

INTERGOVERNMENTAL AGREEMENT ON COMPETITION AND PRODUCTIVITY- ENHANCING REFORMS

An agreement between

- the Commonwealth of Australia and
- the States and Territories, being:
 - ◆ New South Wales
 - ◆ Western Australia
 - ◆ Tasmania
 - ◆ the Australian Capital Territory
 - ◆ the Northern Territory

This Agreement implements a new framework for competition and productivity-enhancing reforms.

Intergovernmental Agreement on Competition and Productivity-enhancing Reforms

PRELIMINARIES

1. This Agreement supports the development of reforms to drive Australia's economic performance and improve living standards. With the decline in the terms of trade from its 2011 peak and downward pressure on workforce participation due to the ageing of the population, Australia must significantly improve its productivity performance if it is to match the growth in living standards enjoyed over the past 30 years.
2. In signing this Agreement, the Parties acknowledge that sustained coordinated action is necessary to enable the Australian economy to meet the challenges and opportunities of a rapidly changing world.
3. The Parties agree to prioritise reforms at their discretion to remove unnecessary regulatory barriers to competition; boost innovation to provide better outcomes for individuals in the delivery of human services; promote efficient investment in and use of infrastructure; and advance other productivity-enhancing reforms across the economy.
4. This Agreement builds on the achievements of previous Council of Australian Governments (COAG) agreements that supported the National Competition Policy and subsequent reforms, including the Competition Principles Agreement and the Conduct Code Agreement. In the event of any inconsistency between this Agreement and the previous agreements, this Agreement takes precedence.

PART 1 - FORMALITIES

Parties to this Agreement

5. This Agreement is between the Commonwealth of Australia (the Commonwealth) and the States and Territories (the States).
6. Where commitments in this Agreement extend to local government, the States are responsible for their implementation.

Term of the Agreement

7. This Agreement will commence as soon as the Commonwealth and one other Party sign it and will operate unless the Parties by unanimous agreement in writing revoke it.

PART 2 - OBJECTIVES

8. The objective of competition and productivity-enhancing reforms is to improve the well-being of all Australians including by:
 - a. ensuring markets work in the long-term interests of all Australians;
 - b. improving standards of access, equity and quality;
 - c. fostering diversity, choice and responsiveness in government services;
 - d. encouraging innovation, entrepreneurship and the entry of new providers of goods and services; and
 - e. promoting efficient investment in and use of infrastructure and resources.

PART 3 - COMPETITION PRINCIPLES

9. Subject to the public interest test in clause 10 of this Agreement, all levels of government will be guided by the following competition principles:
 - a. Competition policies, laws and institutions should promote the long-term interests of all Australians.
 - b. Regulatory frameworks and government policies binding the public or private sectors should not unnecessarily restrict competition.
 - c. When funding, procuring or providing goods or services governments should promote consumer choice and enable informed choices by individuals.
 - d. The model for government provision or procurement of goods and services should separate the interests of policy (including funding), regulation and service provision and where practical encourage a diversity of providers.
 - e. Governments should separate remaining public monopolies from competitive service elements, and also separate contestable elements into smaller independent business activities.
 - f. Government business activities that compete with private providers, whether for-profit or not-for-profit, should comply with competitive neutrality principles to ensure they do not enjoy a net competitive advantage simply as a result of government ownership.

- g. A right to negotiate third-party access to significant infrastructure should be granted including where it would promote a material increase in competition in dependent markets and would promote the public interest.
 - h. Independent authorities should set, administer or oversee prices for natural monopoly infrastructure providers.
- 10. The application of these principles is subject to a public interest test, such that regulation or government policy or practices should not restrict competition unless:
 - a. the benefits outweigh the costs of the restriction to the community as a whole; and
 - b. the objective can only be achieved by restricting competition to that extent.
- 11. Different implementation pathways for competition reform may be needed in regional and remote areas in order to ensure the best consumer outcomes.

PART 4 – AREAS FOR REFORM

- 12. Areas for competition and productivity-enhancing reforms may include:
 - a. Regulatory reforms – to remove unnecessary regulatory barriers to competition (Appendix A).
 - b. Human services reforms – to enable innovative ways to deliver high quality, efficient human services (Appendix B).
 - c. Infrastructure reforms – to promote efficient investment in and use of infrastructure in areas such as road transport, water and energy and updated principles for the National Access Regime (Appendix C).
 - d. Additional productivity reforms – to grow the economy and improve living standards, which may include reforms identified by the Productivity Commission in its five-yearly reviews into Australia’s productivity performance (Appendix D).
- 13. Jurisdictions retain flexibility to develop reforms within and across their priority areas.

PART 5 – FINANCIAL ARRANGEMENTS

- 14. The Commonwealth will provide payments to the States for the delivery of reforms that drive Australia’s economic performance and living standards. The Commonwealth and the States will work collaboratively to develop funding agreements in the priority areas at Part 4, in accordance with this Agreement and the Intergovernmental Agreement on Federal Financial Relations.
- 15. Jurisdictions may become parties to relevant funding agreements at their discretion. To qualify for payments, the States will deliver reforms consistent with the terms and

conditions of this Agreement and the relevant funding agreement. Development of funding agreements in the priority areas at Part 4 will be informed by the appendices to this Agreement. Reforms implemented since the publication of the Competition Policy Review final report on 31 March 2015 will be eligible for consideration under this Part.

PART 6 – INSTITUTIONAL ARRANGEMENTS

National Competition Council

16. The National Competition Council, a research and advisory body established in 1995 by agreement of COAG and formalised under the *Competition and Consumer Act 2010*, will consult with relevant Parties and provide advice to the Commonwealth Treasurer as necessary, on:
 - a. the adequacy of States' reform proposals and achievement of reforms under related funding agreements, to inform Commonwealth decisions on associated payments; and
 - b. the Commonwealth's achievement of reform commitments under this Agreement.
17. Where another body is the appropriate body to assess adequacy and achievement of reforms, alternative institutional arrangements may be agreed in relevant funding agreements.

Productivity Commission

18. Any State may request that the relevant Commonwealth Minister refer studies or inquiries on topics of significance to the Productivity Commission pursuant to the *Productivity Commission Act 1998*.
19. The request must be prepared in consultation with all other States.
20. The Commonwealth Minister will consider the request in determining the Productivity Commission's work program.
21. States that have requested a study or inquiry on a topic relevant to their jurisdiction will publish a response to the study within 12 months of the Productivity Commission publishing its final report.

PART 7 – IMPLEMENTATION

Governance

22. Each Party will be accountable for the delivery of any reforms in their jurisdiction, consistent with existing areas of responsibility.
23. The Parties agree to work collaboratively to share knowledge, experience and data gained from implementing reforms.

24. The Council on Federal Financial Relations (CFFR) will oversee the operation of this Agreement and will provide advice to COAG on any proposed changes to the framework for competition and productivity-enhancing reforms set out in this Agreement.
25. Where reforms are led by COAG Councils other than CFFR, CFFR will provide advice and support to the relevant council as required. COAG Councils need to comply with the COAG Regulation Impact Statements requirements as set out in the COAG Best Practice Regulation, A Guide for Ministerial Councils and National Standard Setting Bodies, 2007.

Review of the Agreement

26. CFFR will commission a review of this Agreement within 5 years or earlier if agreed by the Parties, and consider any amendments to the Agreement which may be proposed to COAG as a consequence of such a review.

Variation of the Agreement

27. This Agreement may be amended at any time by agreement in writing of all Parties.
28. Appendices to this Agreement may be agreed or amended at any time in writing by all the relevant Parties.
29. A Party to the Agreement may terminate their participation in the Agreement at any time by notifying all the other Parties in writing.

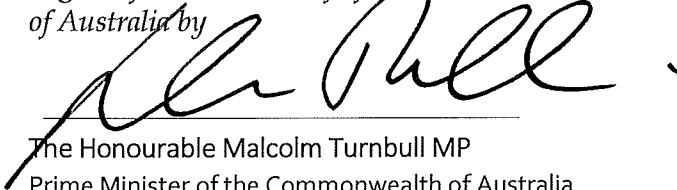
Interpretation and dispute resolution

30. Any Party may give notice to other Parties of a question of interpretation or dispute under this Agreement.
31. Officials of relevant Parties will attempt to resolve any question of interpretation or dispute in the first instance.
32. If a question of interpretation or dispute cannot be resolved by officials, it may be referred to the relevant Ministers.

INTERGOVERNMENTAL AGREEMENT
ON COMPETITION AND PRODUCTIVITY-ENHANCING REFORMS

The Parties have confirmed their commitment to this Agreement as follows:

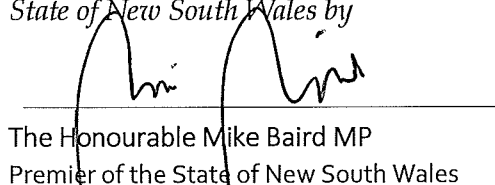
*Signed for and on behalf of the Commonwealth
of Australia by*



The Honourable Malcolm Turnbull MP
Prime Minister of the Commonwealth of Australia

9 December 2016

*Signed for and on behalf of the
State of New South Wales by*



The Honourable Mike Baird MP
Premier of the State of New South Wales

9 December 2016

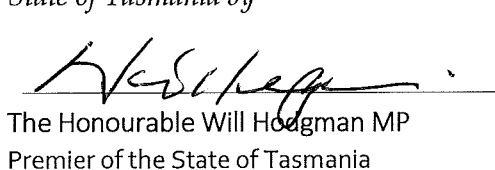
*Signed for and on behalf of the
State of Western Australia by*



The Honourable Colin Barnett MLA
Premier of the State of Western Australia

9 December 2016

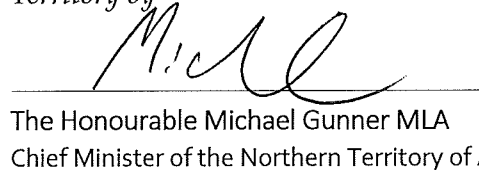
*Signed for and on behalf of the
State of Tasmania by*



The Honourable Will Hodgman MP
Premier of the State of Tasmania

9 December 2016

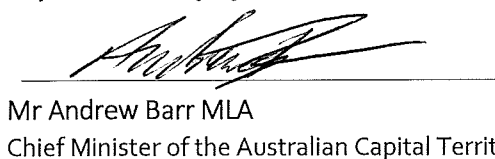
*Signed for and on behalf of the Northern
Territory by*



The Honourable Michael Gunner MLA
Chief Minister of the Northern Territory of Australia

9 December 2016

*Signed for and on behalf of the Australian
Capital Territory by*



Mr Andrew Barr MLA
Chief Minister of the Australian Capital Territory

9 December 2016

APPENDICES TO THE INTERGOVERNMENTAL AGREEMENT:

A. REGULATORY REFORMS

B. HUMAN SERVICES REFORMS

C. INFRASTRUCTURE REFORMS

D. ADDITIONAL PRODUCTIVITY REFORMS

SCHEDULES TO THE INTERGOVERNMENTAL AGREEMENT

E. NATIONAL PARTNERSHIPS

Regulatory reforms

INTERGOVERNMENTAL AGREEMENT ON COMPETITION AND PRODUCTIVITY-ENHANCING REFORMS

1. All Australian governments should review regulation, including local government regulation, and consider reforms that enhance productivity by removing unnecessary restrictions on competition, subject to the public interest test in clause 10 of the Agreement.
2. Jurisdictional exemptions for conduct that would normally contravene the competition law (by virtue of subsection 51(1) of the *Competition and Consumer Act 2010*) should be examined as part of any review process, to ensure they remain necessary and appropriate in their scope. Any further exemptions should be drafted as narrowly as possible to give effect to their policy intent.
3. Any review process should be transparent, with highest priority areas for review identified in each jurisdiction, and results published along with timetables for reform.
4. In identifying eligible reforms, the Parties should draw on the following priority regulatory areas, which include, but are not limited to, those identified in the Competition Policy Review:
 - a. commercial planning and zoning;
 - b. taxis and ride-sharing;
 - c. retail trading hours;
 - d. pharmacy regulation;
 - e. liquor and gambling licensing;
 - f. agricultural marketing arrangements;
 - g. mandatory product and other standards;
 - h. occupational and professional licensing;
 - i. coastal shipping restrictions;
 - j. aviation regulation;
 - k. intellectual property;
 - l. parallel import restrictions;
 - m. media regulation; and

- n. private health insurance.
5. The Parties should also:
- a. consider productivity reforms to residential land-use planning;
 - b. seek to identify and then review other regulatory restrictions on competition not listed above; and
 - c. consider any changes necessary to promote competition arising from any reviews of: competitive neutrality; and procurement and other commercial arrangements.

Competitive neutrality

6. Significant business activities of publicly owned entities should not enjoy any net competitive advantage simply as a result of their public sector ownership.
7. Accordingly, the Parties affirm their commitment to:
- a. the policy and principles of competitive neutrality established in, and implemented by, the 1995 Competition Principles Agreement; and
 - b. apply competitive neutrality principles to government business enterprises engaged in significant business activities in competition with the private sector, established in the 2006 Competition and Infrastructure Reform Agreement.

Review of competitive neutrality policies

8. Building on these enduring commitments, each Party should consider their competitive neutrality policies to ensure that they continue to fulfil their objective and address any issues raised during any review consultations. Specific matters to be considered should include:
- a. **New government businesses:** guidelines on the application of competitive neutrality policy during the start-up stages of government businesses and, in particular, the period of time over which start-up government businesses should earn a commercial rate of return;
 - b. **Coverage:** the appropriate definition of 'significant business activities' including the use of threshold tests in such definitions and examining application to other government activities;
 - c. **Compliance reporting:** measures to improve reporting on compliance with competitive neutrality principles including, for example, a requirement that government business enterprises include a statement on compliance in their annual reports; and
 - d. **Complaints processes:** measures to improve the transparency and effectiveness of competitive neutrality complaint processes including, at a

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minimum, those outlined below under *Competitive neutrality complaint processes*.

9. Each Party should share the outcomes of any reviews and actions arising with the other Parties to promote best practice and to increase consistency and transparency between jurisdictions.

Competitive neutrality complaint processes

10. The Parties should consider the transparency and effectiveness of their competitive neutrality complaint processes including:
 - a. assigning responsibility for investigation of complaints to a body or person independent of government;
 - b. a requirement for government to respond publicly to the findings of complaint investigations; and
 - c. annual public reporting by the independent complaints body or person on the number of complaints received and investigations undertaken.

Government procurement and other commercial arrangements

11. Governments' commercial arrangements with the private sector and non-government organisations (such as procurement, commissioning, public private partnerships and privatisation) should be subject to the public interest test set out in Part 3 of this Agreement. Furthermore, such commercial arrangements should, wherever possible, promote choice, innovation and a diversity of providers.
12. Reflecting this commitment, each Party should consider their policies governing commercial arrangements against the public interest test, including policies or guidelines for procurement, commissioning, public private partnerships and privatisation.
13. Each Party should share the outcomes of any reviews and actions arising with the other Parties to promote best practice.

Human services reforms

INTERGOVERNMENTAL AGREEMENT ON COMPETITION AND PRODUCTIVITY-ENHANCING REFORMS

1. The human services sector plays a vital role in the wellbeing of the Australian population. It covers a diverse range of services, including health, education, justice and community services.
2. In the domain of human services, it is sufficient that all Australian governments be guided by the following principles, subject to clause 3 of this Appendix:
 - a. A better outcome for individuals who use human services should be at the heart of service delivery.
 - b. Governments recognise that individuals are generally best placed to make choices about the human services they need. Governments acknowledge that individuals have different capabilities and should be provided with the necessary support and information to make informed decisions.
 - c. Improved quality, access, equity and better outcomes are the key objectives, and should be considered against assessments of efficiency and sustainability.
 - d. Improved access to information for providers, purchasers and individuals about the cost, efficacy and diversity of human services will enable more informed decision-making.
 - e. Productivity-enhancing reform measures should be evidence-based. Governments commissioning human services should do so carefully, with a clear focus on outcomes. There is no presumption in favour of any particular model when developing reforms.
 - f. Governments should retain a stewardship function, including consideration of separating the interests of policy (including funding), regulation and service delivery. Service delivery systems should be underpinned by consumer protection arrangements.
 - g. Where appropriate, a diversity of providers should be encouraged to offer choice to individuals, while taking care not to crowd out community and volunteer services, especially in thin markets.
 - h. Innovation in service provision should be stimulated, while ensuring necessary standards of quality, access and equity for the diverse range of individuals.
 - i. Governments should engage with providers and individuals to take an iterative approach to co-designing and improving service provision, with pilots and trials a preferred means of testing different service delivery models.

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- j. Governments should design coordinated and integrated service systems so that services are provided sooner, are easier to navigate and better reflect what individuals want and need.
 - k. Measurement and evaluation of service outcomes, cost, effectiveness and public benefits should be undertaken in a transparent way to enable individuals and governments to make more informed decisions.
3. Reforms arising from these principles need not be implemented if:
 - a. there is no net benefit in meeting the principles; or
 - b. the objective of the regulation, policy or practice can only be achieved by continuing with current practice.
4. The Parties acknowledge that the Productivity Commission has been tasked with a review into human services, due to report in October 2017, which will inform reforms in this sector.
5. The Parties acknowledge that some jurisdictions are currently examining aspects of their human services delivery against these principles. The results of these examinations may also inform the future reform directions in the human services sector.

Infrastructure reforms

INTERGOVERNMENTAL AGREEMENT ON COMPETITION AND PRODUCTIVITY-ENHANCING REFORMS

1. Improving the efficiency of investment in and use of infrastructure will help improve Australia's future productivity performance.
2. The Parties should promote efficient investment in and use of infrastructure in areas that include, but are not necessarily limited to, road transport, water and energy and agree to updated principles for the National Access Regime.

Road transport

3. Road transport reforms will promote more efficient investment in and use of roads, ensuring road infrastructure services most efficiently meet the needs of users and are delivered in a transparent and equitable way.
4. The Parties support the work being done by the COAG Council on Transport and Infrastructure to:
 - a. accelerate heavy vehicle road reform, including identifying steps to transition to independent heavy vehicle price regulation by 2017-18; and
 - b. investigate the benefits, costs and options for introducing cost-reflective road pricing for all vehicles.
5. The Parties agree that the following matters should be developed and considered:
 - a. reforms to enable cost-reflective road pricing;
 - b. options to adjust arrangements for indirect taxes and charges as cost-reflective road pricing is introduced;
 - c. the links between collection of charges and the reinvestment of revenue into transport services for users;
 - d. options for independent oversight of pricing; and
 - e. independent institutional arrangements to support road transport reforms.
6. Given the revenue and expenditure implications of road transport reforms, the Parties agree that CFFR should provide advice and support to the COAG Council on Transport and Infrastructure as appropriate.

Water

7. Consistent with the National Water Initiative signed at COAG in 2004, the Parties agree that water reforms should be developed and considered, with a focus on more efficiently and sustainably securing urban water services.

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8. The Parties agree that opportunities to promote improved governance, better economic regulation and a better understanding of where competition can be deployed to deliver benefits in each jurisdiction should be examined.

Energy

9. The Parties support the work being done by the COAG Energy Council to promote:
 - a. the interests of electricity and gas consumers by overseeing the development and maintenance of competitive electricity and gas markets and effective regulation of network monopoly infrastructure;
 - b. greater productivity, energy efficiency, sustainability and security to be key goals;
 - c. stakeholder (including consumer) participation in policy development and implementation; and
 - d. regulatory and governance reform to streamline processes and decision-making and deliver outcomes more efficiently and consistently.

National Access Regime

10. The Parties are committed to the National Access Regime, consistent with Part 3, clause 9(g) of this Agreement.
11. Certification of the effectiveness of State access regimes will be guided by the principles at Appendix C.1, which replace clause 6 of the 1995 Competition Principles Agreement upon agreement by all Parties to this Agreement.

Additional productivity reforms

INTERGOVERNMENTAL AGREEMENT ON COMPETITION AND PRODUCTIVITY-ENHANCING REFORMS

1. This Appendix draws on work by the Productivity Commission (PC) to set out a framework for additional productivity reforms.¹
2. 'Productivity reforms' refer to microeconomic reforms that encourage innovation and drive productivity improvements through any of three broad, interrelated channels: incentives, flexibility or capabilities.
3. Incentives refer to the external pressures and disciplines on organisations to perform well. Productivity reforms that sharpen incentives may include:
 - a. policies consistent with the competition principles set out in Part 3 of this Agreement;
 - b. improvements to trade, taxation, or intellectual property policies; and
 - c. improvements to information or data provision that inform the choices of individuals, organisations or employees.
4. Flexibility refers to the ability of organisations to adapt, expand or diversify in response to market pressures. Productivity reforms that improve flexibility may include the simplification, streamlining or removal of regulation that affects:
 - a. business creation, closure, restructure or mergers;
 - b. changes to the scale or scope of an organisation's activities; or
 - c. the reallocation of resources within or between firms or industries.
5. Capabilities refer to the institutional and regulatory arrangements that enable the development of public goods such as human capital, knowledge capital and public infrastructure. Productivity reforms that improve capabilities may include:
 - a. human services reforms consistent with Appendix B or, more generally, government service delivery reforms that improve outcomes for third parties who interact with government;

¹ PC 2008, 'Enhancing Australia's productivity growth' in *Productivity Commission Annual Report 2007-08*, Ch1 (pp13-21); PC 2009, *Submission to the House of Representatives Standing Committee on Economics: inquiry into raising the level of productivity growth in the Australian economy* (pp39-48); and Banks, G 2012, 'Productivity policies: the 'to do' list', presentation to the Economic and Social Outlook Conference: 'Securing the Future'.

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- b. infrastructure reforms consistent with Appendix C;
- c. microeconomic reforms that improve the connectivity of cities and regions through reforms in areas such as land-use planning and improving the efficiency of transport; or
- d. access to information or data not covered by clause 3(c) in this Appendix.

Access to Services Provided by Means of Significant Infrastructure Facilities

Relationship between Commonwealth and State regimes

1. The regime established by the Commonwealth under Part IIIA of the *Competition and Consumer Act 2010* ('the CCA') is not intended to cover a service provided by means of a facility where the State Party in whose jurisdiction the facility is situated has in place an access regime which covers the facility and conforms to the principles set out in this Appendix unless:
 - a. The National Competition Council determines that the regime is ineffective having regard to the influence of the facility beyond the jurisdictional boundary of the State; or
 - b. Substantial difficulties arise from the facility being situated in more than one jurisdiction.
2. There may be a range of approaches available to a State Party to incorporate each principle. Provided the approach adopted in a State access regime represents a reasonable approach to the incorporation of a principle in clause 7 of this Appendix, the regime can be taken to have reasonably incorporated that principle for the purposes of clause 1.

Effective Access Regimes

3. The National Competition Council and relevant Minister must apply the following principles when making recommendations and decisions in relation to applications for certification of the effectiveness of access regimes, pursuant to Division 2A of Part IIIA of the CCA.

Treatment of interstate issues

4. Where a State Party in whose jurisdiction a facility is situated has in place an access regime which applies to the facility, the regime should have regard to the influence of the facility beyond the jurisdictional boundary of the State.
5. Where more than one State access regime applies to a service, those regimes should be consistent and, by means of vested jurisdiction or other cooperative legislative scheme, provide for a single process for persons to seek access to the service, a single body to resolve disputes about any aspect of access and a single forum for enforcement of access arrangements.

Scope of an access regime

6. For a State access regime (other than an access regime for: electricity or gas that is developed in accordance with the Australian Energy Market Agreement; or the Tarcoola to Darwin railway) to conform to the principles set out in this Appendix, it should:
 - a. promote the economically efficient operation of, use of and investment in the infrastructure by which services are provided, thereby promoting effective competition in upstream and downstream markets; and
 - b. subject to clause 7, apply to services that are reasonably likely to satisfy the following criteria:

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- i. that access (or increased access) to the service, on reasonable terms and conditions, following a declaration of the service would promote a material increase in competition in at least one market (whether or not in Australia), other than the market for the service; and
- ii. that the facility that is used (or will be used) to provide the service could meet the total foreseeable demand in the market at the least cost, where cost is to take into account the costs, to the provider of the service, of co-ordinating multiple users of the facility; and

Note: **Market** is defined in section 4E of the CCA.

- iii. the service is provided by means of a facility that is significant, having regard to its size or its importance to the economy of the State; and
- iv. that access (or increased access) to the service, on reasonable terms and conditions, following a declaration of the service would promote the public interest, having regard to:
 - A. the effect that declaring the service would have on investment in:
 1. infrastructure services; and
 2. markets that depends on access to the service; and
 - B. the administrative and compliance costs that would be incurred by the provider of the service if the service is declared; and
- c. take a reasonable approach to the incorporation of each of the principles referred to in clause 7; and
- d. be consistent with the following pricing principles:
 - i. regulated access prices should:
 - A. be set so as to generate expected revenue for a regulated service or services that is at least sufficient to meet the efficient costs of providing access to the regulated service or services; and
 - B. include a return on investment commensurate with the regulatory and commercial risks involved; and
 - ii. the access price structures should:
 - A. allow multi-part pricing and price discrimination when it aids efficiency; and
 - B. not allow a vertically integrated access provider to set terms and conditions that discriminate in favour of its downstream operations, except to the extent that the cost of providing access to other operators is higher; and
 - iii. access pricing regimes should provide incentives to reduce costs or otherwise improve productivity; and

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- e. include a date after which the regime in respect of a particular service would cease to apply unless reviewed and subsequently extended; noting, however, that existing contractual rights and obligations should not be automatically revoked.

Access Regime Principles

7. A State access regime (other than an access regime for: electricity or gas that is developed in accordance with the Australian Energy Market Agreement; or the Tarcoola to Darwin railway) should incorporate the following principles:

Negotiation framework

- a. The provider of a service should be required to use all reasonable endeavours to accommodate the requirements of persons seeking access to that service.
- b. Wherever possible, third party access to a service provided by means of a facility should be on the basis of terms and conditions agreed between the provider of the service and the person seeking access.
- c. Where such agreement cannot be reached, Governments should establish a right for persons to negotiate access to a service provided by means of a facility.
- d. Any right to negotiate access should provide for an enforcement process.
- e. Access to a service for persons seeking access need not be on exactly the same terms and conditions.
- f. The provider or user of a service shall not engage in conduct for the purpose of hindering access to that service by any other person.

Dispute resolution

- g. Where the provider and a person seeking access cannot agree on terms and conditions for access to the service, they should be required to appoint and fund an independent body to resolve the dispute, if they have not already done so.
- h. The decisions of the dispute resolution body should bind the parties to the dispute but rights of appeal under existing legislative provisions should be preserved.
- i. The dispute resolution body, in deciding on the terms and conditions for access, should be required to take into account the following matters:
 - i. The objective of these principles, set out in clause 6(a);
 - ii. the legitimate business interests of the provider, and the provider's investment in the facility;
 - iii. the public interest, including the public interest in having competition in markets (whether or not in Australia);
 - iv. the interests of all persons who have rights to use the service;
 - v. the direct costs of providing access to the service;

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- vi. the value to the provider of extensions including expansions of capacity and expansions of geographical reach whose cost is borne by someone else;
 - vii. the value to the provider of interconnections to the facility whose cost is borne by someone else;
 - viii. the operational and technical requirements necessary for the safe and reliable operation of the facility;
 - ix. the economically efficient operation of the facility;
 - x. the pricing principles set out in clause 6(d);
 - xi. other matters the body determines are relevant.
- j. Subject to clause 7(k), a dispute resolution body should be able to deal with anything related to third party access, including matters that were not the basis for notification of the dispute. By way of example, the determination may:
- i. require the provider to provide access to the service by the third party;
 - ii. require the third party to accept, and pay for, access to the service;
 - iii. specify the terms and conditions of the third party's access to the service;
 - iv. require the provider to extend the facility, including require the provider to expand the capacity of the facility and/or require the provider to expand the geographical reach of the facility;
 - v. require the provider to permit interconnection to the facility by the third party;
 - vi. specify the extent to which the determination overrides an earlier determination relating to access to the service by the third party.
- k. A dispute resolution body should not make a determination that would have any of the following effects:
- i. prevent an existing user obtaining a sufficient amount of the service to be able to meet the user's reasonably anticipated requirements, measured at the time when the dispute was notified;
 - ii. prevent a person from obtaining, by the exercise of a pre-notification right, a sufficient amount of the service to be able to meet the person's actual requirements;
 - iii. result in the third party becoming the owner (or one of the owners) of any part of the facility, or of extensions of the facility including expansions of the capacity of the facility and expansions of the geographical reach, without the consent of the provider;
 - iv. require the provider to bear some or all of the costs of extending the facility (including expanding the capacity of the facility and expanding the geographical reach of the facility) unless the determination is consistent with a voluntary commitment offered by the provider in an approved access undertaking;

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- v. require the provider to bear some or all of the costs of maintaining extensions of the facility (including expansions of the capacity of the facility and expansions of the geographical reach of the facility);
- vi. require the provider to bear some or all of the costs of interconnections to the facility or maintaining interconnections to the facility.
- l. The dispute resolution body should only impede the existing right of a person to use a facility where the dispute resolution body has considered whether there is a case for compensation of that person and, if appropriate, determined such compensation.
- m. A determination by a dispute resolution body does not have to require the provider to provide access to the service by the third party.
- n. If there has been a material change in circumstances, the parties should be able to apply for a revocation or modification of the access arrangement which was made at the conclusion of the dispute resolution process.

Accounting arrangements

- o. Separate accounting arrangements should be required for the elements of a business which are covered by the access regime.
- p. The dispute resolution body or relevant authority where provided for under specific legislation, should have access to financial statements and other accounting information pertaining to a service.

Merits review

- q. Where merits review of decisions is provided, the review will be limited to the information submitted to the original decision-maker except that the review body:
 - i. may request new information where it considers that it would be assisted by the introduction of such information;
 - ii. may allow new information where it considers that it could not have reasonably been made available to the original decision-maker; and
 - iii. should have regard to the policies and guidelines of the original decision-maker (if any) that are relevant to the decision under review.