



A U S T R A L I A N C H A M B E R
O F C O M M E R C E A N D I N D U S T R Y

Trade Practices Amendment (National Access Regime) Bill

ACCI Submission to the Senate Economics Committee

August 2005



LEADING AUSTRALIAN BUSINESS

BACKGROUND

1. The Australian Chamber of Commerce and Industry (ACCI) has been the peak council of Australian business associations for over 100 years.
2. ACCI is Australia's largest and most representative business association.
3. Through our membership, ACCI represents over 350,000 businesses nationwide, including:
 - Australia's top 100 companies
 - Over 55,000 medium sized enterprises employing 20 to 100 people
 - Over 280,000 smaller enterprises employing less than 20 people
4. These businesses collectively employ over 4 million people.
5. ACCI's 37 member organisations include the State and Territory Chambers of Commerce and Australia's leading national employer and industry associations. Our members represent all major sectors of Australian industry including small employers and sole traders as well as medium and larger businesses.
6. A list of ACCI members is attached.

BACKGROUND

7. On 15 June 2005, the Senate referred the Trade Practices Amendment (National Access Regime) Bill 2005 to the Senate Economics Committee for inquiry.
8. The Bill makes amendments to the Trade Practices Act 1974 that aim to:
 - clarify the National Access Regime's objectives and scope;
 - encourage efficient investment in new infrastructure;
 - strengthen incentives for commercial negotiation; and
 - improve the certainty, transparency and accountability of regulatory processes.

ACCI POLICY

9. ACCI welcomes this opportunity to provide a submission to the Committee on this issue.
10. Infrastructure provision is a very important issue for business.
11. ACCI's view on infrastructure is broadly:
 - There is no overwhelming infrastructure crisis, but there are areas where significant infrastructure investment is needed. Business concerns with infrastructure are more about pricing than access.
 - These needs should be addressed by the private sector where possible, with the Government assisting investment through a facilitative tax and regulatory system.

- The private sector is generally more efficient at developing and operating infrastructure. Government investment should only be used when there is clear and demonstrated market failure and after a thorough cost benefit analysis has been undertaken.
 - Where government involvement in infrastructure is required, governments should make full use of partnerships with the private sector to reduce costs.
 - The tax and regulatory system should provide appropriate incentives to investment while restricting monopoly power. Reforms should continue under National Competition Policy, in line with the recommendations of a recent inquiry by the Productivity Commission.
 - We do not support proposals for an independent National Infrastructure Council or similar to take over decision making on infrastructure projects, but we do support proposals for greater coordination in infrastructure regulation.
12. More details on ACCI's infrastructure policy are available in ACCI's submissions to the Fisher inquiry into Exports and Infrastructure¹ and to the House of Representatives inquiry into regional roads and rail and connectivity to ports².

ACCI RESPONSE TO THE BILL

13. ACCI supports the National Access Regime as a measure to promote competition and restrict monopoly power while promoting efficient investment.
14. ACCI generally supports the proposals in the bill as they will improve the ability of the Regime to meet its goals.
15. We make the following comments.

Objects clause

16. ACCI supports the addition of an objects clause to the Access Regime. We particularly support the primacy that the clause puts on economic efficiency.

Pricing Principles

17. ACCI supports the concerns raised by a number of other organisations that the pricing principles are not being included in the legislation, but are being delegated to the Minister as a legislative instrument.

1. Available from:
http://www.acci.asn.au/text_files/submissions/2005/April%202005%20Exports%20and%20Infrastructure.pdf

2. Available from:
http://www.acci.asn.au/text_files/submissions/2005/HoR%20inquiry%20into%20roads%20%20ports%20-%20ACCI%20sub%20v2.pdf

18. The arguments for including the pricing principles in legislation include:
- The principles were agreed by the Australian Government and the States and Territories.
 - The Productivity Commission has indicated support for the agreed principles in two subsequent reviews. The agreed principles are also broadly consistent with the recent report of the Exports and Infrastructure Taskforce.
 - The Government has not explained why it has changed from the previously announced position of including the principles in legislation.
 - Including the principles in legislation will increase certainty, without preventing any change.
 - Conversely, having the Minister set the principles will cause uncertainty for all involved (particularly if there are no safeguards on the Minister's decision).
 - Having the principles as delegated legislation increases the perception that they are likely to change over time.
 - The principles should be broad enough so that they will not require updating or amendment due to changes to the market or environment.
 - While Parliament may be able to disallow a legislative instrument, it may not be able to amend it.
 - There is more transparency for principles that are in legislation, than for principles that can be varied by the Minister.
 - There is no timetable set for the introduction of the principles.
19. If the Minister is allowed to set the principles, then safeguards could be increased, for example by:
- requiring an independent body to examine proposals for the principles;
 - requiring the Minister to consult with industry and States before changing the principles; and
 - requiring the principles to be consistent with the new objects clause.
 - allowing the Minister's decisions to be reviewed by an independent body.

Declaration criteria

20. ACCI supports the proposal to tighten the declaration test to require that there be a 'material' increase in competition.

ACCI MEMBERSHIP

ACT and Region Chamber of Commerce and Industry
Australian Business Ltd
Business SA
Chamber of Commerce and Industry Western Australia
Chamber of Commerce Northern Territory
Commerce Queensland
Employers' First TM
State Chamber of Commerce (New South Wales)
Tasmanian Chamber of Commerce and Industry
Victorian Employers' Chamber of Commerce and Industry
Agribusiness Employers' Federation
Air Conditioning and Mechanical Contractors' Association of Australia
Association of Consulting Engineers Australia
Australian Beverages Council
Australian Consumer and Specialty Products Association
Australian Entertainment Industry Association
Australian Hotels Association
Australian International Airlines Operations Group
Australian Made Campaign Limited
Australian Mines and Metals Association
Australian Paint Manufacturers' Federation
Australian Retailers Association
Housing Industry Association
Insurance Council of Australia
Investment and Financial Services Association
Master Builders Australia
Master Plumbers and Mechanical Services Association Australia
National Electrical and Communications Association
National Retail Association Limited
NSW Farmers Industrial Association
Oil Industry Industrial Association
Pharmacy Guild of Australia
Plastics and Chemicals Industries Association
Printing Industries Association of Australia
Restaurant and Catering Australia
Standards Australia Limited
Victorian Automobile Chamber of Commerce