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Assistant Treasurer and Minister for Competition Policy and Consumer Affairs

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REFORMS TO STREAMLINE THE NATIONAL ACCESS REGIME

Assistant Treasurer and Minister for Competition Policy and Consumer Affairs, Chris Bowen MP, has commenced consultations with the States and Territories on a package of reforms to enhance the National Access Regime.

The reforms aim to improve the efficiency, timeliness and effectiveness of regulatory decision-making under the Regime in Part IIIA of the *Trade Practices Act 1974* (TPA).

While the Regime appears to be operating effectively, there are concerns it is generating regulatory risks that are hindering investment in essential infrastructure.

Some infrastructure owners and access seekers have argued that processes under the Regime are too lengthy and costly.

Mr Bowen says there is a broad consensus that something needs to be done to speed up the process.

"Currently, processes under the National Access Regime can go on for years. The National Access Regime needs to be improved to make decisions and arbitration faster," he said.

Accordingly, Mr Bowen is proposing amendments to Part IIIA and related provisions in Parts II and IIA of the TPA that will streamline administrative arrangements and provide greater regulatory certainty for infrastructure owners.

The package draws on recommendations from the Council of Australian Governments (COAG), the Productivity Commission, the National Competition Council (NCC) and the Australian Competition and Consumer Commission (ACCC).

In summary, the reforms will:

- implement COAG Competition and Infrastructure Reform Agreement commitments to introduce ***binding time limits*** and ***limited merits review***;
- streamline Part IIIA decision-making criteria and processes, and improve regulatory certainty, by ***providing scope for binding no-coverage rulings and fixed principles in access undertakings***; and
- reform ACCC and NCC administrative processes, and Australian Competition Tribunal review processes, to improve the timeliness of outcomes.

A complete list of measures is included at **Attachment A**.

Mr Bowen emphasised that these are not fundamental changes, and do not aim to strengthen or weaken the criteria for application of the Regime.

"The reforms strike an appropriate balance between the rights and interests of infrastructure owners and investors on the one hand, and the competition benefits of facilitating access on the other," he said.

"This will ensure both investment in nationally significant infrastructure and the efficient use of that infrastructure."

The National Access Regime in Part IIIA of the *Trade Practices Act* was introduced in 1995 following a recommendation of the Hilmer Committee.

The Regime promotes the efficient use of nationally significant infrastructure. It facilitates access in cases where replicating the infrastructure concerned would not be economical and where commercial negotiation with the infrastructure owner or operator has failed.

Following consultation with the States and Territories, legislation to amend the National Access Regime is expected to be introduced into Parliament in mid-2009.

Attachment A

Measure	Explanation
Council of Australian Governments Competition and Infrastructure Reform Agreement commitments	
Binding time limits on regulatory processes	Introduce binding time limits (of generally six months) on decision-makers for regulatory decisions, in place of current target time limits. Would allow 'clock-stopping' for consultation and information gathering and where all parties agree to a suspension. Deemed decisions to apply in certain circumstances.
Limited merits review	Limit merits review to information submitted to the regulator (with few exceptions).
Streamlining Part IIIA decision-making criteria and processes	
Binding 'no-coverage' ruling	Allow potential infrastructure investors to seek a binding minimum 20 year exemption from declaration of new infrastructure where that infrastructure would not meet the declaration criteria.
Allow 'fixed principles' in access undertakings	Allow access undertakings to include 'fixed principles' which will apply to subsequent undertakings covering that infrastructure service.
Remove the 'health and safety' criterion	Limit consideration of health and safety issues to the public interest criterion and the arbitration process, rather than under a separate declaration criterion.

Streamline the 'effective access regime' criterion	Services covered by a state/territory access regime would only be exempt from declaration where the regime has been certified as effective under Part IIIA.
Deeming of ministerial decisions	Amend the deeming provision so that in the event of a non-decision the Minister is taken to have agreed with the National Competition Council's recommendation.
National Competition Council (NCC) and Australian Competition and Consumer Commission (ACCC) administrative processes	
Amendments to declaration applications	Allow the NCC to accept alterations to declaration applications, addressing a current legal uncertainty.
Amendments to access undertakings	Allow the ACCC to approve undertakings subject to the infrastructure provider agreeing to amendments to the terms and conditions of the undertaking.
Increase flexibility for regulators to take decisions	Allow the NCC and the ACCC to make decisions by circulation of papers.
Australian Competition Tribunal processes	
Awarding of costs in review processes	Allow costs to be paid or awarded for review of declaration decisions before the Australian Competition Tribunal in certain circumstances.
Remove automatic stay of decisions	When a decision is appealed, the Tribunal to determine whether a stay on decision to declare a service is appropriate.