

At the same time, effective competition policy is vital to ensuring that monopoly owners of multi-user assets that have been corporatised or privatised cannot restrict access and/or raise access prices unreasonably.

When implemented appropriately, privatisation can improve the efficiency of investment and management and improve community welfare. However, these benefits will not be achieved unless the resulting market structure supports competition, or the government exercises proper regulatory oversight from the outset. Without an adequate regulatory regime, monopoly providers of infrastructure can impose high prices or poor service quality.<sup>11</sup>

The ACCC has raised serious concerns that the lure of revenue from asset sales can blind governments to the potential long-term risks to competition and national welfare. It points out that suboptimal privatisations 'effectively impose a tax on future generations of Australians and hinder Australia's competitiveness in the world market'.<sup>12</sup> The Chairman of the ACCC, Mr Rod Sims, has cited the Port of Newcastle as an example of a privatised natural monopoly that can impose very large price increases because there is little in the regulatory regime to prevent it (Box 4).<sup>13</sup>

<sup>11</sup> Australian Competition and Consumer Commission, [Submission to Senate Economics References Committee Inquiry into the Privatisation of state and territory assets and new infrastructure](#), 29 January 2015, p. 3f.

<sup>12</sup> Australian Competition and Consumer Commission, [Submission to Senate Economics References Committee Inquiry into the Privatisation of state and territory assets and new infrastructure](#), 29 January 2015, p. 5f.

<sup>13</sup> Rod Sims, Chairman of the Australian Competition and Consumer Commission, [Evidence to the Port of Melbourne Select Committee \(corrected version\)](#), Parliament of Victoria, 30 September 2015, p. 2f.

The Productivity Commission has similarly argued that the priority for privatisation is not to secure the highest price *per se*, but to achieve economic efficiency, manage risks to consumers and the public interest, ensure the market structure is amenable to privatisation, and make certain that asset sales are conducted efficiently, ethically and transparently.<sup>14</sup>

Where owners of bottleneck infrastructure are vertically integrated into competitive elements of the logistics chain, it can create a positive incentive against cooperation. Examples are where below-rail service providers own above-rail operations or where ports own terminal services. In this case 'bottleneck infrastructure owners have an incentive to use their market power in the regulated monopoly segments to create market power in the unregulated segments.'<sup>15</sup>

#### **Box 4: Port of Newcastle**

In April 2014, the NSW government sold a 98-year lease on the Port of Newcastle to a joint venture owned by Hastings Funds Management and China Merchants for \$1.75 billion, which amounted to 27 times earnings. The port was sold without any third-pricing oversight. From 1 January 2015, the Port of Newcastle increased navigation charges by between 40 to 60 per cent.<sup>16</sup> This effectively doubled the profit of the new company to around \$40 million, without adding any new services to customers.<sup>17</sup>

Glencore responded by seeking a declaration of the port under Part IIIA of the Competition Act. In its submission to the National Competition Council, Glencore argued that this measure could be but one of many schedule adjustments that could change the underlying economics of the coal industry and risk investment in mining.<sup>18</sup> Glencore argued that:

The ability of Port of Newcastle to nearly double its profits by increasing the price it charges for exactly the same service, and with virtually no transparency or justification, is effectively imposing an arbitrary tax on the mining industry.<sup>19</sup>

On appeal, the Australian Competition Tribunal agreed with Glencore and noted that bottleneck infrastructure like ports are more usually released to private ownership with 'a certified access regime or other effective regulatory framework for 'managing' the prices set by the monopoly owner or operator', but that in the case of the Port of Newcastle Operator no such structure had been put in place.<sup>20</sup> This case was significant in that it set out that correct approach is to compare the effect on competition with and without access to those services and to ignore any current access which is being provided to users.<sup>21</sup>

The minerals industry's experience of other infrastructure privatisations, notably in Queensland, reinforces the case for government hastening slowly and evaluating carefully. In its first undertaking following the privatisation of Queensland Rail (April 2013), Aurizon's rail track business sought average tariff increases estimated at 36 per cent and non-electric tariff increases averaging 45 per cent.<sup>22</sup> Proposed price increases of this magnitude underscore the importance of a strong regulatory framework for natural monopoly assets. The assessment and finalisation of Aurizon's regulatory proposal took three years, with a heavily amended access undertaking being approved in October 2016.<sup>23</sup>

<sup>14</sup> Productivity Commission, [Public Infrastructure, Volume 1](#), Inquiry Report No. 71, Canberra, 14 July 2014, p. 18.

<sup>15</sup> *Ibid*, page 3

<sup>16</sup> Matthew Stevens, [Glencore seeks ACCC protection at Newcastle port](#), Australian Financial Review, 13 May 2015

<sup>17</sup> Rod Sims, [How did the light handed regulation of monopolies become no regulation?](#) Australian Competition and Consumer Commission, 29 October 2015

<sup>18</sup> Matthew Stevens, [Glencore wins Newcastle port war](#), Australian Financial Review, 1 June 2016

<sup>19</sup> Peter Freyberg, Port of Newcastle – Application for NCC recommendation for declaration under Part IIIA, 4 November 2015

<sup>20</sup> *Ibid*

<sup>21</sup> Richard Robinson, Matthew Bull and Josh McGeechan, [Competition Tribunal Upholds Glencores Port of Newcastle Challenge](#), Herbert Smith Freehills, 3 June 2016

<sup>22</sup> Queensland Resources Council, Main submission to the Queensland Competition Authority on Aurizon Network's draft 2013 Undertaking ('UT4'), 10 October 2013, p. 2.

<sup>23</sup> Queensland Competition Authority, [Aurizon Network 2014 access undertaking Volume 1 – Governance & Access](#), April 2016

Regulation for competition policy purposes needs to be supported by good process and high-quality administration. Strong institutional oversight is required to ensure alternative policy options are considered and to ensure regulations generate benefits that outweigh costs.

It is important that competition policy frameworks are not overly complex and that consideration be given to minimising business compliance costs, especially where those costs fall disproportionately on businesses that compete globally.

### Examples of suboptimal infrastructure markets

#### Box 5: Australian Rail Track Corporation

In 2014-15, New South Wales exported 173 million tonnes of coal worth \$14.4 billion in export revenue – equivalent to around 40 per cent of Australia’s total coal export volume and value.<sup>24</sup> The vast majority of NSW’s coal exports are produced in the Hunter Valley.

The Australian Rail Track Corporation (ARTC) was established out of a 1997 Inter-Governmental Agreement entered into between the Commonwealth of Australia and the States of New South Wales, Victoria, Queensland, Western Australia and South Australia. ARTC is vertically separated, providing ‘below-rail’ services (such as the rail track infrastructure) but not ‘above-rail’ services (such as haulage). ARTC provides a single point of contact for parties seeking to run trains on the National Interstate Rail Network and the Hunter Valley Rail Network in New South Wales.<sup>25</sup>

The Australian Rail Track Corporation (ARTC) owns and operates the Hunter Valley Coal Network, which is a key component in the supply chain of Australia’s coal export industry. Every tonne of coal that travels through the Hunter Valley to the Port of Newcastle must use track owned and controlled by the ARTC. These flows of coal output contribute significantly to national income.

For most Australian coal producers the rail-port logistics chain represents a monopoly bottleneck. A single integrated unregulated monopoly owner of the logistics chain would be fully able to extract the entire economic rent from the users. For example, in ARTC has an effective monopoly of the Tarcoola-Darwin Railway line (Box 6 below). Such a monopolist could set its charges at the level that fully captures the difference between the world price and the cost of production.

<sup>24</sup> Coal Services, [Annual Report 2014-15](#), p. 41; Department of Industry, Innovation and Science, [Resources and Energy Quarterly – December Quarter 2015: Statistical data](#), released on 22 December 2015, Canberra. In calendar 2015, 158 million tonnes of coal were exported through the Port of Newcastle alone. Coal exports account for 97 per cent of the port’s trade. See Port of Newcastle, [Port of Newcastle’s non coal trade growth continues](#), released on 8 January 2016.

<sup>25</sup> Australian Competition and Consumer Commission, [ACC role in rail](#), viewed 14 August 2017.

## Box 6: The Tarcoola-Darwin Railway

The Tarcoola-Darwin Railway (TDR) transports commodities between Tarcoola (South Australia) and Darwin. The TDR is an effective monopoly of rail services as it is the only railway between South Australia and the Port of Darwin. The railway is operated by Genesee & Wyoming Australia (GWA). GWA has operated freight operations in South Australia since 1997 following acquisition of the former Australian National Railroad lines. In 2010 GWA then acquired ownership of the TDR when it purchased Freightlink.<sup>26</sup> The AustralAsia Railway (Third Party Access) Act 1999 establishes the governance of the TDR. Under the governance arrangement, GWA operates both the below ground and above ground operation of the TDR.

The Port of Darwin is Australia's most northern deep water harbour and the closest port to Asia. Until 2016, the Port was owned by the Northern Territory Government; however, in 2016, the government established a 99-year lease of the Port with the Landbridge Group. The Landbridge Group now operates the multi-user, mixed cargo and marine services port. The leased area includes land adjacent to the railway for future development.

In 2013-2014, total throughput for all Australian ports totalled 1,220 million tonnes (MT), with the Port of Darwin one of the smaller contributors, with 4.60 MT of throughput during that same period.<sup>27</sup> Of this, 62 per cent of all throughput was bulk freight, with iron ore (1.88 MT) and manganese (0.92 MT) the main commodities. Dry bulk export from Port Darwin decreased significantly in 2014-15. While this reflects falls in exports of minerals concentrates such as iron ore and manganese, uneconomic freight costs could also be a factor.

### Exports from Port Darwin (million tonnes, MT)

Year	Total cargo trade	Dry bulk exports	Iron ore Darwin	Manganese Darwin
2010-11	3,835,354	2,226,668	1,288,658	882,804
2011-12	3,511,007	2,218,521	1,084,607	833,193
2012-13	4,299,009	2,560,362	1,668,432	888,765
2013-14	4,597,933	2,816,967	1,881,773	924,946
2014-15	3,423,680	1,534,475	735,513	791,970
<b>Decrease 2013-14 to 2014-15</b>	26%	46%	61%	14%

Source: Darwin Port Corporation, [2015 Trade Report – Positioning for the Future](#), 11 September 2015

As the primary means of transport for bulk exports into the Port of Darwin, the TDR carries significant economic importance. The Australian Government, in its June 2015 publication, *Our North, Our Future: White Paper on Developing Northern Australia*, indicated that:

The north is fast developing as a trade gateway for all of Australia. The Darwin-Adelaide Railway has helped lift the volume of exports through Darwin Port to be thirteen times larger in just 10 years.

It is important that the Northern Territory government ensures that appropriate competition policy settings are in place to preserve the efficiency dividend.

<sup>26</sup> AustraliaAsia Railway Corporation, [Rail Operator](#), viewed 14 August 2017.

<sup>27</sup> Ports Australia, [Total Throughput \(mass tonnes\) for 2012/2013](#), viewed 14 August 2017

### **The HVCCC: A unique, voluntary solution to a complex coordination problem**

The Hunter Valley Coal Chain Coordinator (HVCCC) exemplifies how cooperation in the operation of multi-user supply chain infrastructure can enhance efficiency and exports where participants have differing interests. The HVCCC emerged as a voluntary solution to a complex coordination problem by all participants and had to be authorised by the ACCC. It has achieved significant positive outcomes for the coal industry in the Hunter Valley by ensuring a reliable and efficient supply chain (Box 7).

#### **Box 7: The Hunter Valley Coal Chain Coordinator (HVCCC)**

The Hunter Valley Coal Chain Coordinator (HVCCC) brings together the largest coal export operation in the world, consisting of approximately 35 coal mines owned by 11 coal producers, coal haulage distances of up to 380 kilometers, more than 31 points for loading coal onto trains, four rail haulage providers delivering to three coal terminals and the movement and loading of more than 1400 coal vessels a year through the Port of Newcastle.<sup>28</sup>

The HVCCC provides a unique and effective solution to a complex coordination problem that has significant public benefits. It has achieved significant positive outcomes for the coal industry in the Hunter Valley by ensuring a reliable and efficient supply chain. The ACCC describes the public benefits of the HVCCC as:

- More accurate and timely investment decisions;
- Optimal operation of the coal chain and demurrage savings to Australian coal producers;
- Reducing the environmental and safety risks associated with offshore vessel queues; and
- Enhancing the reliability and international reputation of the Hunter Valley coal industry.<sup>29</sup>

This case study is an example of the success of all industry stakeholders in optimising the use of existing and planned infrastructure to meet the requirements of producers who generate significant export income for the nation.

<sup>28</sup> HVCCC Hunter Valley Coal Chain Coordinator, [History](#), viewed on 14 August 2017

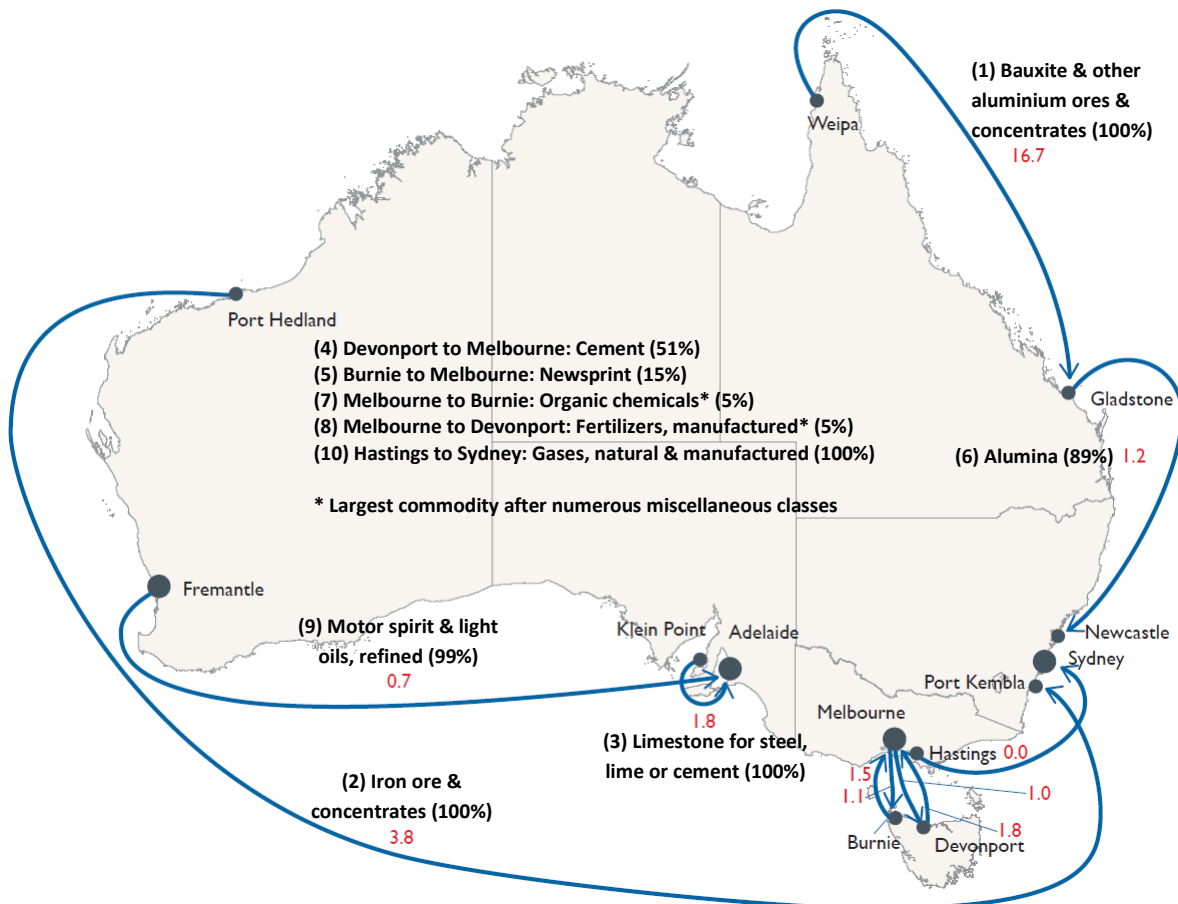
<sup>29</sup> Australian Competition and Consumer Commission, [Australian Rail Track Corporation Limited, Hunter Valley Coal Network Access Undertaking](#), 10 February 2010.

### 3. COASTAL SHIPPING REFORM IS OVERDUE

- Bulk commodities account for 80 per cent of Australia’s coastal shipping trade by tonnage, with bauxite and other aluminium ores and concentrates comprising 34.2 per cent, and iron ore and concentrates 7.5 per cent
- The Coastal Trading Act has increased domestic transport and administration costs and made it more difficult to source coastal shipping services when they are needed
- The Australian Government should continue to prosecute the sensible and pragmatic national interest reforms that were advanced in the Shipping Legislation Amendment Bill 2015.

As the largest user of coastal shipping services, the Australian minerals industry has a strong interest in competitive and cost-effective coastal shipping (Figure 1). Bulk commodities account for 80 per cent of Australia’s coastal shipping trade by tonnage, with bauxite and other aluminium ores and concentrates comprising 34.2 per cent, and iron ore and concentrates 7.5 per cent.<sup>30</sup>

**Figure 1: Top ten coastal freight routes, 2014–15 (total freight per route in millions of tonnes, predominant commodity and its share of flow)**



Source: Bureau of Infrastructure, Transport and Regional Economics

<sup>30</sup> Data provided to the MCA by the Bureau of Infrastructure, Transport and Regional Economics, 9 May 2017



The participation of foreign ships is a longstanding feature of Australia's coastal shipping trade and is essential to the efficient and timely movement of freight. Australia has always had an undersupply of ships providing domestic services. From the commencement of the *Navigation Act 1912*, Australia relied upon British ships (and later other foreign vessels) to supplement its coastal shipping fleet.<sup>31</sup>

### **The Coastal Trading Act made retrograde changes to competition rules**

The gradual liberalisation of Australia's coastal shipping trade was reversed by the *Coastal Trading (Revitalising Australian Shipping) Act 2012*. This Act made retrograde changes to competition rules by replacing single and continuous voyage permits with a tiered licensing system that discriminates against foreign ships. While Australian-flagged ships enjoy unrestricted access to coastal trade under a five-year general license, foreign-flagged vessels only have access to a 12-month temporary license or, in exceptional circumstances, a 30-day emergency license. In addition, the Coastal Trading Act gives Australian ships the power to contest voyages proposed by foreign ships.<sup>32</sup>

The Productivity Commission has observed that: 'Cabotage restrictions are a significant impost for Australian businesses that rely on coastal shipping, and they deter businesses from using coastal shipping'.<sup>33</sup> The then Deputy Prime Minister, the Hon Warren Truss MP, pointed out in 2015 that:

We know that the cost of shipping dry food powder from Melbourne to Brisbane is the same as shipping the same product from Melbourne to Singapore.

And it is cheaper to ship sugar from Thailand to Australia than it is to ship Australian sugar around our own coastline.<sup>34</sup>

The experience of the Australian mining industry is that the Coastal Trading Act has increased domestic transport and administration costs and made it more difficult to source coastal shipping services when they are needed. In particular:

- For some dry bulk commodity producers, the cost of shipping final product around Australia is now about the same as shipping from overseas to Australia
- Bell Bay Aluminium reported a 63 per cent increase in shipping freight rates from Tasmania to Queensland in just the first year of the 2012 regime – from \$18.20 a tonne in 2011 to \$29.70 a tonne in 2012<sup>35</sup>
- Another company saw freight charges increase by over \$3,000 a day up and down the east coast of Australia.

Companies stress that the requirements of the Coastal Trading Act are particularly onerous given the minerals industry's unpredictable commercial environment. Running a dynamic schedule for bulk commodities like bauxite and alumina requires full flexibility for cancellations and additions. It is extremely difficult – and unreasonable – for a bulk shipper to provide accurate information about planned voyages a year in advance.

The MCA broadly supports the following amendments to the Act that are proposed in the government's *Coastal Shipping Reforms: Discussion Paper*:

1. Abolishing the five-voyage minimum for temporary license holders and allowing them to apply for single voyages
2. Removing the need to consult general license holders and other stakeholders if there is no general license holder who wishes to be consulted and/or no general-license vessel which is able to carry the product

<sup>31</sup> Commonwealth of Australia, [Explanatory Memorandum to the Shipping Legislation Amendment Bill 2015](#), p. 46.

<sup>32</sup> Commonwealth of Australia, [Explanatory Memorandum to the Shipping Legislation Amendment Bill 2015](#), pp. 52, 90f.

<sup>33</sup> Productivity Commission, [Regulation of Australian Agriculture: Final Report](#), released on 28 March 2017, p. 390.

<sup>34</sup> The Hon Warren Truss MP, then Deputy Prime Minister and Minister for Infrastructure and Regional Development, [Second Reading Speech on the Shipping Legislation Amendment Bill 2015](#), Hansard, 25 June 2015, p. 7577.

<sup>35</sup> *ibid.*, p. 7577.

3. Replacing the two types of licence variations ('authorised matters' and 'new matters') with a single temporary-license variation provision, and allowing only one business day for consultations (instead of two days)
4. Limiting the requirement to lodge voyage notifications two business days before the loading date to those voyages where details provided in the application have changed
5. Amending the tolerance limit for loading dates from five days to 30 days and removing volume tolerances altogether (currently 20 per cent of the nominated cargo volume)
6. Abolishing emergency licenses and modifying the criteria for issuing general licenses and temporary licenses to allow for emergency situations.
9. Clarifying several definitions in the Act to assist with administration.<sup>36</sup>

In contrast, the MCA has reservations about the following proposed amendments:

7. Amending the definition of 'coastal trading' to include voyages to and from places in Australian waters outside the coastal waters of a state or territory, such as offshore installations in Australian territory to the mainland
8. Amending the definition of 'coastal trading' to include vessels docked for service in dry dock, or docked for maintenance, repairs, cleaning or painting, and not engaged on a voyage.

The MCA submits that proposed amendment 7 requires further consideration to understand better the full implications of such an amendment. Additionally, while the rationale for proposed amendment 8 – providing that foreign vessels undergoing repairs in Australia should not be subject to importation – is understood and accepted, the MCA queries whether the more appropriate vehicle to implement this position is under Customs legislation and regulations.

### **The contestability provision diminishes productivity and increases uncertainty**

While the first six and ninth amendments proposed in the discussion paper would ameliorate the inflexibility and burdens of the Coastal Trading Act, consideration should also be given to removing the restrictions that protect Australian-flagged ships from competition by foreign-flagged vessels.

Whereas the previous licensing regime allowed both Australian and foreign-flagged ships to engage in coastal trade, the current regime imposes more onerous regulatory obligations on foreign-flagged vessels. Yet even though these differential requirements ensure that Australian vessels receive preferential treatment in coastal trading, they are failing to revitalise the Australian shipping industry. Rather, as the Productivity Commission has argued, the net effect of these protectionist measures is to reduce competition in coastal shipping services and to reduce incentives for domestic suppliers to improve. Consequently, industry users are switching to alternative modes of transport, thereby contributing to a further decline in demand for Australian shipping services.<sup>37</sup>

The contestability provision exemplifies how the Coastal Trading Act diminishes productivity and increases uncertainty. When a foreign vessel applies for a temporary license, the minister must notify all general license holders of the application (and other bodies that the minister considers would be directly affected if the application were granted). If a domestic shipping company indicates that it is able to conduct any nominated voyages under its general license, this triggers a mandatory consultation process between the foreign shipping company and the general license holder. This negotiation may be arbitrated by the department, but ultimately the minister (or his or her delegate) decides whether to grant or refuse the temporary license application.<sup>38</sup>

<sup>36</sup> Department of Infrastructure and Regional Development, [Coastal Shipping Reforms: Discussion Paper](#), 21 March 2017.

<sup>37</sup> Productivity Commission, [Tasmanian Shipping and Freight: Final Report](#), released on 24 June 2014, Canberra, pp. C1, C.7; [Regulation of Australian Agriculture: Final Report](#), released on 28 March 2017, pp. 390, 392f.

<sup>38</sup> Productivity Commission, [Tasmanian Shipping and Freight: Final Report](#), released on 24 June 2014, Canberra, p. C.13; Commonwealth of Australia, [Explanatory Memorandum to the Shipping Legislation Amendment Bill 2015](#), pp. 90f.

In assessing a temporary license application, the minister (or his or her delegate) *must* have regard to the following factors:

- The outcome of negotiations
- Whether, and to what extent, the vessel authorised by the holder’s general licence is equipped to carry the passengers or cargo specified in the application
- Whether those passengers or cargo can be carried on the expected loading dates or within 5 days before or after the relevant date
- If the application relates to the carriage of cargo – the reasonable requirements of a shipper of the kind of cargo specified in the application.<sup>39</sup>

The Coastal Trading Act also nominates several factors which the minister (or his or her delegate) *may* consider, including ‘any other matters the Minister thinks relevant.’<sup>40</sup>

A majority decision of the Full Court of the Federal Court of Australia clarified that commercial matters – such as freight rates, contractual terms or the economic position of the cargo owner – are not part of the mandatory consideration of ‘the reasonable requirements of a shipper of the kind of cargo specified in the application’. While commercial matters cannot be excluded from consideration, the minister (or his or her delegate) cannot give them a weighting that is inconsistent with the primary protectionist objective of the Coastal Trading Act. As Chief Justice Allsop explained:

Subject to the breadth of available considerations in s 34(2)(g), no provision of the Act makes freight rates (proposed by the general licence holder or the temporary licence applicant) an identifiable consideration ... [B]ut is impossible, in my view, to exclude freight rates and their impact on industry anxious to keep costs down, as legally irrelevant. How much weight to put on freight rates in any particular case will generally be a matter for the decision-maker. There may, however, be circumstances that display such a weight being given to a legally relevant circumstance that it so distorts the operation of the Act beyond and outside the intended operation of the regulatory framework intended by s 3(1) as to be legally unreasonable and inconsistent with the Act. This Act was part of a suite of legislation to revitalise Australian shipping. It was not a piece of legislation to ensure the lowest possible freight rates set by foreign-flagged vessels to shipper interests in Australia and thereby make the development of Australian-owned or registered vessels very difficult. The balance of competing considerations is one for the decision-maker armed with contemporaneous and up-to-date information and chosen government policy.<sup>41</sup>

The previous government sought to solve this problem by redefining the objectives of the Act as fostering a competitive coastal shipping services industry that supports the Australian economy, and maximising the use of available shipping capacity on the Australian coast. The previous government also sought to afford Australian and foreign ships equal access rights to carry coastal goods or passengers.<sup>42</sup> Both of these reforms would have improved the efficiency of the Coastal Trading Act and should be reconsidered.

Unless the overriding anti-competitive objective (and discriminatory regulatory regime) of the Coastal Trading Act is addressed, coastal shipping will continue to decline as a share of the national freight task – despite growing volumes. In 2015, the then Deputy Prime Minister warned that:

Between 2000 and 2012, while the volume of freight across Australia actually grew by 57 per cent, shipping’s share of the Australian freight task fell from about 27 per cent to just under 17 per cent. Between 2010 and 2030, Australia’s overall freight task is expected to grow by 80 per cent, but coastal shipping is only forecast to increase by 15 per cent.<sup>43</sup>

The Coastal Trading Act has reduced access to foreign shipping at a time of global oversupply of shipping capacity. Conversely, the fleet of Australian ships suitable for domestic maritime transport

<sup>39</sup> Commonwealth of Australia, [Coastal Trading \(Revitalising Australian Shipping\) Act 2012](#), Section 34(3).

<sup>40</sup> *ibid.*, Section 34(2).

<sup>41</sup> Federal Court of Australia, [CSL Australia Pty Limited v Minister for Infrastructure and Transport \[2014\] FCAFC 10](#).

<sup>42</sup> Commonwealth of Australia, [Explanatory Memorandum to the Shipping Legislation Amendment Bill](#), p. 51f.

<sup>43</sup> The Hon Warren Truss MP, then Deputy Prime Minister and Minister for Infrastructure and Regional Development, [Second Reading Speech on the Shipping Legislation Amendment Bill 2015](#), Hansard, 25 June 2015, p. 7576.

has been declining for decades. The number of major Australian registered ships with coastal licenses has halved from 30 in 2006-07 to 15 in 2013-14. Since the Coastal Trading Act was introduced, the carrying capacity of the Australian coastal fleet has decreased by 63 per cent.<sup>44</sup>

In addition, Australia's coastal fleet is older and more costly to operate by international standards. The average age of a major Australian ship with a general license is 23 and none are aged less than 15 years – the upper age limit preferred by shippers. Older ships are slower, less efficient and reliable, and require larger crew contingents. They also attract higher insurance premiums.<sup>45</sup>

The higher operating cost of Australia's ageing fleet is contributing to its declining participation in international trade. The regulatory impact statement on the Shipping Legislation Amendment Bill 2015 concluded that:

[T]he current situation is such that foreign participation in the Australian domestic maritime industry is essential for the foreseeable future ... The declining tonnage of trading ships on the Australian registry has led to a shortage in Australian capacity on domestic routes and has brought about an increased reliance on foreign ships to provide these services ... Domestic coastal trade suffers from either high freight charges or loss of business to the road and rail freight sectors.<sup>46</sup>

To stimulate competition and growth in Australia's coastal trade, the government should continue to prosecute the sensible and pragmatic national interest reforms proposed in the Shipping Legislation Amendment Bill 2015:

- Introducing a single permit system allowing unrestricted trade for both Australian and foreign vessels
- Ensuring that Australian and foreign-registered vessels are subject to the same conditions of access and operation by removing the ability of domestic ships to contest voyages proposed by foreign ships.

At the same time, the bill proposed no changes to the Fair Work Act and sought to apply Part B of the Seagoing Industry Award to foreign vessels primarily engaged in coastal trading.<sup>47</sup>

### **The case for coastal shipping reform is compelling**

A number of respected and independent bodies have urged the federal government to liberalise Australia's coastal trade. In its final report on the regulation of agriculture, the Productivity Commission recommended that:

As a matter of priority, the Australian Government should amend coastal shipping laws to substantially reduce barriers to entry for foreign vessels, to improve competition in coastal shipping services.<sup>48</sup>

Similarly, the Australian Competition and Consumer Commission stated that liberalising the coastal shipping trade would benefit businesses and consumers:

Restrictions on competition in coastal shipping are potentially at odds with principles of National Competition Policy ... Increased competition in coastal shipping should result in lower freight costs, with flow-on effects of lower prices for manufacturing inputs and consumer goods ... A more efficient coastal shipping industry will help to relieve pressure on Australia's road and rail networks, lowering transport costs and consequently prices, across the economy.<sup>49</sup>

The Competition Policy Review Panel reasoned that cabotage licensing is justified only if it can be shown that the costs of restricting competition are more than offset by benefits to the nation:

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<sup>44</sup> Commonwealth of Australia, [Explanatory Memorandum to the Shipping Legislation Amendment Bill](#), pp. 8, 83.

<sup>45</sup> *ibid.*, p. 50.

<sup>46</sup> Commonwealth of Australia, [Explanatory Memorandum to the Shipping Legislation Amendment Bill 2015](#), p. 49f.

<sup>47</sup> *ibid.*, pp. 2-6, 17, 28.

<sup>48</sup> Productivity Commission, [Regulation of Australian Agriculture: Final Report](#), released on 28 March 2017, p. 42.

<sup>49</sup> Australian Competition and Consumer Commission, [Submission to the Government's Options Paper: Approaches to regulating coastal shipping in Australia](#), May 2014, p. 1.

The Panel considers that reform of coastal shipping and aviation cabotage regulation should be a priority. Consistent with the approach the Panel recommends for other regulatory reviews, the Panel considers that restrictions on cabotage for shipping and aviation should be removed, unless it can be demonstrated that the benefits of the restrictions to the community as a whole outweigh the costs and the objectives of the policy can only be achieved by restricting competition.<sup>50</sup>

The Commission of Audit judged cabotage licensing to be 'effectively industry assistance' and advised that: 'To ensure a more efficient coastal shipping industry, the Commission recommends cabotage be abolished.'<sup>51</sup>

Conversely, there is no credible economic analysis to suggest that restricting access to foreign ships is good policy. The positive assessment of the regulatory impact statement on the Coastal Trading Act assumed substantial productivity gains that appeared 'unrealistic' to the Productivity Commission.<sup>52</sup> Subsequent cost-benefit analyses (conducted for both industry and government) have shown that shielding the domestic shipping industry from competition imposes significant net national costs.

The deadweight loss of the existing regulatory regime to the national economy is expected to be between \$242 and \$466 million to 2025.<sup>53</sup> The Productivity Commission has argued that Tasmania is disproportionately harmed, because it depends on coastal shipping for 99 per cent of freight moved in and out of the state, and because it has smaller freight volumes and more marginal ports.<sup>54</sup>

The high opportunity cost of the Coastal Trading Act – and its failure to revitalise domestic shipping – puts paid to any claim that liberalising coastal trade would result in a net loss of jobs (Box 8).

The regulatory impact statement on the Shipping Legislation Amendment Bill 2015 estimated that a controlled deregulation of coastal shipping would deliver a net benefit of \$786.2 million to the Australian economy and an annual deregulatory saving to business of \$27.9 million.<sup>55</sup> On the other hand, retaining or increasing restrictions on the participation of foreign ships would entrench domestic shipping industry assistance at the expense of the wider Australian community.

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<sup>50</sup> Competition Policy Review Panel, [Final Report](#), 31 March 2015, p. 210.

<sup>51</sup> Commission of Audit, [Towards Responsible Government, Phase 2 Report](#), March 2014, p. 29.

<sup>52</sup> Productivity Commission, [Final Report on Tasmanian Shipping and Freight](#), released on 24 June 2014, Canberra, p. 8.

<sup>53</sup> Commonwealth of Australia, [Explanatory Memorandum to the Shipping Legislation Amendment Bill](#), p. 52.

<sup>54</sup> Productivity Commission, [Regulation of Australian Agriculture: Final Report](#), 15 November 2016, released on 28 March 2017, p. 392.

<sup>55</sup> Commonwealth of Australia, [Explanatory Memorandum to the Shipping Legislation Amendment Bill](#), pp. 68, 70.

## Box 8: The Coastal Trading Act temporarily protects some jobs at the expense of many more

Protectionist measures – like those enshrined in the Coastal Trading Act – might preserve some jobs for some time in one industry, but they place many more jobs in other industries at risk by reducing their competitiveness. The Productivity Commission argues strongly that while the Coastal Trading Act cannot sustainably protect jobs from international competition, it does increase costs for the users of coastal shipping and the broader Australian community.

The Shipping [Legislation] Amendment Bill [2015] was referred to the Senate Rural and Regional Affairs and Transport Legislation Committee, which pointed to the estimated benefit from the proposed amendments of over \$667 million over 20 years (SRRATLC 2015b). These benefits would arise through increased competition from foreign vessels ...

However, Parliament did not pass the [Shipping Legislation Amendment] bill due to concerns over the potential loss of Australian jobs (Albanese 2016) ...

In itself, protecting an industry to preserve jobs is not justified. The cabotage restrictions protect some jobs at the expense of growth in other industries (PC 2014g). Protecting an industry from competition not only harms consumers (in this case farmers), but also reduces the incentives of the protected industry to improve its efficiency and competitiveness. Over time, the protected industry falls further behind foreign competitors, requiring ever more protection and increasing the cost to consumers and the community in general.<sup>56</sup>

Some opponents of the Shipping Legislation Amendment Bill asserted that it would induce the loss of 1,000 jobs. But these opponents ignore the hundreds of thousands of jobs in other industries – including minerals extraction and processing, petroleum, cement, steel and agriculture – that rely on the efficient transportation of freight by sea.

Rio Tinto alone employs 6,000 workers in bauxite mines, alumina refineries and aluminium smelters across Australia, namely:

- Amrun bauxite mining extension project in Cape York Peninsula, Far-North Queensland
- Bell Bay Aluminium smelter near George Town, Tasmania
- Boyne Smelters Limited, located approximately 20 kilometres south of Gladstone at Boyne Island, Central Queensland
- Gove Operations Bauxite Mine Alumina Refinery in North-East Arnhem Land
- Queensland Alumina Limited in Gladstone
- Tomago Aluminium, located 13 kilometres north-west of Newcastle
- Weipa bauxite mine in Cape York Peninsula
- Yarwun alumina refinery situated 10 kilometres north-west of Gladstone.<sup>57</sup>

<sup>56</sup> Productivity Commission, [Regulation of Australian Agriculture: Final Report](#), released on 28 March 2017, p. 392.

<sup>57</sup> See Rio Tinto, [Our business: Aluminium](#), viewed on 13 August 2017.

## 4. STREAMLINING AND SAFEGUARDING PROJECT APPROVALS

- The Australian minerals industry supports environmental regulation that is both efficient in its operation and effective in achieving the desired outcomes.
- However, duplication of federal and state environmental approval processes is causing unnecessary complexity and delays in resource projects. Australian businesses could save \$426 annually if project approvals were streamlined.
- Parliament should approve a One-Stop Shop for environmental approval processes. Also, governments should place greater emphasis on the implementation of risk-based approaches when determining both the assessment pathway and in setting information requirements appropriate to the action proposed.

### Project delays significantly affect the mining's industry competitiveness

Australia enjoys a comparative advantage in minerals exports, which must be continually defended by reducing costs, improving productivity and pursuing innovation. Regulatory settings have a profound impact on the minerals industry's cost competitiveness, productivity and capacity to adapt to changing market conditions.

The Productivity Commission has pointed out that unnecessary regulatory burden – including overlapping or inconsistent regulations between jurisdictions – restricts management decisions and discourages investment.<sup>58</sup>

Mining developments are subject to local, state/territory and federal government regulations and planning regimes. A study by consultancy firm URS in 2013 identified a substantial increase in state and federal regulation affecting mining approvals between 2006 and 2013.<sup>59</sup> The extent of regulatory 'churn' is highly destabilising for business and undermines community confidence in the rigour of existing processes.

Federal environmental law continues to grow. A 2017 Institute of Public Affairs report found the overall stock of legislation managed by the then Department of Environment increased more than 240 per cent between 2001 and 2014.<sup>60</sup>

The continual expansion in regulation has been compounded by the development of additional independent advisory panels at both federal and state levels.<sup>61</sup> The 2013 URS report found the trend to establish or expand the mandate of these panels has 'the potential to duplicate the normal assessment processes of government agencies and to undermine the confidence that can be placed in those processes'.<sup>62</sup>

The MCA notes the long lead-times necessary for putting in place new infrastructure to support freight and supply chains. Delays and uncertainty in project approval processes pose a significant risk to the industry's global competitiveness. In a survey of MCA members, 90 per cent of respondents ranked reforming approval processes as 'very important' or 'important' to improving productivity.

A 2012 report by Port Jackson Partners found that Australian thermal coal projects experienced an average project delay of 3.1 years, compared with an average of 1.8 years in other jurisdictions.<sup>63</sup>

<sup>58</sup> Productivity Commission, *Regulation of Australian Agriculture, Draft Report*, released on 21 July 2016, p. iv-v.

<sup>59</sup> URS, *Update of national audit of regulations influencing mining exploration and project approval processes*, report commissioned by and prepared for the Minerals Council of Australia, 31 May 2013, p. vii.

<sup>60</sup> Begg, M, *The growth of federal environmental law*, The Institute of Public Affairs, April 2017, p. 2.

<sup>61</sup> For example, the Independent Expert Scientific Committee for CSG and large coal developments, established under the EPBC Act

<sup>62</sup> URS, *Update of national audit of regulations influencing mining exploration and project approval processes*, report commissioned by and prepared for the Minerals Council of Australia, 31 May 2013, p. ix.

<sup>63</sup> Port Jackson Partners, *Opportunity at risk: regaining our competitive edge in minerals resources*, report commissioned by the Minerals Council of Australia, MCA, 16 September 2012, p. 27.

The delay costs for projects can be substantial. A one year delay can reduce the net present value (NPV) of a major mining project by up to 13 per cent and cost up to \$1 million every day.<sup>64</sup>

### **Environmental assessment and approvals should be streamlined**

One of the biggest drags on the international competitiveness of Australia's minerals industry is lengthy and costly delays in securing project approvals. Commonwealth and state duplication and poor coordination creates overly complex processes/arrangements and have long been identified as major causes of approval delays and result in substantial additional costs for businesses.

The Productivity Commission has concluded that overlap and duplication between federal and state processes can be greatly reduced without lowering the quality of environmental outcomes.<sup>65</sup>

State processes should be fully accredited under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) to create a single assessment and approval process. Monitoring and reporting arrangements can ensure that the federal government retains oversight and high environmental standards continue to be met.<sup>66</sup>

The benefits of streamlined project approvals are significant. Analysis by the then Department of the Environment concluded streamlining federal and state environmental approval processes would save Australian businesses \$426 million annually.<sup>67</sup> A 2014 BAEconomics found reducing project delays by one year would add \$160 billion to national output by 2025 and create an additional 69,000 jobs.<sup>68</sup> In addition to significant cost-savings to industry, more efficient internal processes reduce government costs as well.

The need to streamline environmental approvals has been recognised by numerous bipartisan reviews over many years. Accordingly, parliament should approve the necessary changes to the EPBC Act and allow the One-Stop Shop reforms to proceed.

The collection and analysis of environmental information can be costly and time consuming for proponents. A large environmental impact assessment (EIA) can cost many millions dollars and take a number of years to complete. A recent draft environmental impact statement in the Northern Territory involved the production of over 8,500 pages of documentation, weighing 43 kilograms.

Governments (state and federal) are taking an increasingly risk averse approach to EIA. This has resulted in unnecessarily complex assessment processes and increasing EIA information requirements resulting in wide ranging assessments of all impacts, regardless of materiality or level of risk. This can significantly increase costs for proponents and delay projects without a concomitant benefit in terms of additional environment protection.

Accordingly, the MCA recommends governments place greater emphasis on the implementation of risk-based approaches when determining both the assessment pathway and in setting information requirements appropriate to the action proposed.

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<sup>64</sup> MCA member calculations, based on a project value of between \$3 billion and \$4 billion.

<sup>65</sup> Productivity Commission, [Major Project Development Assessment Processes: Research Report](#), Canberra, released on 10 December 2013, pp. 2 and 13.

<sup>66</sup> See Allan Hawke, [The Australian Environment Act: Final report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999](#), October 2009, p. 66f; and the Productivity Commission, op. cit., p.15.

<sup>67</sup> Department of the Environment, [Regulatory cost savings under the one-stop shop for environmental approvals](#), Australian Government, Canberra, September 2014, p. 1.

<sup>68</sup> BAEconomics, [The economic gains from streamlining the process of resource project approval](#), report commissioned by the Minerals Council of Australia, Canberra, July 2014, p. 1f.



## 5. OTHER MINERALS INDUSTRY POLICY PRIORITIES

- Urban development must take adequate account of existing and planned export infrastructure.
- Unnecessary restrictions on port development including and maintenance dredging can create a 'bottleneck' or constraints on future port capacity would result in a less cost competitive environment.
- Mining companies should not be burdened with responsibility for reporting on government-determined infrastructure metrics.

### Urban development and land access

Australia's mining footprint constitutes less than 0.02 per cent of Australia's land mass, compared to almost 60 per cent for agriculture (excluding forestry).<sup>69</sup> Accordingly, the intersection between the mining and agriculture is relatively small. Despite the mining industry's small operational footprint, access to land (including agricultural land) remains critical:

- **Exploration** – Land access is critical for mineral exploration. On-ground activity including exploratory drilling of prospective areas is essential to resource identification and provides the pipeline of future mining projects.
- **Mining** – Mining leases are typically much larger than the mining 'footprint'. While land is generally purchased where practical and appropriate, land that overlaps with the mining lease and is not directly affected by the mining operation may remain with the landholder, requiring ongoing land access arrangements to be in place.<sup>70</sup>

Similarly, it is important that urban development takes adequate account of existing and planned export infrastructure. MCA members have noted that in some cases, the approval of new residential housing near existing coal infrastructure has created problems in renewing mining leases.

The MCA recommends that state governments play a greater role in ensuring key infrastructure corridors are protected and that potential encroachment is addressed. State or Territory government support is crucial to providing certainty. For example, unless there is a policy framework or legislation that ensures that a State or Territory is committed to infrastructure, then land around a port area could be sold off for residential development and consequently future coal or other resources shipments could be restricted.

### Box 9: Draft Environmental Assessment Guideline for Separation distances between industrial and sensitive land uses

Western Australia's Environmental Protection Authority (EPA) is proposing mandated buffers between industrial and sensitive land uses. Sensitive land uses includes urban areas such as residences, hospitals, nursing homes, schools, child care facilities, shopping centres and playgrounds. Under the draft guidelines, loading or unloading of bulk materials such as coal, ore, or ore concentrate would require a buffer of between 1 kilometre and 2 kilometres from sensitive land uses. Functionally this could present difficulties to the transportation and unloading of bulk materials, especially by rail, as many rail tracks travel through urban areas including being close to residences.<sup>71</sup>

<sup>69</sup> Australian Bureau of Agricultural and Resource Economics and Sciences, [2010-11 summary statistics](#), *National scale land use version 5*, Department of Agriculture and Water Resources, Canberra, 2016.

<sup>70</sup> SNL Metals & Mining (formerly Intierra RMG)- Mining and Minerals database, December 2012.

<sup>71</sup> [Draft Environmental Assessment Guideline for Separation distances between industrial and sensitive land uses](#), Environmental Protection Authority Western Australia, September 2015

## **Dredging**

Ports are essential infrastructure for multiple industries. Port efficiency and safety is dependent on port infrastructure upgrades which include dredging activities. Unnecessary restrictions on development including and maintenance dredging can create a 'bottleneck' or constraints on future port capacity would result in a less cost competitive environment. This may also create significant market loss and associated opportunity costs for the industry. Unnecessary regulatory restrictions while costly for proponents may also result in unintended safety impacts.

All significant industrial activities, including port and transport infrastructure are covered by a comprehensive regulatory framework at both the federal and state government levels. The MCA considers a risk-based approach should be central to the regulation and broader management of port activities. This will ensure that limited government resources are appropriately focussed on the management of key threats. Policy responses should be founded in sound science and proportionate to the likelihood and consequence of those risks identified.

## **Key performance indicators**

The MCA notes that companies should not be burdened with responsibility for reporting on government-determined infrastructure metrics. Large companies that operate their own infrastructure already collect their own metrics. However, should KPIs be publicly available the MCA recommends the information be used equitably to benefit the entire supply chain. The minerals industry also cautions against adopting a single KPI; for example one that focuses on returns to governments rather than the bigger picture of economic wellbeing for Australia as a whole.