Notice that CGT revenue fell substantially after the 1999 changes, which suggests that the Ralph Review may have underestimated the cost of these changes.

Another way to look at CGT revenue is to examine the effective tax rate, which is CGT revenue divided by taxable capital gains. Since 2000, the effective tax rate on capital gains has actually increased, despite the reduction in the 'headline' rate. This may suggest that the new system is not as concessional as first thought.

This is shown in Figure 2 on page 3.

SURVEY OF CGT CONCERNS

ACCI's 2004 Pre-Election Survey of Australian Business provides useful data on the level of concern business has with CGT. The survey was conducted in the first half of 2004 and had 1685 respondents.

Respondents were asked about their level of concern with a range of taxation measures including personal income taxes; fringe benefits tax; company tax; capital gains tax; and the goods and services tax.

Figure 3, on page 3, shows the percentage of respondents who regard capital gains taxes as an important problem for their enterprise (either a major or moderate concern).

Capital gains tax is an important problem for 62 per cent of all firms polled and is substantially more important for small firms (69 per cent) than larger firms (51 per cent).

Non-exporters are slightly more troubled by the capital gains tax regime than exporters and firms in regional/rural areas are more concerned than those in metropolitan areas.

Compliance Difficulties

The survey also asked whether businesses had any compliance difficulties with the CGT (see Figure 4 on page 4).

Compliance difficulties associated with the capital gains tax are an important problem for 45 per cent of all firms surveyed, being substantially more important for small firms (49 per cent) than larger firms (40 per cent).

Levels of concern were much the same for exporters and non-exporters, while regional/rural businesses were slightly more concerned than metropolitan businesses.

While firms had substantial concerns with the complexity of CGT, the level of concern with complexity of the overall tax system was higher, with 88 per cent of business respondents regarding the overall complexity of the tax system as a problem for their firm, and smaller firms (89 per cent) somewhat more concerned than larger firms (86 per cent). The higher level of concern for overall complexity may be because not all businesses have to deal with CGT directly.

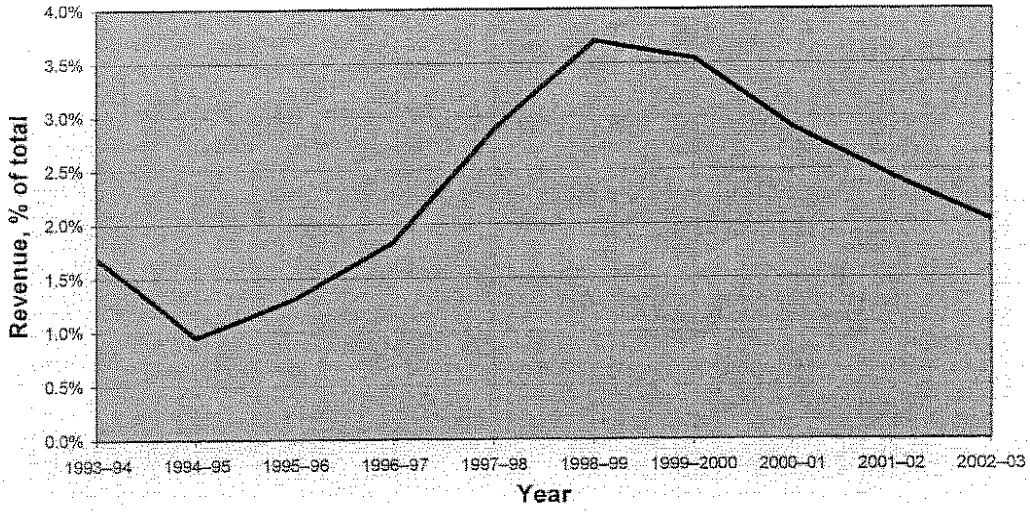
This data supports the case for ongoing reform to CGT.

ACCI POLICY ON CGT

ACCI released its *Taxation Reform Blueprint* in 2004.[1] The blueprint includes a detailed discussion of business concerns with Capital Gains Tax (CGT) and some proposed reforms.

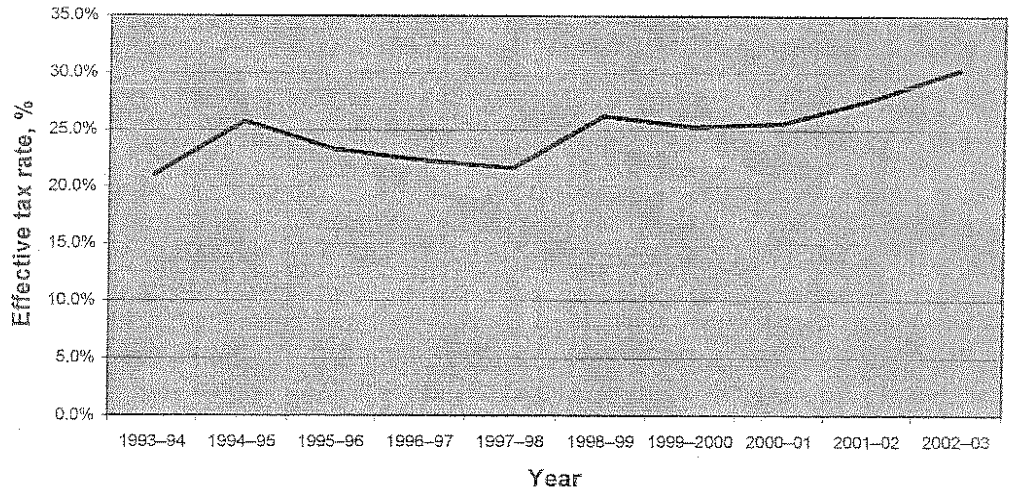
The Blueprint argued that business received significant benefits from the changes to CGT that occurred in 1999 following the Ralph Review. However, business has raised a range

Figure 1
Revenue from Capital Gains Tax



Source: 2002-03 Taxation Statistics, Table 9.12.

Figure 2
Effective Tax Rate on Capital Gains



Source: 2002-03 Taxation Statistics, Table 9.12.

of concerns with CGT that mean that further reform is needed:

- Other western countries have increased or extended their concessions for CGT which means that Australia is less competitive on the taxation of capital gains. Some countries, such as New Zealand, do not have a CGT.
- A high tax on capital discourages capital formation.
- Economic theory shows that tax should be lower on transactions and assets that are more mobile (that is, they can be moved around more easily). Hence, taxes on capital should be lower because it is highly mobile, particularly internationally.
- Companies can distribute profits as dividends or retain the earnings to invest in the company's growth. However, CGT discourages retained earnings because these earnings will increase the company's assets per share, raising share prices. Investors who sell their shares before the retained earnings are distributed are taxed twice – first via the company tax on the earnings and second via the CGT on the share sale. Therefore CGT can reduce corporate savings and investment.
- Similarly, CGT penalises businesses that have to retain profits because they are in the start-up phase – discouraging entrepreneurs and venture capital investments.
- CGT also discourages asset turnover, acting as a transaction tax which discourages efficient allocation and reallocation of capital.

As a result, ACCI's members argue that further reductions in CGT are necessary to increase Australia's growth and competitiveness.

Business proposes that the Government should seriously consider:

- introducing a stepped rate of CGT to significantly reduce the burden of tax on capital gains and

Figure 3
Capital Gains Tax

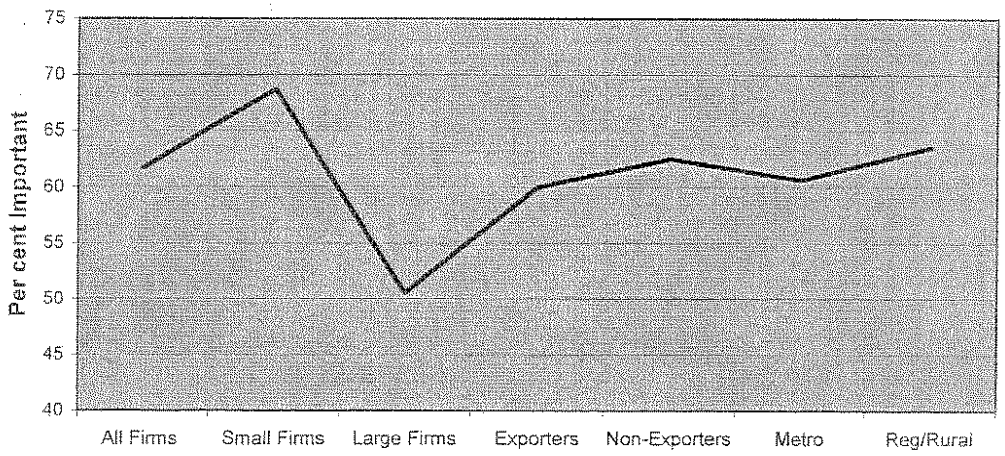
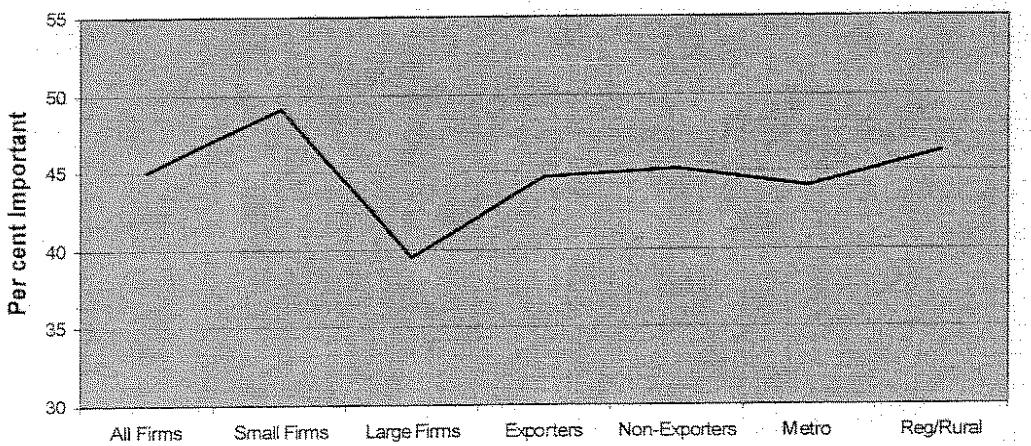


Figure 4
CGT - Compliance Difficulties



encourage increased investment;
- allowing the carry-back of capital losses;
- an extension of rollover provisions; and
- franking credits for capital gains.

A possible CGT schedule is Figure 5 below.

This is the same as the current schedule for assets held for up to two years, but reduces CGT (compared to the current system) for assets held beyond two years.

Further details on these proposals are available in ACCI's *Taxation Reform Blueprint*.

OTHER SPECIFIC ISSUES

Since the release of ACCI's *Taxation Reform Blueprint*, a number of other specific issues relating to CGT have been discussed.

CGT and Housing

Some commentators have argued that the 1999 CGT changes have caused asset price bubbles, particularly on the housing market.

It is argued that a bubble in house prices in 2003 and 2004 was caused by the combination of CGT and negative gearing and that an appropriate policy solution was to subject housing to more taxation through either a reduced CGT concession or a reduction in negative gearing.

ACCI does not support these proposals.

Firstly, the strong increase in housing prices in 2003 and 2004 has been driven by a number of factors. It is very difficult to isolate the cause of each factor. For example, price increases may have been much smaller if planning controls from State and local governments were improved.

Secondly, the latest data shows that house prices in most regions have moderated or fallen. Figure 6 on page 5 compares the most recent price movements with those of 2003.

Thirdly, there would be some problems with limiting negative gearing or the CGT concession. In particular, it may be difficult to prevent avoidance of these restrictions. For example, investment houses could be held by trusts which are bought and sold instead of the underlying property, thus avoiding any special CGT treatment for housing. The Productivity Commission has noted that "*ostensibly*

Figure 5
Possible CGT Schedule

Time asset held	Proportion of gains subject to tax
Less than 1 year	100%
1-2 years	50% (25% small business active asset exemption)
2-5 years	25%
5-10 years	10%
More than 10 years	0% (ie tax free)

Figure 6
House Price Changes[2]

City	Jun 2002- Dec 2003	Jan 2003- Jun 2005
Sydney	25	-7
Melbourne	20	0
Brisbane	62	5
Adelaide	35	9
Perth	33	19
Canberra	41	0
Australia	29	0

'quick fixes' suggested by many participants - such as limiting negative gearing or removing the CGT discount for housing - could detract from rather than promote more efficient investment."[3]

Fourthly, around 70 per cent of the housing stock is owner-occupied and not subject to CGT at all. An imposition of CGT on owner-occupied housing is not being proposed, so an increase in CGT for investment housing will just increase the tax discrepancy between investor and owner-occupied housing. As a result, it is not clear that this will have any effect on the total demand for housing. It will just increase the tax on rental property (and note that renters are on average less well off than home owners).

Housing also has distinct benefits which are often overlooked. The Housing Industry Association (one of ACCI's members) has argued that housing provides private benefits including increasing wealth and employment and many social benefits including increasing stability, social capital, maintenance, education and health.[4]

Income Tax Base Broadening & CGT

ACCI strongly supports reductions in personal tax. We particularly advocate the reduction of the top marginal tax rates to the company tax rate of 30 per cent, reductions in the number of tax brackets to ideally two and the elimination of bracket creep by indexing the tax brackets to the inflation rate. Further details on these policies are contained in our *Taxation Reform Blueprint.*

It has been suggested that major personal tax reforms could be funded by the abolition or reduction of various tax concessions, including the 1999 CGT concessions.

ACCI would have to examine particular proposals before providing a definitive comment, but it is very unlikely that business would be willing to support a reduction in the CGT concessions as a tradeoff for lower personal tax rates.

Instead, ACCI argues that major tax cuts (including further cuts to CGT) can be funded by the reduction of wasteful Government spending. This issue was examined in a discussion paper that ACCI released earlier this year entitled *Government Spending (And Taxes) Can be Cut - And Should Be* (available from our website).

This paper shows that it is a furphy to argue that the size of Government has been shrinking. Commonwealth expenditure in 2003-04, excluding GST, is the same as in 1995-96 (with grants to the states excluded to be consistent) and is 2.5 percentage points higher than the last year of the Whitlam Government. Much of the growth has been through income support payments and a large amount of this goes to families that pay significant tax. This 'churning' of money is inefficient.

Therefore, we do not need to assume that tax cuts have to be funded by the broadening of the tax base. Spending cuts can and should be examined as a funding source.

CGT Concessions for Small Business

Since 1999, small business has had access to the general CGT discount of 50 per cent as well as a range of specific small business concessions and rollovers, specifically:

- a 50 per cent discount for active assets (this is in addition to the general 50 per cent exemption, meaning that there is a 75 per cent reduction for active assets);
- rollover relief, allowing businesses to roll any remaining CGT liability into replacement assets; and
- a full (100 per cent) CGT exemption of up to $500,000 for retiring small business owners.

To be eligible for these capital gains concessions a business must pass the following tests:

- the maximum net asset value test which requires the business entity and related entities to own less than $5 million in total net value of CGT assets when the GCT

event occurs;
- the active assets test which requires an asset be an active asset at the time of the capital gain event; and
- the controlling individual test.

The specific CGT concessions for small business are quite substantial. ACCI is not arguing for further specific concessions for small business. Instead, ACCI argues that the burden of CGT should be reduced more generally.

Concerns with the 1999 Changes

Despite the worthwhile changes in 1999, the reformed provisions are still complex – something that probably contributed to the level of concern over complexity raised by small business in ACCI's Pre-Election Survey (outlined above). As a result, few small businesses have taken up the small business provisions.

There are also a number of other more technical concerns, including:

- the concessions do not apply to small businesses operating through a number of ownership structures, for example companies owned by discretionary trusts and unit trusts with more than two unit holders;
- the asset threshold (for the 50 per cent exemption and rollover relief) is different from other thresholds (such as the STS threshold), creating confusion and complexity;
- the asset threshold may include all of the value of a taxpayer's residence, even if only a small portion is used to produce income;
- the operation of the asset test for partnerships, the retirement exemption, the controlling individual test and the definition of "connected with" are complex and unclear; and
- the requirement that assets be active at the time of sale is onerous and too restrictive.

ACCI raised these and other concerns in a submission to the Board of Taxation's post-implementation review of the small business CGT provisions (available from ACCI's website).

Anti-Avoidance

Sizeable anti-avoidance provisions (also known as 'integrity provisions') exist in the CGT laws, adding to complexity. This complexity may make businesses reluctant to use CGT concessions.

ACCI accepts that anti-avoidance rules are needed to stop abuse of tax concessions. However, these rules can go too far. ACCI considers that the Government should attempt to design the tax system so that the number and complexity of avoidance provisions is minimised. If a tax proposal requires complex anti-avoidance rules, then it may be better to redesign the proposal to ensure that these rules can be reduced or eliminated.

A tax provision with very complex anti-avoidance rules may be useless if the complexity of the anti-avoidance rules means that almost no taxpayers make use of the provision or if the costs of compliance wipe out the tax benefits under the provision. This problem has been particularly raised in the context of the small business CGT concessions where it has been argued that the anti-avoidance rules are making it too difficult for many businesses to make use of the provisions.

CONCLUSION

Notwithstanding the important changes made to the CGT system in 1999, business has strong concerns with aspects of how it currently operates and believes that improvements can and should be made.

The effective tax rate on capital gains appears to be increasing, business concerns with the tax are high and the system is uncompetitive with many other nations.

ACCI is proposing a number of further reforms to reduce the CGT burden on taxpayers. These reforms will address concerns that Australia's CGT system is uncompetitive, discourages capital formation and retention of profits, penalises startup businesses and harms the efficient allocation and reallocation of capital.

We believe that the Australian Government should introduce a stepped rate CGT where the percentage of gains subject to the tax reduces, the longer an asset is held.

ACCI does not support proposals to reduce the CGT concession for housing or restrict the access of housing to negative gearing. Such proposals would be counterproductive, poorly targeted and hard to implement. We also have concerns over proposals to reduce the CGT concessions to fund tax cuts. Instead tax cuts should be funded by reductions in unproductive Government spending.

Business welcomed the changes in 1999 that broadened and simplified the small business concessions. However, significant concerns still exist with these concessions, meaning that their actual use by small businesses has been small. Further reform and simplification of these provisions should occur.

Australia's CGT regime has undergone many changes since its introduction 20 years ago but more needs to be done. While public policy debate is currently and correctly focused on personal income taxation reform, policy makers should also ensure that this important influencer of individual and business investment decisions is also given the attention it deserves.

FOOTNOTES

1 Available from ACCI's website, www.acci.asn.au.
2 Source: RBA (2005) *Statement of Monetary Policy*, August at page 36.
3 Productivity Commission (2004) *First Home Ownership - Inquiry Report* at xxv.
4 See HIA Submission to the Commission's First Home Owner's Inquiry (Submission 117) at pages 4-5.

INTELLECTUAL PROPERTY RIGHTS AND GEOGRAPHICAL INDICATIONS

Intellectual property, and the associated legal intellectual property rights (IPRs), is a vital element of entrepreneurship and an engine for the economic development and growth of nations. However, proposals to create a multilateral register of certain forms of IPRs risks granting some countries and producers monopoly rights over commonly used product names and would seriously prejudice international competitiveness and market opportunities for Australian processed food exporters.

THE POLICY DEBATE

Intellectual property rights (IPRs) are about optimising and realising the commercial and economic value from the IP chain: problem → knowledge → imagination → innovation → intellectual property → the solution.

However a key element of the international policy debate on the adequacy or the need for enhancement of protection of IPRs, centres on the extension of the coverage of geographical indications (GIs) within the World Trade Organisation (WTO) system.

This debate has seen the de facto formation of two clear camps within the WTO - proponents in favour of the extension of GIs and those against. So far, both camps have adopted combative and resolute positions with the prospects of convergence, let alone agreement, still far away.

Those In Favour of GI Extension

Proponents of the multilateral extension of GIs, led by the European Union and including countries such as India, Sri Lanka, Cuba, Thailand and Pakistan, make a number of arguments in support of their advocacy.

Their case revolves around the extension of the international recognition of GIs beyond current wines and spirits to cover a broader range of agricultural produce and processed foods and the creation of an international system for the listing of GIs where all participating WTO members would be required to submit their GIs for registration.

Under this model WTO members would, initially, have an 18 month window of opportunity to review a compiled list of GIs to be protected, and to accept or challenge any registrations. Where there were disagreements, the parties concerned would seek to resolve them by negotiation.

After a certain period, where a dispute remained unresolved, the matter could be taken to the WTO Dispute Settlement Mechanism (DSM) and its dispute resolution procedures would apply.

The EU and its allies on GIs have been working to advance their agenda on two paths:

- firstly, and most prominently, through negotiations in the WTO TRIPS Council (the body set up to administer the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights) as part of the Doha Round of trade negotiations, principally through the extension of the coverage of the TRIPS Agreement (currently limited to wines and spirits) to a wider range of foodstuffs; and
- secondly, through negotiations on agriculture, also as part of the WTO Doha Round.

Those Against the GI Extension

Opponents of extension and the multilateral register, such as Australia, Canada, Chile, New Zealand and the United States, argue these proposals go well beyond the scope of TRIPS rules.

They regard the WTO TRIPS negotiating mandate as limited to individual GIs, not whole product areas and to negotiations over exploring the scope for discontinuing existing exceptions for particular geographical indications.

Other objections made by opponents to the EU-led proposals include:

- the substantial administrative and legal costs associated with extending the existing WTO reach;
- the lack of evidence of the inadequacy of existing protections for products, or that extension

would deliver more effective protection than that already available under existing WTO law; and
- they would prejudice existing IP rights holders and future market access opportunities and create higher prices and uncertainty for consumers.

Consumer and Producer Benefits

Beyond the main policy arguments, the proponents and the opponents of extension of GIs also disagree on the potential consumer and producer benefits of their respective positions.

The Proponents' Position

Proponents of a GI extension claim a number of potential benefits for consumers, most notably that their proposals will simplify and clarify the current system of product labelling which they consider to be confusing and potentially misleading for consumers.

They argue that the current system is misleading because it has the capacity to give consumers a false impression of where the product originated and that the clearer and more reliable labelling which flows from GI extension will see quality and safety standards converge on the higher levels of countries and regions of origin.

Proponents of GI extension also see several potential benefits for producers, most notably that it will provide superior protection for the intellectual property (IP) of GI holders than is currently available from the trademarks systems of many countries.

They claim the existing trademarks system (ostensibly a private right) does not adequately protect the reputation of the GI holders' products, most notably the unique expertise used in the production of their goods and that having built that reputation, the GI holder should be the only one(s) allowed to benefit from that status.

Stronger GI protection would also assist GI holders to open new export markets, in particular those which were once limited by the presence of a rival producer(s) who had been selling products under the same description or nomenclature.

For example, producers of Parma ham in Italy are unable to export under that name to Canada because another producer in the latter country holds that trademark/tradename.

Proponents of GI extension, especially those in Europe, also attach importance to the prompt (as well as favourable, for them) resolution of the GI extension issue.

This timeliness reflects both a desire to restrain the potential for a GI in another country to be regarded as 'generic' (and hence less capable of limitation) and, with the decline in the EU's notorious Common Agricultural Policy (CAP), the marketing value of GIs is likely to become more important in GI holders' efforts to become/remain internationally trade competitive.

Pilsner Beer, for example, has become regarded as both a generic term and a GI depending on the country concerned. Countries considering the term to be generic include Australia, Canada, Japan, Norway, Sweden and South Africa, whilst those viewing it as a GI include Argentina, Austria, Britain, China, India, Italy and the United States of America.

KEY CONCEPTS

An appellation of origin is a special kind of GI, used on products that have a specific quality exclusively or essentially due to the geographical environment in which the goods are produced. The concept of GIs encompasses appellations of origin.

Appellations of origin currently protected under international IP law include Bordeaux for wine, Jaffa for oranges, Tequila for spirit drinks, and Noix de Grenoble for nuts.

By comparison, a GI term is regarded as generic if it is used as the designation of a kind of product, rather than an indication of the place of origin of that product.

Consumer recognition of the GI signifying a 'kind of product' can be used when evaluating whether a GI is a generic term – that is, it is ultimately a question of consumer attitudes and perception.

A geographical indication is a sign used on products that have a specific geographical origin and possess qualities or a reputation that are essentially attributable to that place of origin.

Most commonly, a GI consists of the name of the place of origin of the goods. A specific link also needs to exist between the products and their original place of production.

Agricultural products and processed foods typically have qualities that derive from their place of production and are influenced by specific local factors, such as climate and soil.

High profile examples of GIs include Roquefort for a cheese produced in France, Darjeeling (tea in India), Parma (a ham in Italy), Sari (for female clothing in India), Dijon (for mustard in France), Feta (cheese in Greece) and Basmati (for rice in India).

An indication of source is a marker referring to a country, or place within that country, as being the place of origin of a product. It is important this indication be of a geographic nature and not reference to another type of origin, such as the enterprise which manufactured the product.

Indication of source differs from GIs most notably in the former's use on a product does not imply any particular characteristic, quality or reputation for those goods, whereas it does for the latter.

A trademark is a sign used by a business to distinguish its goods and/or services from those of other enterprises. It gives its owner the right to exclude others from using that mark.

By comparison, GIs indicate to consumers a product is produced in a certain place and has certain characteristics attributable to that place of production. All producers who make their products in the place designated by a GI and whose products share typical qualities can use that geographical indication.

Proponents also see considerable producer benefit in the movement to a comprehensive international register of GIs, arguing the costs of compliance and registration (and, potentially, enforcement) of trademarks in multiple countries are too great for many GI holders in smaller regions and in developing countries.

Under this approach, the obligation for enforcing GIs listed on the international register with the WTO would reside with national governments, in contrast to the enforcement of trademarks which is a private right.

By way of context and likely reach, in 2003 there were more than 600 GIs and designations of origin for agricultural products and processed foods on the EU's register, as well as 3000 GIs for wine and 400 for spirits.

The Opponents' Position

Opponents of GI extension, such as Australia, identify a number of costs and other detrimental features associated with such an outcome for both consumers and producers.

They argue the proposed international register would likely conflict with trademark systems already in place in most countries, given that both GIs and trademarks ostensibly perform the same function (that of distinguishing the source of the product).

Such a mechanism would also be fundamentally anti-competitive, by creating a globally enforceable monopoly right based on purely local considerations in just one country or region of one country. For example, the holder of the GI for 'Roquefort' cheese on the international register would have a whole-of-world monopoly on that term.

Where the international register was superior to, and hence GI registrations thereon over-rode those on, national trademark lists this situation would likely cause considerable commercial losses for trademark holders, especially those who have substantial intangible capital investment in the 'branding' associated with that mark.

Indeed, many products for which GI coverage is being sought by the European Union – for example, Parmesan cheese, associated with the Parma region of Italy – have benefited considerably from advertising and promotion by non-Italian multinational firms (such as the Kraft group), raising the profile of cheese in general to a broader range of consumers and that type of cheese in particular.

Opponents of a GI extension, and the international register proposal in particular, argue the mere existence of a place as the basis for a GI may well be inconsistent with existing WTO rules in its definition of GIs – that is, quality, reputation and similar characteristics require use for their very existence.

Opponents also see a 'second agenda' within the EU's advocacy for GI extension - to allow the registration and protection of processes and production methods (PPMs), as currently practiced within the European Union.

Such a situation could become a serious and significant barrier to liberal international trade and incompatible with core rules of the WTO system by creating the potential for discrimination between imported products based on PPMs. Consumers would also be likely to experience substantial confusion from any extension of GIs in the manner sought by proponents.

In this view, changes to product labelling flowing from the exclusive international register would mean consumers would no longer be able to recognise once-familiar products, with a new system of labelling causing confusion amongst consumers (especially older ones more reliant on known labels).

Producers would suffer considerable burdens, not least of which would involve the financial cost and legal responsibility of re-packaging and re-labelling their products both per se, and in a manner that does not violate a GI contained on the proposed international register.

There would also be substantial costs associated with the loss of market reputation and share for existing products and producers and in creating through marketing and promotion the same standing for the new name.

Such increased costs would either have to be passed on to consumers, in the form of higher prices and/or reduced choice, or borne by the producer in the form of lower profits and hence business viability.

Opponents also point out a GI extension, both in terms of the proposed international register and changed domestic arrangements, would involve the creation of new and/or modified regulatory systems to monitor and enforce GIs. Such costs would be borne by taxpayers, both consumer and producer, and prove particularly stressful for developing and transitional economies.

Australian Government Stance

The Australian Government has generally taken a stance in opposition to the extension of GIs agenda that is being pursued by the EU and its associates.

In a speech to a major international forum on GI issues in 2003, the then Australian Ambassador to the WTO set out the Australian Government's position, which included the rejection

of any multilateral register for wines and spirits that extended the current level of protection or qualifies the exceptions available under existing WTO rules.

The Australian Government also proposed the continuation of discussions in the WTO of issues relating to the extension of current WTO rules on GI protection to other products and examining both the inter-relationships between trademarks and GIs and the implications of outlawing under the WTO a producer in one country using the name or symbols of another country to market a product.

Australia also lodged a complaint in the WTO DSM against the European Union over the latter's inappropriate use of GIs for foodstuffs and agricultural products.

In this case, Australia complained aspects of EU legislation effectively required other WTO members to provide reciprocal and/or equivalent protection to the EU's own GIs before GIs from those countries would be protected in the EU.

The Australian action was launched to defend the longer term interests of Australian exporters, especially those engaged in the production and export of foodstuffs and agricultural products, most notably processed dairy and meats.

In Australia's view, the EU's legislation required other WTO members to act as agents of the EU in GI matters. In the end the WTO DSM agreed with Australia's argument, which ACCI regards as a valuable and welcome decision.

The Australian business community endorses the Australian Government's recent endeavours in this area.

CONCLUSION

While the effective defence of intellectual property rights is important for business, this goal should not be used to pursue an old fashioned, protectionist agenda.

The creation of a multilateral register of certain forms of Intellectual Property Rights risks granting some countries and producers monopoly rights over commonly used product names and processes which would seriously prejudice international competitiveness and market opportunities for Australian food producers.

The Australian Government must continue to pursue these arguments through appropriate international bodies such as the WTO.

EXPORT MARKET DEVELOPMENT GRANTS SCHEME SHOULD CONTINUE

The Australian Government has finally released the long awaited Jollie Review of the Export Market Development Grants Scheme. The report recommended the Scheme be continued for another five years – a conclusion ACCI wholeheartedly supports.

THE JOLLIE REVIEW

The Jollie Review, named after leading businessman Peter Jollie who led the inquiry, was established by the Australian Government to examine the effectiveness of the Export Market Development Grants Scheme (EMDGS), whether it should continue to operate, and if so what improvements could be made.

Key criteria for determining the effectiveness of the EMDGS included whether it:

- increased the number of smaller to medium sized firms who developed into new exporters;
- assisted these firms to become sustainable exporters and in particular generated export outcomes above those which would have otherwise occurred (the so-called 'additionality test'); and
- fostered a broader export culture within the Australian community.

The EMDGS provides grants to eligible firms to partially reimburse them for expenses they have incurred when engaging in specific export promotion activities in any foreign market (except New Zealand).

The main export activities for which EMDGS grants can be claimed range across costs associated with overseas representatives, marketing consultants, market visits, participation in trade fairs, seminars and similar promotional events and bringing overseas buyers to Australia.

The review, the 17th in the life of EMDGS since it was first created in 1974 (making it possibly the most reviewed Federal Government program), followed a package of reforms announced in 2003 which shifted the Scheme further towards the needs of smaller exporters.

These changes, which were broadly welcomed by commerce and industry, included:

- reducing the annual income ceiling for participating firms;
- reducing the maximum grant;
- reducing the time period a firm can remain in the program; and
- removing the availability of grants for firms entering additional markets.

All of these meant more money for new and smaller exporters.

EMDGS – A SNAPSHOT

The Australian Government currently provides $A170 million annually in funding to the EMDGS, which helped some 3600 predominantly smaller firms get into exporting last financial year.

According to figures from Austrade, the Australian Government agency responsible for administering the program, 73 per cent of EMDGS claimant firms had less than 20 employees (56 per cent having less than 10 staff) and 77 per cent of claimant firms had incomes less than $A5 Million per annum with 83 per cent earning less than that amount from exporting.

The largest users of EMDGS by industry come from manufacturing (accounting for around 40 per cent of all payments by value), followed by property and business services (20 per cent) and then wholesale trade and cultural and recreational services (each with just under 10 per cent).

Looked at another way, heaviest demand on the program came from exporters of consumer products (around one-third of program funding), followed by services (one-fifth) and industrial products (one-sixth).

The most popular markets for EMDGS claimants were Europe, the Middle East and Africa (accounting for 63 per cent of claims by number), followed by the Americas (54 per cent), north east Asia (43 per cent) and south east Asia, south Asia, and the Pacific (37 per cent). These figures total more than 100 per cent as firms can claim for multiple markets.

Three categories of expenses account for the overwhelming share of outlays under the program:

- overseas representation and marketing consultants (33 per cent, by value of payment);
- marketing visits (30 per cent); and
- promotional literature and advertising (20 per cent).

Consistent with the design and intent of EMDGS, most claimants appear to use the Scheme to 'jump start' their export initiatives, with fully 70 per cent of claimants being in the program for 3 years or less and just 13 per cent remaining in it for 6 or more years.

HITTING THE MARK

Research conducted by Austrade and by the Centre for International Economics (CIE) also indicates the EMDGS is hitting the mark in assisting new and aspiring exporters, in particular smaller firms, to get into exporting.

According to an Austrade survey of EMDGS participants, the Scheme helped them overcome the single largest barrier to engaging in exporting - namely access to the necessary operating capital to fund their export promotion work.

On a 0 to 10 scale (0 meaning of no importance and 10 meaning of greatest importance), program participants ranked lack of capital at some 6.5 index points, followed by the company tax rate and risk and uncertainty of exporting each at just under 4 index points.

Other noteworthy constraints on export performance included foreign trade barriers (around 3.5 index points) as well as lack of market opportunities and government regulation (both around 3 index points). Cultural barriers and concerns over intellectual property laws in foreign markets each recorded 2.2 index points.

Micro-econometric (firm-level) modelling undertaken by the CIE for the Jollie Review bears out these issues and the greatest dividends from EMDGS appear to be enjoyed by the most financially constrained firms.

For these firms, every $1 of EMDGS funding induces between $1.30 and $1.90 in additional export promotional funding, which could convert into as much as $20 in additional export income over the future life of the grant-recipient firm.

KEY RECOMMENDATIONS

The Jollie Review made a number of useful recommendations to both improve the operation, and preserve the integrity, of the Scheme.

These covered themes such as:

- which businesses should be eligible to access the program;
- the range of products which should qualify for assistance;
- future directions for funding; and
- ensuring high standards of accountability for the taxpayer funds used to sustain the Scheme.

Eligible Businesses

The Jollie Review considered proposals to change the definition, and thus the reach, of 'eligible businesses' – that is the characteristics of firms who are eligible to apply for EMDGS grants – to include larger businesses (those with annual incomes of more than $A30 million).

It quite rightly rejected this

suggestion, recognising larger firms generally have more export experience and greater ability to fund export promotion activities from their own resources than do smaller firms. Within a financially capped Scheme, more money for larger businesses would mean less for smaller firms.

The Review also adopted a cautious approach to calls to widen the eligibility of events holders.

While major events can generate foreign-sourced income, EMDGS already accommodates inbound tourism operators and events promoters, i.e. conference organisers, and it is often unclear whether one-off events really constitute an integral component of an organised and sustained export effort.

However, the Review did propose a more flexible approach to dealing with the difficult issue of the principal status and closely related entities rules of the program, under which grants can only be made to the owner of the goods and services being exported.

Although generally sound, these rules discriminate against those involved in the creation and trade in intellectual property where, within an integrated business structure, one company develops and owns the intellectual property and another firm promotes and exports it.

While there is a legitimate need to take into account the interests of these firms, Austrade must be careful not to create an exception which becomes a new rule and/or allows applicant firms to engage in double-dipping (that is, being funded twice for the one activity).

Eligible Products

The EMDGS has clear rules on what products are eligible to receive grants.

In broad terms: for manufactures, they must meet certain minimum Australian content requirements; for services, they must be provided to a non-resident of Australia and/or fall into certain categories of services; for intellectual property, it must originate in Australia; and for know-how, it must be based on research done in Australia.

The Review gave lengthy consideration to proposals to ease the existing 'substantially Australian origin' test for eligible manufactures, noting Austrade's experience that these rules have become increasingly difficult to apply, resulting in greater administrative difficulty for them and increased uncertainty for clients.

The challenge becomes one of identifying an appropriate set of rules of origin which do not undermine the basic 'Australianess' of the exported manufactures being assisted by the EMDGS and do not conflict with Australia's broader rules of origin obligations under international law.

Such issues are complex, multi-faceted and require careful and detailed examination.

The recommendation by the Review for a formal Ministerial Guideline on the matter is sound and was developed in consultation with ACCI and the chamber movement which has special expertise and responsibilities in this area.

A number of those making submissions to the Review called for an expansion of the eligible expense categories to include, in particular, product labelling and packaging and the costs of intellectual property protection.

Sound arguments can be made for both proposals. Exporters are often obligated to apply different labels to their products for each export market depending on language and specific regulatory requirements, without which they will not be allowed into a foreign market. Intellectual property protection in new and difficult markets is an essential first step to even entering some markets and to securing a revenue stream.

The Australian Government could constructively re-examine the Review's rejection of these arguments and give serious consideration to the reinstatement of these expenses.

The Review, however, recognised the merit of increasing the overseas visit allowance, the per diem paid for exporters to visit new and existing markets.

As the Review correctly observed: "*... many high performing exporters regularly visit their overseas markets. These visits help exporters to better understand their customers, learn how business is conducted and develop new networks.*"

The current allowance, set at $200 per day in 1991, has been substantially eroded by inflation and movements in the value of the Australian dollar and the recommended new allowance of $A300 a day is sound.

Program Funding

Commerce and industry has long been concerned at the adequacy of funding for the EMDGS, calling on a number of occasions for a discrete increase in the Australian Government's financial commitment and thereafter indexation to price inflation.

Funding for EMDGS remained unchanged in nominal terms (and hence reduced in real terms) in the 6 financial years to 2003/04, when the Australian Government committed an extra $30 million until 2006/07.

While welcome news, this financial commitment will expire within the planning periods of many exporters and a clear indication of future funding levels is necessary to obviate

the uncertainties which the Jollie Review notes undermines business confidence in the Scheme.

Commerce and industry supports: the two-pronged recommendation by the Review to maintain current levels of program funding; indexing the EMDGS budget to inflation to preserve its real value; and introducing a smoothing arrangement, where funds not expended in one year of the program can be retained and made available elsewhere over the life of the Scheme (especially in unexpectedly high demand years).

The Review also considered calls for lowering the basic non-reimbursable amount - i.e. the $15,000 threshold of eligible promotional expenses the claimant must spend each year before qualifying for assistance. Micro-firms and very new exporters have argued this minimum self-expenditure threshold is too high and a barrier to them engaging in exporting.

While eliminating, or even substantially reducing, the threshold may assist some potential micro-firm exporters, it would undermine the principle that claimants should demonstrate a worthwhile commitment and financial contribution to their own export efforts.

The processes for making and paying claims was also examined by the Jollie Review, recognising the experience of commerce and industry that delays and uncertainties surrounding payments make it difficult for exporters to budget and manage cash flows and plan ahead for follow-up export promotion activities.

While there could be merit in establishing a parallel, faster turnaround claims channel for micro businesses, and possibly first time claimants operating in difficult markets, such initiatives should not come at the cost of administrative integrity and financial accountability for taxpayer funds.

For the great majority of claimants, and in particular the substantial number who submit their paperwork 'at the last minute', the better approach may be for Austrade, as the Scheme administrator, to encourage exporters to provide accurate and timely applications in return for more certain, and quicker, grant payments.

Accountability

An important characteristic of the EMDGS over more than 30 years of operation has been rigorous standards of accountability, both on the part of Austrade and of claimants.

Key features of this accountability have included the requirement for: applicants to commit some of their own funds to their export activities before applying for financial assistance; grant claims to be documented and substantiated, with a strong risk management program; grants to be paid based on objective criteria set down in legislation and transparent regulations; and third year and later claimants to satisfy an export performance test.

The Review noted calls for an easing in these accountability requirements, in particular to adopt a more lenient approach to permitting grants claims for cash-payments and for contra-payment arrangements.

Proponents argued cash transactions without a paper trail are standard practice in some markets and exporters tackling them were disadvantaged in making EMDGS claims relative to those operating where there were more conventional business practices.

The Review, quite rightly, rejected these arguments, pointing to Austrade's experience and indicated that cash payments tend to be associated with dubious grants claims and a lack of transparency in the applicants' other business arrangements.

Rather, the Review made the sensible recommendation of strengthening Austrade's powers to specifically exclude cash payments from eligibility for grants and to disregard unsubstantiated claims.

CONCLUSION

ACCI believes that the EMDGS is a valuable mechanism for encouraging smaller firms to explore export markets and become sustainable exporters and that the Australian Government should adopt the main recommendation of the Jollie Review – i.e. that the program be continued for another 5 years.

The Government should also give consideration to other recommendations including:

- expanding eligible expense categories to include product labelling, packaging and the cost of intellectual property protection;
- increasing the overseas visit allowance; and
- indexing the EMDGS budget to inflation and allowing funds not expended in a particular year of the program to be used elsewhere over the life of the Scheme.

It should also commission an independent review of the various trade facilitation and promotion programs offered by the Federal, State and Territory Governments to ensure they operate in a complementary and seamless manner.

Most importantly, this inquiry should make substantive recommendations to eliminate duplication, gaps and/or inconsistencies between those programs.

TRAINING WAGE REFORM GOOD FOR APPRENTICES

Australia's federal system of government is currently preventing many Australians from undertaking apprenticeships and traineeships. ACCI is advocating a policy approach that seeks to remove these workplace relations and training barriers and get more skilled workers into the labour market.

NEW APPRENTICESHIPS

Since 1996 the number of Australians employed as apprentices and trainees has more than doubled. At the end of 1996, 163,000 Australians were employed as apprentices and trainees, while in June 2004, the figure was 396,000.[1] This growth coincides with the implementation of the Howard Government's New Apprenticeships program.

The New Apprenticeships program enables Australians to develop skills and a trade in a greater number of fields than were available under previous government schemes, as well as continuing to encourage Australians to undertake an apprenticeship in a traditional trade. The program allows for flexible learning arrangements, school-based, part-time and full-time New Apprenticeships.

New Apprenticeships have become more attractive to a greater cross-section of the community. Apprentices and trainees are increasingly more likely to be female and/or older and employed part time. There has been a notable increase in the number of existing workers undertaking New Apprenticeships. As well, traditional trades remain a major pathway for young males to make the transition from school to work.

The uptake of New Apprenticeships is an important part of ensuring a continued supply of skilled workers into the labour market. However, current State industrial arrangements do not allow for the full realisation of the New Apprenticeships program.

WORKPLACE RELATIONS BARRIERS TO TRAINING

In July of this year, ACCI published a report entitled *Addressing Workplace Relations Barriers to Training*. This report was publicly welcomed by the Hon Gary Hardgrave MP Minister for Vocational and Technical Education[2] and identified gaps in training wage arrangements as the major barrier to providing the full range of New Apprenticeships.

Training Wage Arrangements – A National Perspective

Identifying gaps in training wage arrangements across State/Territory jurisdictions is a difficult task due to the complexity of both the workplace relations and the vocational education and training (VET) systems.

From a workplace relations perspective there are six systems - a federal system that covers ACT, NT and VIC and a system for each remaining State. Each State and Territory has its own state training authority (STA) responsible for the VET system within that jurisdiction.

Put simply, many awards that provide for employees' wages and conditions do not contain the necessary safety net provisions to allow employers to employ school-based and part-time New Apprentices, STAs do not have the ability to ensure there is appropriate award coverage for training packages and the variation of awards to include such coverage often falls to industry parties which can be a costly and time consuming process.

Decisions about the approval and implementation of training packages are made at the State/Territory level by the relevant STA. Typically, STAs will not approve a New Apprenticeship pathway unless there are appropriate workplace relations arrangements in place. Unfortunately, STAs do not generally have the ability to ensure there are award provisions for training wages nor a process to work with their workplace relations counterparts to achieve this.

At the State level it is considered the responsibility of the industry parties to file applications to vary awards through the relevant Industrial Relations Commission. This is often a difficult and costly exercise for employers in the face of union opposition, particularly to part-time and school-based arrangements. There are some unions that are opposed to any forms of part-time work including school-based arrangements, particularly in the traditional trades area.

Training packages that have significant gaps in training wage arrangements, i.e. no award provisions or limited and inflexible award provisions for the employment of New Apprentices, include:

- Electrotechnology;
- Construction;
- Plumbing & Service;
- Automotive;
- Metal & Engineering;
- Hospitality;
- Hairdressing;
- Aeroskills; and
- Furnishing.

These are key training packages in identified areas of skill shortages in

the traditional trades.

Generally, jurisdictions that have some form of enabling legislation to provide workplace relations arrangements for New Apprentices have better coverage of training wage arrangements.

New Apprenticeships will be more attractive if the training pathways are more flexible. Full access to training wage provisions combined with targeted new policies like the establishment of the Australian Technical Colleges should lead to a significant increase in the number of New Apprenticeships, particularly in the traditional trades.

The increase in opportunities should be most significant in the States that currently have no access to part-time apprenticeships such as New South Wales and Western Australia.

ACCI believes that government policy should aim at the creation of a comprehensive safety net of wages and conditions that facilitate whatever training options are available in the training sphere.

ACCI'S SOLUTION

In the *Addressing Workplace Relations Barriers to Training* report, ACCI developed a number of recommendations to address these barriers. These include:

- supporting a comprehensive safety net of wages and conditions for all school-based and part-time apprentices. Default minimum training wages should be available in the absence of award provisions for all full-time, part-time and school-based New Apprenticeships;
- supporting the Government's proposal that the State-Commonwealth funding agreement link funding to the removal of workplace relations barriers to nationally accredited training in the State systems;
- supporting a legislative solution to ensure that training wage arrangements for school-based New Apprenticeships are available from 1 January 2006 to underpin the Australian Technical Colleges;
- the setting of a legislative safety net for school-based and part-time New Apprenticeships should not provide a vehicle for any push to increase apprentice wages generally;
- that industry work with Government representatives to advise on the impediments in the workplace relations and training systems hindering the take-up of New Apprenticeships;
- that the training wage structure in the National Training Wage Award should be simplified and apply to all training packages;
- information should be developed to educate employers in targeted industries on the provision of above award wages and conditions for New Apprentices;
- that employers should be able to employ a New Apprentice for the duration of their training without the obligation to provide employment after the completion of the New Apprenticeship; and
- in any role the proposed Australian Fair Pay Commission has in setting and adjusting minimum wage rates, it is recommended that the following issues be considered:
  - introducing a wage structure to meet the requirements of shorter duration New Apprenticeships and competency-based arrangements;
  - wage rates for shorter/specialised skill qualifications in traditional trades;
  - wage rates for fast-tracked and older New Apprentices; and
  - junior traineeship wage rates should be available in all industries.

GOVERNMENT POLICY AND REFORMS

Since 2003 the Australian Government has made a number of commitments to, and statements about, addressing workplace relations barriers to training.

During the 2004 Federal Election campaign, the Government made a commitment to address skill shortages. Included in this commitment was a proposal to remove workplace relations barriers to the implementation of school-based and part-time apprentices. The proposal aimed to address the lack of training wage arrangements in the State and Federal systems for the full range of New Apprenticeships and formed part of the Government's broader workplace relations reform package.

In May 2005 the Government announced a workplace relations reform package which included the introduction of a national workplace relations system and the establishment of the Australian Fair Pay Commission to set and periodically adjust minimum wage rates, including training wages.

In September 2005 the Prime Minister, in a statement about workplace relations reforms and apprenticeships,[3] announced further details about the role of the Australian Fair Pay Commission.

The Prime Minister announced that the workplace relations reform legislation will:

- include a requirement that minimum wages for trainees be set by the Australian Fair Pay Commission (AFPC) at levels that ensure they are competitive in the labour market;
- provide the AFPC the discretion to establish separate minimum wages for all categories of trainees;

- give the AFPC a general power to take any action in relation to wages that is necessary to ensure that the full range of apprenticeships and other training arrangements that are created by the training system will be covered by appropriate wages;
- require the AFPC to establish minimum training wages for all types of apprenticeships that will operate wherever there are currently any gaps in state or federal award coverage;
- remove any provision of an award that restricts the range of apprenticeships. This would include the removal of any provision that regulates or limits the duration of New Apprenticeships; and
- include standard minimum wages for school-based traineeships and apprenticeships that will take effect immediately and be available for Australian Technical Colleges wherever awards do not already include such minima. The minimum wages will apply until the AFPC has been established and has set minimum wages that will fill the gaps in award coverage.

Business welcomed the Prime Minister's September 2005 announcement and believes that it reflects the recommendations of ACCI's *Addressing Workplace Relations Barriers to Training* report.

These reforms will see the establishment of national wage arrangements that will provide all Australians with an opportunity to undertake an apprenticeship or traineeship through a School-Based New Apprenticeship or under a part-time arrangement.

The opportunity to undertake apprenticeships and traineeships should be available to all Australians, regardless of the jurisdiction they live in.

CONCLUSION

ACCI supports reforms that will encourage a greater uptake of school-based and part-time New Apprenticeships and the development of a comprehensive safety net of wages and conditions that enables the workplace relations system to keep pace with education and training reforms and facilitate the transfer of skilled workers into the labour market.

However there is scope within the broader reform of minimum wage setting to look at simpler and more comprehensive safety nets for traineeship and apprenticeship levels. Such a safety net could be developed around three basic principles:

1) rates of pay should be concessional and discounted to full-time adult rates of pay;
2) rates of pay should be internally consistent; and
3) rates of pay should reward the gaining of skills and experience.

Reform should also extend to the National Training Wage Award. This award is excessively complex and subject to a range of limitations.

The initial consideration by the AFPC will be important as it may set in place the approaches to minimum wage setting in the future.

The ACCI secretariat in conjunction with its members will seek to provide input to the AFPC on minimum wage setting overall and for various cohorts including apprentices and trainees.

ENDNOTES

1 NCVER Apprentice and Trainee Collection Number 26.
2 Media Release, *ACCI Report on Barriers to Training Welcomed*, 27 July 2005.
3 Prime Minister's Statement, *Workplace Relations Reform and Apprenticeships*, 20 September 2005.

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PROGRESS MADE ON COAG NATIONAL REFORM AGENDA

In February 2006, the Council of Australian Governments agreed on a new national reform agenda to follow on from National Competition Policy. ACCI is pleased with moves to bring about positive change in the new reform priority areas which include the national training system, infrastructure regulation, transport and energy and occupational health and safety, but disappointed that COAG did not agree to further reform state taxes and workplace relations.

In 1995, the Commonwealth, State and Territory Governments agreed to a wide ranging reform program called National Competition Policy (NCP), which was designed to improve Australia's economic performance by increasing competition across the economy.

Given that this 1995 reform program was due to end in 2005-06, the Council of Australian Governments (COAG) in 2004 asked the Productivity Commission to conduct an inquiry into NCP's future.

The Productivity Commission's report, released in February 2005, found that NCP had provided substantial benefits to Australia's economy and society, significantly increasing productivity, growth and living standards. In particular, the Commission found that NCP reforms to key infrastructure sectors alone contributed at least $20 billion to Australia's GDP ($1,000 per person).

ACCI made a detailed submission to this review strongly supporting NCP and arguing for its reform program to continue and be extended to cover training (the submission is available from ACCI's website). The Commission subsequently made recommendations in line with ACCI's submission.

Commonwealth, State and Territory Governments met on 10 February as COAG to decide on the replacement for NCP. COAG agreed that the NCP reform program should continue with the addition of a number of areas including training.

This agreement is for a new National Reform Agenda focusing on human capital reform, competition reform and regulatory reform. These and other issues related to the meeting are the subject of this article.

HUMAN CAPITAL REFORM – REFORMING THE NATIONAL TRAINING SYSTEM

ACCI is pleased with the breakthrough announced at the COAG meeting

INSIDE

regarding reform to the national training system.

COAG has forged a coordinated approach to the removal of impediments to skills recognition and participation which are often caused by the interface between training regulators and other areas of government, particularly agencies responsible for licensing.

All ACCI proposals put to governments over the last three years have been addressed by COAG and importantly, clear timeframes for resolution established. It is vital that these reforms are industry-led. ACCI and its members will be seeking meetings to address the agreements with all relevant government departments as a matter of urgency.

There are four key areas that COAG has agreed to address:

1. The Commitment to Quality Training

ACCI has long supported a move from an input-based National Quality Assurance Framework to a more rigorous outcomes-based national set of standards which would apply to all Registered Training Organisations and State Training Authorities.

We have come a long way in the last 10 years in reforming quality assurance arrangements and these outcomes reflect the next steps to be taken.

ACCI is also developing some key principles which should apply to the development and implementation of any new Framework. These include:

- the establishment of a rigorous, nationally consistent quality assurance system incorporating standards for registering authorities;
- ensuring the heightened confidence of industry and employers;
- implementation of a regime of sanctions which clearly outlines the consequences of the failure of providers and authorities to meet essential minimum standards;
- definition of "outcome-based audits" in a clear manner also incorporating definitions of evidence required, particularly around employer satisfaction and participation;
- recognition of diversity of provider size, delivery methods and scope;
- facilitation of the synergy of all audit and continuous improvement activity, including other State/Territory regulation; and
- reduction of red tape whilst maintaining a quality national training system.

2. A More Mobile Workforce to Help Meet Skills Needs

Australia operates in a global economy with an increasingly mobile workforce which operates across national boundaries. All nations are examining ways to reduce barriers, whilst maintaining national security, to attract the very best workforce.

ACCI supports full mutual recognition nationally in the area of occupational licensing and believes that the Australian Government should:

- establish consistent nationally agreed competency-based requirements for the regulation of the same occupational activity or function between and within jurisdictions; and
- use the nationally consistent VET system to assess the achievement of those competency-based requirements.

This should provide a seamless transition path through training and assessment to competency-based industry licensing that is underpinned by National Industry Training Packages.

This will provide a number of benefits including:

- reduced barriers to the mobility of labour between jurisdictions;
- improved consistency in the regulatory requirements of jurisdictional industry regulatory authorities;
- a sound basis on which to improve the mutual recognition of occupational licences between jurisdictions; and
- a strong foundation from which to develop nationally consistent regulatory regimes.

It is vital that this does not result in an increase in regulation in the training system.

ACCI does not support a one size fits all approach and proposes that change should be implemented on an industry by industry basis involving industry associations to maintain employer confidence. One reason for this is that in some industries there are matters other than Competency Based Training (CBT) outcomes that are considered as essential parts of the licensing regime.

COAG has taken this bold step and set up clear goals with consultations being cooperatively managed by state governments and industry associations.

ACCI supports skilled migration as part of the solution to skill and labour shortages in the Australian economy. It is recognised that Australia is competing with many

other countries for workers with the qualifications and skills in demand in our workforce.

The option of attracting semi-skilled workers is becoming increasingly important. For this reason ACCI supports the new Trade Skills Training Visa, providing it concentrates on employment in regional areas with identified labour shortages and that training is delivered through the New Apprenticeships program. State-specific migration schemes that encourage the location of skilled migrants in regional areas are strongly supported.

ACCI believes that the assessment of qualifications of people seeking to migrate to Australia should be undertaken in their country of origin or some other offshore location such as the country where they were recruited. Licensing should be included as an integral part of this process so those recruited as skilled migrants can work as fully licensed workers on arrival in Australia or be aware of what they need to do to gain the required licence and where this training can be obtained.

This applies equally to the trades and to non-trade occupations where there may be regulatory requirements to work in the industry in Australia that do not apply in other countries (e.g. Responsible Service of Alcohol in the Hospitality Industry where there are significant skill and labour shortages).

Training to fill gaps in skills identified by the offshore assessment should be undertaken in the offshore location or in Australia. There are currently a number of Australian training providers, public and private, delivering offshore and investigations need to be undertaken regarding the potential for this network's involvement in delivering this assessment and gap training. A joint industry-provider consortia could be developed to provide one-stop shops in specific countries. A tender process could provide accountability for selected consortia. COAG proposals are well on the way to establishing these arrangements, initially in selected countries.

The process of recognising skills of those applying to come to Australia as skilled or semi-skilled migrants, or Australians returning to this country after a period of absence when they may have acquired skills and/or qualifications overseas, needs to be streamlined.

ACCI supports the joint approach by the Department of Immigration and Multicultural Affairs (DIMA), the Department of Employment and Workplace Relations (DEWR) and the Department of Education, Science and Training (DEST) to develop a web portal that will provide simple, comprehensive and up to date information for migrants who are seeking recognition of their qualifications and licensing for their skilled occupations.

3. A More Flexible and Responsive Training System

ACCI fully supports competency-based arrangements rather than time-served criteria for the completion of apprenticeships and believes that this system would facilitate the supply of skilled and qualified workers more quickly into the Australian workforce. Quality standards must be maintained.

The concept of "time served" should be removed from training conditions following consultation with industry. While there is considerable support for competency being the major criteria for successful assessment and completion of training, there are instances where there is a need to be able to demonstrate experience and understanding of the working conditions of the industry. Therefore, ACCI is cautious about any new arrangement which simply shortens the duration of an apprenticeship but is not linked to the person's ability to do the job. An appropriate mix of on and off the job training needs to be maintained to provide opportunities for those in training to gain the necessary workplace experience. The COAG proposals support this approach.

ACCI fully supports the proposed industrial arrangements in the Australian Government's *WorkChoices* legislation and looks forward to changes flowing from that legislation that will free up the marketplace for apprentices and trainees. Industrial relations arrangements should be amended so that they specifically allow for competency-based progression. As a priority, industrial arrangements that set a fixed time duration for apprenticeships should be amended to allow for early completion. ACCI has a comprehensive set of proposals which it has provided to the Australian Government.

In addition, industrial arrangements should also be adjusted to allow for competency-based progression for part time apprenticeships across industries.

COAG has also recognised the need for a range of training and employment pathways to meet the challenges of the continually evolving workforce. New qualifications at Certificate II in specific industries are necessary for the training system to meet the needs of a modern workforce and modern organisation of work but must be fully supported by the relevant industries.

Recent research undertaken through the National Skill Shortages Strategy (NSSS) in the Building and Construction Industry has provided strong evidence of the need for a range of specialised qualifications to meet the needs of employers and employees in the industry.

Similar needs are being revealed in the Electrotechnology and Communications industries where specialised activities and new technologies are creating a demand for workers skilled in specific competencies.

There should be multiple entry and exit pathways for training to meet individual needs and the needs of business and industry. Exit points at Certificate II that provide occupational outcomes in demand in the Australian workforce should be supported and industrial arrangements that hinder the development and implementation of these courses and the provision of new qualifications need to be amended to remove these impediments.

New Qualifications at Certificate II should be developed so that they provide a legitimate exit point and are also a re-entry pathway for those who wish to come back to training to attain the full trade qualification, or to continue training while working in the Certificate II occupation.

The development of these new qualifications should be undertaken by the relevant Industry Skills Council (ISC) if their industry informs the ISC that the qualifications are needed. The obligation to develop these new pathways should be included in ISC funding agreements and the ISC Key Performance Indicators.

The National Quality Council should have the power to intervene if the relevant ISC is not prepared to develop the pathway or where a blockage to development is identified by either the Institute of Trade Skills Excellence or an employer organisation. Where such intervention is required the matter should be referred to the Ministerial Council on Vocational and Technical Education (MINCO) so that the authority of the State and Territory Governments can legitimise the intervention.

ACCI will be working with a number of cross industry partners to develop a model for industrial arrangements to support these new pathways. There will need to be a flow of Commonwealth funding to support pilot programmes to implement training in these new qualifications so that the development of qualified workers with skills urgently needed in the Australian economy is not delayed by the need to obtain state-based funding for training development and delivery.

Restrictions on the types of apprenticeships allowed to be undertaken under certain industrial relations arrangements need to be identified, removed and replaced with an approach that provides a more a-priori universal coverage, rather than relying on specific allocations that take place through the award variation process.

ACCI believes strongly that Recognition of Prior Learning (RPL) is a vital element of a flexible training system and needs to be upgraded. COAG has also agreed to address this issue with clear targets and some funding incentives.

A reformed, flexible training system will need to facilitate a workable and effective national RPL system that is geared to the needs of mature-age and existing workers as well as for traditional youth apprenticeships and encourages consistency and quality building confidence for the achievement of valid competency-based outcomes.

There is considerable discussion regarding the upskilling of existing workers to provide alternative sources of skilled labour. If upskilling of existing workers is to reach its full potential to contribute skilled workers, RPL is an essential factor. Many workers have developed skills from long time employment in industries (e.g. builders labourers) but are reluctant to commence trade training from the beginning. RPL provides a pathway for their skills to be recognised and their period of training shortened making the commencement of training more attractive and completion more likely.

Similar considerations apply to people returning to work after injury or those who have been on some form of welfare support and are returning to the workforce under the Government's Welfare to Work initiatives. RPL can provide pathways which encourage those with skills from their previous periods of employment to re-enter the workforce in positions where they can make an effective contribution.

The current system does not give many incentives for training providers to undertake RPL. In fact it is financially negative for providers and expensive for the employees or employers wishing to have existing skills assessed. A reform of the training system needs to ensure that RPL is an effective and efficient element of the system on both the demand and the supply aspects with appropriate financial support for training providers and employers.

Part of the development of a more flexible training system will need to incorporate training in employability skills that are vital for successful transition into work. This would include life skills training and preparation for work training delivered on a national basis.

4. Targeted Response to Skill Shortages and Regions

The needs of employers and employees in regional areas of Australia must be fully examined to determine the best ways to meet local needs.

Carriage of national projects to develop, trial or pilot strategies to

address skill shortages in regional Australia should be vested in industry organisations rather than training providers or Industry Skills Councils.

The development of regional strategies and solutions to skill and labour shortages is hindered by a lack of consistent, reliable data at the regional level. There are a number of statistical instruments that provide information regarding skill and labour shortages (e.g. the Migrant Occupations in Demand List (MODL), the National Skill Shortages (NSS) List and a number of state government lists providing both whole of state and specific regional information). Despite this, regional needs for information are not well served.

ACCI advocates a review of all current lists dealing with skill shortages. A whole of government approach needs to be applied to the collection of workforce data to facilitate effective strategies to address skill shortages. Consolidation of all lists - national, state and regional, into one comprehensive, easily understood document would facilitate the needs of those researching skill needs in Australia, nationally, in states and in regional areas and the needs of those with interests in attracting skilled and semi-skilled migrants from overseas. Such a list will link skill shortages information together in a clear hierarchy. Information gathered in this way should include industry-based data as well as the geographically identified data.

Next Stages of Training Reform

COAG has also identified some additional work to be undertaken by December 2006. These areas, which largely coincide with the other priority areas of ACCI in addition to the four above, are:

- the growing need for higher level skills;
- cultural and workplace change to lift educational participation and attainment;
- possible reforms to funding and other mechanisms to make the training system more responsive to demand;
- options to increase Australia's investment in vocational education and training;
- enhancing user choice through meaningful and timely performance information;
- more appropriate regulation of education and training providers; and
- building stronger relationships between firms and training providers.

ACCI welcomes the intervention of COAG to put pressure on industry and all governments to finally resolve these matters and move forward for the benefit of all Australians. The challenge should be met with open arms by all, not resisted due to self interest or perceptions of loss of control by government bureaucrats.

COMPETITION REFORM

From its name, it was clear that competition was at the heart of National Competition Policy.

ACCI strongly supports the continuation of these competition reforms under the new National Reform Agenda. The competition reforms under NCP have been very successful, but have not been completed. For example, many anti-competitive regulations remain that have not been reviewed by NCP. Some jurisdictions have been penalised for their failure to review anti-competitive regulations (such as restrictions on retailing hours).

The new agenda should continue the pressure for reform of these regulations.

Infrastructure Regulation

COAG signed an agreement to provide for a simpler and consistent national system of economic regulation for "nationally significant infrastructure", which includes ports, railways and other export-related infrastructure.

The principles of the Agreement are consistent with ACCI's submissions on the National Access Regime and to the 2005 review of export-related infrastructure. In particular, the agreement specifies that third party access to infrastructure should be commercially negotiated wherever possible (in other words, regulation of access should only occur if commercial negotiations fail).

ACCI also supports the agreement by COAG that:

- all access regimes should include consistent principles;
- regulators should be bound to make access decisions within six months; and
- competitive neutrality principles should be enhanced to ensure government businesses engage in fair competition with the private sector.

ACCI also welcomed the announcement of improved infrastructure planning, in particular the commitment to a five-yearly stocktake of infrastructure and assessment of future needs. COAG also agreed to establish one stop shops in each jurisdiction to facilitate significant development projects.

Transport

Characteristics of land transport policy have included the lack of transparency and the presence

of unclear cross-subsidies and inadequate cost recovery in user charging and pricing, which result in distortions and inefficiencies in the use of land transport facilities and services. Commerce and industry expects both rail and road transport sectors to operate without subsidies, with user charging and pricing being based on full cost recovery and applied in a competitively neutral and transparent manner.

The Productivity Commission has also been asked to report to COAG in 2006 on, inter alia, optimal methods and timeframes for introducing efficient road and rail freight infrastructure pricing. COAG also agreed to review the harmonisation of road and rail regulations for implementation within five years. A review will also be undertaken on urban congestion trends, impacts and solutions. The review's findings will be considered at the first meeting of COAG in 2007.

COAG also announced:

> *"a harmonisation of road and rail noting that a national system is crucial to Australia's economic and social well being. It is essential that decisions made in one jurisdiction should be mutually recognised elsewhere. There should be an integrated, national and efficient decision-making framework to gain access to the national road or rail network."*

ACCI supports greater harmonisation of regulations throughout Australia. This is particularly important for sectors which are vital to Australia's competitiveness.

Energy

ACCI recognises that the Australian Government has a strategic national role to play in the development of energy policy and supports the development by government of a comprehensive, integrated, long term, market-responsive and output-based energy policy that promotes a fully contestable national grid with full interconnectedness.

COAG announced continued reform of the energy sector. ACCI has adopted a policy supporting the National Energy Market and a national regulator. ACCI welcomed COAG's restatement of its commitment to achieving a genuinely national electricity transmission grid and moving forward on a national distribution and retail framework, particularly the phase out of energy retail price regulation. COAG also recommended the introduction of smart meters to improve price signals for consumers. ACCI considers this a positive initiative to assist demand side management.

A high-level COAG Energy Reform Implementation Group will be established to detail implementation arrangements for the further reforms.

REGULATORY REFORM

ACCI released a regulation discussion paper in November 2005 entitled *Holding Back the Red Tape Avalanche.*

The paper made a number of recommendations such as improving gate keeping mechanisms, improving Regulatory Impact Statements, better measurements of compliance costs and measures to address the stock of regulation. The COAG communiqué has largely taken up these recommendations.

COAG announced that "*Governments will establish and maintain effective arrangements at each level of government that maximises the efficiency of new and amended regulation and avoid unnecessary compliance costs and restrictions on competition.*" This will be achieved through establishing and maintaining 'gate keeping mechanisms', improving compliance cost measures and broadening the scope of regulation impact analysis to recognise the cumulative burden on business.

COAG has also undertaken to address six regulatory 'hotspot' areas to become an annual review where regulatory reform provides significant net benefits to business. ACCI supports this approach to reducing the stock of regulation.

Finally COAG undertook to benchmark, measure and report on regulatory burdens across all levels of government using a common framework. It was also noted that some jurisdictions may wish to set quantifiable targets. The COAG regulatory statement also noted that the Regulation Task Force and its recommendations were before the Australian Government and the determination of this process would also have a major impact on the overall regulatory framework.

Occupational Health and Safety

ACCI welcomed the inclusion of Occupational Health and Safety (OHS) on the COAG agenda, reflecting the increasingly high profile given to OHS by ACCI and its members and in the community.

ACCI has worked hard with governments at all levels over many years to achieve a nationally consistent OHS framework. Many of the objectives of the 2005 ACCI OHS Policy Blueprint *Modern Workplace: Safer Workplace* (the Blueprint) are making their mark at the highest levels of government.

ACCI welcomed COAG's decision to request that the Australian Safety and Compensation Council (ASCC) work with the jurisdictions and industry to develop strategies to improve the development and uptake of national OHS standards to improve national consistency. This decision reflects the ACCI OHS Policy as articulated in the Blueprint.

ACCI is however disappointed that the communiqué makes no mention of the development of prevention strategies.

The national focus is on improving Australia's OHS performance as articulated in the *National OHS Strategy* and the national targets for injury reduction.

All the national stakeholders have the same objective - to achieve safer workplaces. However industry has very different views on how this mutual objective should be achieved, given that COAG, the Workplace Relations Ministers Council (WRMC), ASCC and the Jurisdictions all focus on regulations, compliance and enforcement whereas industry's focus is on practical injury prevention strategies in the workplace.

The COAG decisions have the potential to influence the WRMC approach to the adoption of nationally consistent national standards packages which are developed through the ASCC.

The ACCI Blueprint elements that are compatible with the COAG decisions include:

- *"governments and regulators understanding their proper role to put in place a framework of laws and programs that is reasonable, balanced and practical" (Outcome 1);*
- *"Where national OHS standards are appropriate they should be developed through tripartite consensus involving balanced representation of governments, representatives of employers and of employees and be nationally consistent in their implementation (Recommendation 16); and*
- *"employers, employees and jurisdictions should agree to work together to develop and adopt national standards packages…new or revised standards are submitted together with an implementation plan and an agreed timeframe to WRMC for endorsement and approval" (Regulation Reform 6).*

Whilst ACCI has welcomed the COAG decisions, we are disappointed that two key areas have not been addressed, both of which are potential barriers to achieving national consistency and improved OHS performance:

- COAG has a strong focus on regulatory reform with no focus or even a mention of the development of prevention strategies, which ACCI believes is the key to improved OHS performance at the workplace; and
- COAG's decision that there be no reduction or compromise in standards for legitimate safety concerns in current OHS standards will result in increasing the burden of OHS regulations to the highest common denominator without recognition of what is the most practical and effective way to achieve improved workplace safety.

ACCI is disappointed that COAG did not use this opportunity to provide national leadership on the important business issues of moving towards a nationally consistent workers' compensation framework and in particular Self Insurance. These issues currently generate a proliferation of state-based regulation which is a major cost and administrative burden on industry.

ADMINISTRATIVE ARRANGEMENTS

An important part of the 1995-2006 NCP was the introduction of competition payments to States and Territories. These payments were designed to encourage the reform effort by ensuring that these jurisdictions shared in the economic benefits of reform that flowed to the Commonwealth.

The Australian Government has now decided to discontinue competition payments because the introduction of the GST has meant all jurisdictions directly share in the benefits of reform. However, it has indicated it will provide funding on a case-by-case basis to *"ensure a fair sharing of the costs and benefits of reform."* ACCI supports these decisions.

The abolition of competition payments means that the incentives to reform may be reduced. Therefore, ACCI encourages COAG to monitor the reform effort by jurisdictions and if the reform effort decreases, the Australian Government may need to consider some incentives and/or penalties on jurisdictions.

ACCI supports the establishment of a COAG Reform Council to monitor the reform agenda. This will replace the National Competition Council which oversaw the NCP reform program.

CLIMATE CHANGE

COAG also agreed to plan for collaborative action on climate change. ACCI supports the development of a new national *Climate Change Plan Of Action* which takes up the direction recently endorsed by the Asia Pacific Partnership on Clean Development and Climate (AP6) nations of Australia, China, India, Japan, Korea and the US. The plan of action must acknowledge that R&D will play a pivotal role in addressing overall emissions levels. ACCI further supports the development of a national framework on the take-up of renewables, low emission technologies and change adaptation. ACCI looks forward to working with the high-level interjurisdictional Climate Change Group to find viable solutions to global warming.

For the *Climate Change Plan of Action* to be successful it needs to adopt the AP6 approach and involve business in

solutions to greenhouse gas emissions such as the recently announced AP6 public and private sector taskforces covering different energy technologies and energy intensive industries.

ACCI recognises the importance of a coordinated approach to measuring greenhouse gas emissions, however it does not support the suggestion of the States that such emissions be included in the National Pollutant Inventory (NPI).

DISAPPOINTMENTS

State Taxes

ACCI was disappointed that COAG did not take the opportunity to agree on further reforms to state taxes. In particular, the States and Territories should meet the spirit of the original GST deal by abolishing all taxes that were included in that agreement. Significant progress has been made in this direction, but much more needs to be done:

- most jurisdictions have agreed to abolish taxes included in the GST agreement, but New South Wales in particular lags;
- the timetable for abolition of taxes is very slow - it is proposed that some taxes will not be abolished until 2010; and
- the jurisdictions have specifically argued that stamp duty on transfers of property should be retained, despite the cost this imposes on business.

ACCI maintains our position that all the States should abolish all of the taxes included in the 1999 GST agreement, particularly including stamp duty on business property.

This is not a new business wish list – we are only asking the States and Territories to keep to the spirit of the original GST deal.

These taxes, many of which impact directly on the business community, reduce growth and the ability of business to provide jobs and lead to increases in the price of goods and services to consumers. ACCI believes that the delays and exemptions mean that the States are not meeting the spirit of the 1999 agreement.

Workplace Relations

The COAG meeting occurred in the context of a highly contested policy debate during the preceding 12 months over workplace relations reforms as outlined in the Commonwealth's *WorkChoices* legislation.

For years, workplace relations policy in Australia has been driven by differing economic, social and political values of governments. It has also been shaped by trade union, employer and industrial politics. Given these realities, and the different political colours of current Commonwealth and State/Territory governments, COAG members could be forgiven for not seeking agreement on the detail of the *WorkChoices* package.

However, ignoring *WorkChoices* altogether was a mistake.

While the detail of *WorkChoices* is a matter of political and industrial dispute, there are policy directions that continue the necessary trend towards decentralisation and workplace bargaining over wages and conditions in Australian workplaces. Those themes fit comfortably with the broad policy direction acknowledged as necessary for our modern economy in the 1990s by both the Keating Labor Government and subsequently the Howard Coalition Government. In the days following COAG this reality was publicly acknowledged by one of the leaders of our trade union movement, ACTU Secretary Greg Combet, who whilst arguing for better collective bargaining rights and critical of *WorkChoices*, acknowledged that economic change had meant that "*decentralised bargaining is here to stay*" (AFR 20/2/06). Our heads of government, in a meeting that provided direction on policies to promote growth in productivity, could have at least expressed similar sentiments.

One further aspect of *WorkChoices* which crosses the political and industrial divide and should have been on the COAG table is the creation of a single national system of workplace relations in Australia. It is disappointing that it wasn't.

At a time of significant change to the framework of Australian workplace relations laws, the community could rightly have expected our political leaders to discuss how a national framework could be smoothly implemented, whilst differing on the content of such laws. Instead we now have the blunt instrument of a High Court challenge by the States and Territories that seeks to overturn the equally blunt but necessary use of the corporations power in the *WorkChoices* legislation.

Whilst *WorkChoices* moves significantly in the direction of a national system, gaps in coverage will remain even if the High Court challenge is unsuccessful. It is in the national interest that the remaining duplication in Commonwealth and State workplace relations laws be removed. The referral of powers by Victoria in 1997 remains a template for future COAG and ministerial consideration. If adopted, Australia would largely end the 'horse and buggy' era of industrial regulation, and not before time.

As outlined in ACCI's October 2005 paper *Functioning Federalism and the Case for a National Workplace Relations System*, current multiple overlapping systems of Commonwealth and State regulation on employment laws are

the product of colonial disputes of the 1890s and unsuited to the modern era of national economic integration and globalisation. They breach almost every principle of efficient and effective regulatory design. They impose duplicate but different regulation on the same topics, create uncertainty over legal rights and obligations, have no coherent basis for their coverage and cost the taxpayer over $100 million per year in the duplication of courts, tribunals, bureaucracies and inspectorates.

The preference of industry is for one single national system to be established through co-operative arrangements between Commonwealth and State governments, as is the case in Victoria. In the absence of intergovernmental agreements, use of the Commonwealth corporations power is the next best option.

While a federal system of government can produce benefits of competitive federalism in some areas of public policy, this is not the case in the industrial relations context. Claims that retention of State industrial relations systems act as a force for beneficial competition or as a future 'safe haven' against Commonwealth laws are wrong and should be roundly dismissed. The lessons of history and Australian constitutional law show that employers and employees under State systems have no free choice of jurisdiction and can be legally forced into Commonwealth laws by union action, whether or not a State government or those employers and employees agree.

The intention in re-basing the system should be to move to a simpler national system, not to make change for change's sake. One single set of national laws should be designed to improve the quality of employment regulation by giving primary authority over wages and employment conditions to people in workplaces, not to centralise such decisions in the hands of government at any level, Commonwealth or State.

A shift to a national system is not a panacea to cure all ills, but it is a major structural microeconomic reform. There are some risks, but not greater than the risks inherent in current approaches. That COAG did not seize this opportunity in February 2006 is to be regretted. It can only be hoped that after the adversarialism of a High Court outcome all Australian governments take a different and more constructive approach to each other on this aspect of necessary economic reform.

CONCLUSION

COAG meetings are important occasions for Australian governments to come together and discuss the national policy framework.

February's COAG meeting made significant progress in breathing new life into National Competition Policy and in committing government to tackling serious regulatory reform issues as well as a recognition of the need to for a better coordinated approach to the vocational education and training system. ACCI supports these endeavours.

However, ACCI is disappointed that COAG passed up the opportunity to discuss state taxes and further national workplace relations reform.

ACCI will continue its work to keep all of these issues at the forefront of political debate this year and is committed to structural policy changes that strengthen the Australian economy and the ability of business to create jobs and wealth.

IMPLEMENTING WORKCHOICES - REFORMING THE INDUSTRIAL AWARD SYSTEM

As a consequence of the passage of the Australian Government's WorkChoices reforms, an Award Review Taskforce is currently taking submissions on the rationalisation of awards and of wage and classification structures. ACCI has made two submissions to the Taskforce arguing for a significant simplification that delivers a genuine safety net while reducing the regulatory burden on business.

Australia's system of industrial awards are a relatively unique approach to employment regulation. For decades, they have saddled employers with a level of complexity and bureaucracy that few of our competitors have to deal with. They are also increasingly out of step with the realities of the modern workplace and the needs of employers and employees.

Our system of federal award regulation arose out of the foundation of the Commonwealth Arbitration Court in 1904. The product of disputes brought to that court were arbitrated awards that regulated employment conditions and bound employers and employees.

By 1920, industrial tribunals were

starting to bind whole industries and groups of employers to particular awards. A system that started off as a means of settling specific industrial disputes became a system for ongoing industry-wide regulation of employment conditions. Centralisation of employment terms became the norm.

Awards regulate in minute detail the rights and obligations of employers and employees. In fact, they regulate in such detail that they determine the conditions under which business can operate and work be performed.

During the 1980s, there was an increasing awareness amongst employers, some unions and policymakers that this approach to employment regulation was increasingly out of step with Australia's modern economy. Various proposals for reform of the award system were developed. However, when compared with the pace of reform in other areas of our economy, the reform efforts of the 1980s now appear modest and inadequate. At the same time, other countries were undergoing substantial labour market reform – with impressive economic results.

Frustration with the award system was, however, one of the key drivers for business to move into systems of workplace-level bargaining with unions and employees. As legislative reforms (both at a State and Federal level, including the 1993 Act) opened up the possibility of employers and employees replacing award regulation with their own workplace agreements, businesses benefited from significant increases in competitiveness, flexibility and innovation. This in turn provided the foundations for sustainable, significant increases in real wages for employees.

The passage of the *Workplace Relations Act 1996* provided the next significant advance in both agreement-making options and in improved award regulation. For the first time, the federal workplace relations system provided and supported options for both agreement-making between individual employees and employers, and for non-union collective agreements. This improved agreement-making framework saw a significant increase in the uptake of formal workplace agreements within the federal system with the result that fewer than a quarter of employees now remain directly reliant on awards.

The *Workplace Relations Act 1996* also introduced significant reforms to the content of awards through the award simplification process. That process required awards to be simplified to 20 'allowable matters'. There was some reduction in the level of process and detail with which awards regulated employment matters and some reduction in the overall numbers of awards.

The philosophy was that awards would operate as a 'safety net' rather than regulating market rates and conditions.

In hindsight the gains from award simplification, whilst useful, were modest. The process was plagued by delay and opponents of reform were able to successfully resist proposals for significant and genuine simplification. Award simplification concluded with far too many awards (approximately 4,000 state and federal awards) still in existence, continuing to regulate employment conditions in a detailed manner.

The challenge for policymakers therefore remained - how to reform our increasingly archaic and outmoded system of award regulation and find a way to establish employment regulation on a simple, effective and modern basis.

THE NEXT WAVE OF WORKPLACE REFORM – WORKCHOICES

With the announcement of the Australian Government's *WorkChoices* legislative package in October 2005, a new opportunity for additional reform emerged.

WorkChoices introduces some of the most significant reforms to workplace relations that Australia has seen in 100 years. *WorkChoices* will introduce very significant changes across most areas of employment regulation, including agreement-making, the creation of a new safety net of statutory employment conditions (the Australian Fair Pay and Conditions Standard or AFPCS) and significant changes to the award safety net.

WorkChoices will make several key changes to awards, including:

- the No Disadvantage Test – which requires agreements to be no less generous in their terms and conditions than the relevant award – will be replaced by a less complex test based on the Australian Fair Pay and Conditions Standard;
- awards will undergo additional simplification;
- pay rates and classification scales will be separated from awards. They will become Australian Pay and Classifications Scales (APCS) and will be periodically reviewed by the new Australian Fair Pay Commission;
- awards will undergo 'rationalisation on an industry basis' – that is, it is envisaged that there will be a significant reduction in the number of awards in the federal workplace relations system; and
- state awards will be overridden and replaced by rationalised