



# GLOBALLY COMPETITIVE AND PROFITABLE

## GOALS:

1. SECURE MACRO-ECONOMIC POLICIES PROMOTING INVESTMENT AND GROWTH
2. ADVOCATE POLICIES FOR SUSTAINABILITY OF THE INDUSTRY (EXPLORATION ACCESS & ASSET PROTECTION)
3. ADVOCATE A UNIVERSALLY APPLIED CLIMATE CHANGE POLICY
4. ADVOCATE POLICIES FOR INCREASINGLY OPEN MARKETS
5. PROMOTE THE DEVELOPMENT OF EFFICIENT & ADEQUATE INFRASTRUCTURE (WATER, ENERGY & TRANSPORT SYSTEMS)
6. PROMOTE POLICIES CONDUCIVE TO INNOVATION & TECHNOLOGY ADVANCEMENT



## GLOBALLY COMPETITIVE & PROFITABLE

Achieving an internationally competitive investment and operating framework in Australia that encourages the development of a profitable and sustainable minerals industry.

### GOAL: SECURE MACRO-ECONOMIC POLICIES PROMOTING INVESTMENT AND GROWTH

#### THE COMMONWEALTH BUDGET

In its *2004-05 Pre-Budget Submission* to the Australian Government, the MCA advocated spending on building and maintaining capacity in essential infrastructure, minerals exploration, education, water and energy, and limiting tax cuts to the return of bracket creep.

The MCA's position was based on concerns that overly generous tax cuts provided a fiscal stimulus to the domestic economy thus warranting a tightening in monetary policy and generating higher interest rates and an inflated Australian dollar.

The centrepiece of an enterprising plan to revitalise minerals exploration in Australia was an obvious and disappointing omission from the Budget. The MCA continues to advocate a flow-through-shares scheme that would extend tax deductions for exploration expenditure by 'junior' explorers to their investors, and increased public expenditure on pre-competitive geoscientific data.

However, the Government's Budget announcements on innovation, climate change and transport were welcome, specifically:

- > commitment to long-term funding of \$5.3 billion over seven years for research and development and a new program to strengthen science, technology and mathematics education through the *Backing Australia's Ability* strategy
- > the foreshadowed National Land Transport Plan *AusLink*
- > maintenance of existing measures plus an additional \$248.3 million for a range of new measures to manage climate change, including funding of \$27 million to foster the development of innovative, low emission abatement technologies
- > \$755 million over five years to continue to improve Australia's national security.

The MCA also welcomed the Australian Government's continued commitment to the medium-term fiscal strategy of maintaining the Budget in surplus over the life of the economic cycle.



## 2005-06 PRE-BUDGET SUBMISSION

In its *2005-06 Pre-Budget Submission*, the MCA reiterated that Australia's minerals industry is primed for a period of considerable expansion. Demand is strong, minerals prices are rising, production capacity is expanding, and employment is growing. However, structural constraints threaten to limit the scale and longevity of the current expansion.

The MCA Submission sets out a responsible and forward-looking blueprint for tackling these critical policy issues, while underscoring the minerals industry's commitment to sustainable development. It advocates that:

- > while the Australian Government has built a strong record of steady and prudent economic management, continued vigilance is essential to maintain a business environment characterised by low interest rates, low inflation and low unemployment
- > in response to strong demand, especially from North Asia, the minerals industry's elevation in production and infrastructure capacity has not been matched by investment in essential public infrastructure, especially water, energy and the export transport corridor
- > skills shortages in professional and trades areas are of acute concern for the minerals industry. The MCA acknowledges the Australia Government's programs and is actively involved in the development of the new Australian Technical Colleges initiative. Further steps are also necessary to promote learning in the sciences and engineering and to expand mining education. The Australian Government should also expand its skilled migration program and criteria
- > the Australian Government commit to the introduction of a flow-through-shares scheme for 'junior' explorers and additional funding for pre-competitive geoscientific mapping, to reinvigorate minerals exploration
- > while much progress has been made, the reform of business taxation is incomplete, including reforms to promote consistency in the treatment of capital allowances (including the tax depreciation treatment of long-life assets), bedding down the tax consolidation regime, removing anomalies in the application of fringe benefits taxes and further reform of international tax arrangements.

## MINERALS INDUSTRY SURVEY

The *2003-04 Minerals Industry Survey (MIS)* reinforced that the Australian minerals industry has entered a strong expansion phase in response to Asia's industrialisation, with increases in production, revenues and employment over the past year.

New investment in plant and equipment was forecast to grow to \$8.2 billion in 2004-05, a 60 per cent increase on the \$5.1 billion spent in the previous financial year. This investment is necessary to meet demand, particularly from China, Japan, Taiwan, the Republic of Korea and India.

However, the Survey Report noted that unless Australia can overcome critical short and long-term supply capacity constraints on its export performance, the minerals industry's investment in new production capacity may not fully realise its potential.

Other key findings include:

- > net profit return on average shareholders' funds fell to 7.4 per cent in 2003-04. The 2003-04 profitability result reflected in part capital investment in new projects that are not yet contributing to profit levels, production volumes and the higher Australian dollar/US dollar exchange rate
- > in 2003-04, average \$US world mineral prices rose by 18 per cent, following a 4 per cent rise in the previous year. However, with the \$A rising around 22 per cent between 2002-03 and 2003-04, this translated into a 3 per cent fall in the Australian dollar commodity price index between 2002-03 and 2003-04
- > direct employment rose by 12 per cent (some 5,400 people to 49,371), the first increase since 1994-95. Respondents forecast a further increase in employment of 2 per cent in 2004-05. Around 24 per cent, or nearly 1 in 4 full-time equivalent positions in the industry are now contracted out
- > mine production by respondents to the Survey rose by 4 per cent in 2003-04, following a rise of 5 per cent in the previous year.

The MIS emphasised the necessity for Australia's investment climate to remain competitive in the face of continued long-term price pressures and increased competition in the supply of minerals.

## TAXATION REFORM

The Business Taxation Advisory Group of the Competitiveness Committee was instrumental in key tax reforms for the minerals industry, including:

- > the implementation of the new tax consolidation regime
- > ongoing business response to the Review of International Taxation Arrangements
- > the implementation of the foreign exchange aspects of the Taxation of Financial Arrangements regime
- > the determination of effective lives for minerals industry assets
- > agreement to a process to determine the life of a mine/project for taxation purposes
- > improved GST rulings
- > input to a range of public inquiries.

### *THE TAX CONSOLIDATION REGIME*

The new Tax Consolidation Regime, which for some groups took effect from 1 July 2002, treats wholly-owned groups as a single entity for income tax purposes. It will bring, over time, benefits to the entire economy. The Regime will:

- > address efficiency and integrity problems in the existing taxation of wholly-owned groups
- > reduce double taxation and tax avoidance
- > assist in the simplification of the tax system, resulting in both reduced compliance costs and administration costs
- > improve the efficiency of business restructuring and the integrity of the income tax system.

The introduction of the consolidated taxation of wholly owned groups raises a range of significant new technical tax issues which have far reaching commercial implications. For the minerals industry, it represents the largest change to the tax system since the introduction of the GST.

The MCA has joined with the Australian Petroleum Production and Exploration Association (APPEA), to form with the ATO and Treasury, the Resources Industry Consolidation Forum (a Working Party of the ATO's National Tax Liaison Group Consolidation Subcommittee), to look specifically at key resources sector tax consolidation issues. The Forum is to:

- > resolve issues at the administration and interpretative level
- > reach an understanding of the 'policy' underlying particular tax consolidation issues
- > identify areas where the Australian Government needs to consider legislative amendment to ensure the legislation is consistent with this underlying policy.



The major legislative elements of the tax consolidation regime are in place, yet there remains considerable uncertainty for minerals companies. The MCA, together with APPEA, worked with the Australian Government and the Treasury to secure legislative amendments to appropriately deal with the transition of former mining and transport capital expenditure into the new regime.

#### *EFFECTIVE LIVES PROJECT*

The effective lives project aims to set 'safe harbour' effective lives for assets for tax depreciation purposes, by establishing a life, measured in years, for assets used in each sector of the minerals industry in Australia. The MCA conducted a two-pronged strategy through direct policy advocacy and experiential mine site tours to increase the understanding of ATO officials regarding effective lives of commonly used plant and equipment across the minerals industry in the areas of minerals processing, light commercial vehicles and heavy mobile equipment, and port and rail assets.

During 2004, the ATO released updated schedules of effective lives relating to:

- > assets used in the gold industry (effective 1 July 2004)
- > assets used in the nickel industry (effective 1 July 2004)
- > buses, light commercial vehicles, trucks and truck trailers (effective 1 January 2005).

Updated schedules of effective lives for other aspects of the project, notably iron ore, are expected to take effect from 1 July 2005.

The Australian Government announced in the 2002-03 Commonwealth Budget that it would introduce statutory caps on the effective lives for taxation purposes of aeroplanes, helicopters and certain oil and gas assets. The Government also announced in August 2004 that it would introduce legislation to set an effective life cap for the depreciation of trucks, truck trailers, buses and light commercial vehicles.

These decisions represent commendable progress and provide the basis for developing a consistent policy approach regarding the effective life of all long-lived assets across all sectors. It is in the national interest for special consideration to be given to any one sector in the absence of a consistent public policy position on all long lives assets.

The MCA has long advocated a cap (say of 20 years) on the effective lives of long-lived assets for depreciation purposes. This would provide a consistent policy approach.

#### *LIFE OF MINE/PROJECT*

The MCA successfully steered the policy development of determining 'life of mine' or 'life of project' for tax depreciation purposes through its ongoing engagement with Government on taxation. In 2004, the ATO agreed to an MCA proposal to initially focus on a 'base case' that sets out a very simple scenario to be analysed before more complicated situations are considered.

The MCA is working to identify a set of principles and procedures typically used by minerals companies to determine 'life of mine' in the normal course of their business, which will be acceptable to the ATO as the life of mine for taxation purposes.



This involves establishing:

- > what the terms 'life of mine' or 'life of project' mean in a minerals industry context
- > how minerals companies arrive at their identified life of mine/project estimates
- > what companies would typically identify as a 'mine' or 'project'.

A draft Taxation Ruling on determining life of mine for taxation purposes will be issued in 2005.

#### *GOODS AND SERVICES TAX (GST)*

The MCA continued to take a lead advocacy role in addressing technical aspects of the GST legislation. Key outcomes achieved included:

- > GST and treatment of coal 'blending': secured a sensible commercial GST treatment that does not impede coal export arrangements
- > GST and coal 'swaps': updated valuation methodology
- > GST and industry joint venture arrangements: clarified the GST treatment of joint venture arrangements.

#### *TAXATION OF FINANCIAL ARRANGEMENTS*

The Australian Government announced in August 2004 a range of policy and technical measures in relation to reform of the Taxation of Financial Arrangements (TOFA). The measures which strongly reflect input from the MCA, comprise:

- > changes to the foreign currency rules to address business concerns and better align the rules to financial accounting approaches
- > technical amendments to the debt-equity rules to deal with specific concerns
- > a deferral of the commencement of the remaining TOFA reforms to better deal with emerging international accounting standards, which are to take effect from 1 January 2005.

Further amendments to the foreign currency rules may become necessary in response to continuing concerns raised by the minerals industry and other business sectors. The MCA will continue consultations with Treasury and advocacy through its membership of the ATO's TOFA Foreign Exchange Working Party. Draft legislation is expected to enter Parliament in mid 2005.

#### *TAXATION OF INFRASTRUCTURE FINANCING ARRANGEMENTS (PROPOSED DIVISION 250)*

The MCA has significant concerns that the proposed Division 250 regarding taxation of infrastructure financing arrangements will adversely impact on minerals companies. The exposure draft legislation proposes the replacement of the *Income Tax Assessment Act 1936* provisions (Section 51AD and the associated Division 16D), which have particular relevance to financing arrangements in the infrastructure industry with a revised regime contained in proposed Division 250.

Division 250 is much broader in scope than Section 51AD and Division 16D and focuses on arrangements between taxpayers and tax-exempt bodies. The Division can trigger where the taxpayer uses assets to provide



goods to a tax-exempt body, and that taxpayer is not considered to be sufficiently exposed to the risks and rewards associated with the ownership of the assets.

The proposed Division specifically defines a number of circumstances where taxpayers are deemed to fail the relevant test (known as the 'predominant economic interest' test) and the rules contained in Division 250 therefore apply to them.

The implications of failing this test and having Division 250 apply include the loss of tax depreciation on the taxpayer's asset base, and also the 're-characterisation' of the taxpayer's revenue stream as a form of principal and interest financing arrangement.

The MCA is advocating that the proposed rules be rewritten to ensure that arrangements that are clearly commercial in nature (such as, but not limited to, the sale of coal for power generation), and which do not have the character of financing arrangements, do not fall within the scope of the proposed Division 250.

#### *FOREIGN RESIDENT WITHHOLDING PAYMENTS FOR CONSTRUCTION AND RELATED ACTIVITIES (5% WITHHOLDING TAX)*

In May 2004, the Australian Government announced that payments under contracts for the construction, installation and upgrading of buildings, plant and fixtures, and associated activities will be covered by the new foreign resident withholding arrangements. Regulations were issued in June.

The MCA has raised significant concerns about the scope and impact of these withholding arrangements on commercial operations in the resources sector. The minerals industry and other business sectors are seeking clarification of the scope and application of these new withholding arrangements, including publication and promotion of the ATO's position.

#### *FUEL EXCISE*

Fuel is a major factor in the minerals industry's international competitiveness, representing one of the principal variable inputs. Policies in relation to the taxation of fuel are therefore critical, not only to government revenue, but the sustainability of minerals industry export oriented business operations.

The MCA is fundamentally opposed to taxes on business inputs, which distort production and consumption decisions, adversely impacting on resource allocation decisions and reducing overall economic welfare.

For this reason, the MCA welcomed the Australian Government's announcement in its Energy White Paper that it would introduce a full excise credit system for all business use of fuel off-road. Credits will apply to all fuels, including petrol, used in these activities. This will be phased in, with a 50 per cent credit available from 1 July 2008 and a full credit from 1 July 2012.

Ultimately, fuel excise will only apply to:

- > business use of fuel in on-road applications in vehicles with a gross vehicle mass of less than 4.5 tonnes
- > private use of fuel in vehicles and in certain off-road applications.

This will mean a range of activities conducted by or for the minerals industry, not presently eligible for credits under the Energy Grants Credits Scheme, will receive credits.



The Government's White Paper is a significant and welcome development that delivers on a long-standing goal of the MCA for certainty and comprehensiveness in removing taxes on fuel as a business input. The MCA will be working with the Government during 2005 to give effect to these announcements.

## **GOAL: ADVOCATE POLICIES FOR SUSTAINABILITY OF THE INDUSTRY (EXPLORATION ACCESS & ASSET PROTECTION)**

### **EXPLORATION ECONOMICS**

Australia's shrinking national minerals inventory, through a sustained decline in exploration activity and expenditure, poses a significant long-term threat to the minerals industry, the economy and Australia's international competitiveness.

National exploration expenditure has declined 37 per cent since the mid-1990s and Australia has slipped to 5<sup>th</sup> place in the global rankings for exploration spending. While the exploration industry is cyclical, it is widely acknowledged by industry and governments that the downturn reflects:

- > structural impediments or market failures
- > changed land access conditions
- > emerging gaps in pre-competitive geoscience information and human and intellectual capital.

The consequences of not responding to these changes are serious. Australia is in danger of diminishing its capacity to meet growing global demand for minerals and metals products driven by Asia's industrialisation.

2004 saw a number of key industry/government developments to address this issue. In June, the Australian Government launched its Resources Exploration Strategy, featuring the report of the Minerals Exploration Action Agenda (MEAA) *The Road To Discovery*.

Two critical measures were obvious and disappointing omissions from the Strategy – a flow-through shares scheme that would extend tax deductions for exploration expenditure by 'junior' explorers to investors, and increased public expenditure on pre-competitive geoscientific data.

These were the centrepiece of the comprehensive and complementary package of measures recommended in 2003 by the MEAA's Implementation Group, Chaired by Mr John Dow of Newmont Australia.

MCA Chief Executive, Mr Mitchell H. Hooke, is a member of the MEAA Implementation Group, which will continue to work through the Strategy's commitments in 2005.

### **ACCESS TO RESOURCES**

Two events in 2004 highlighted the need for certainty and flexibility regarding state-based mining rights in Australia – the decision to close a vanadium mine in Western Australia and the Queensland Government's legislation to revoke the Aurukun bauxite lease on Cape York Peninsula.

In its submission to the WA Legislative Assembly's Economics and Industry Standing inquiry into vanadium resources, the MCA advocated an open and transparent framework for the allocation of mineral tenements, based on high-level principles.



This should be preserved through appropriate statutory and regulatory approaches, which deliver the most efficient outcome through the application of minimum effective regulation.

To this end, the MCA advocated that:

- > in a system where mineral rights are owned by the Crown and mineral resources are developed by the private sector, some mechanism is needed for transferring exploration and mining rights to private hands
- > it is important that the mechanisms put in place to assign and charge for mineral rights serve as far as possible to promote the efficient exploitation of Australia's mineral resources
- > Australia's inherent comparative advantage in the natural endowment of resources needs to be exercised, however government policy should recognise that the economic viability of a project or sub-project varies due to changes in mining, metallurgical, economic, marketing, technological, legal, environmental, social and government factors
- > That is, previously uneconomic demonstrated resources may become economically recoverable and vice versa. Therefore, government policy regarding a State's mineral resources, their development potential and the allocation of mineral tenements should not penalise a minerals company for deferring investment in a resource because it is uneconomic
- > once the legal framework has been developed future intervention by government must be consistent with established principles in the interest of maintaining certainty and avoiding sovereign risk.

## REPORTING STANDARDS

### *INTERNATIONAL FINANCIAL REPORTING STANDARDS*

Australia, along with many other countries in Europe and Asia, will transition its financial reporting regime to International Financial Reporting Standards (IFRS) for financial periods commencing on or after 1 January 2005.

The Australian business community, including the MCA, has generally welcomed this initiative. A single set of high quality accounting standards across major international capital markets will greatly facilitate cross-border comparisons by investors, reduce the cost of capital, and assist Australian companies wishing to raise capital or list overseas. The change will result in increased transparency in financial reporting, but at the same time challenge the ways in which companies, including those in the minerals industry, measure performance and communicate with the markets.

The minerals industry in Australia has long operated under a set of accounting rules that deal with certain unique aspects of its business, through a specific Australian Accounting Standard (AASB 1022). Under the IFRS regime, no such standard exists, although the International Accounting Standards Board (IASB) plans to develop a new standard to fill this gap.

In February, the MCA and KPMG co-hosted an industry working session with Australian member of the IASB, Mr Warren McGregor, based in London. Session participants discussed the particular circumstances of the minerals industry, to ensure that the IASB is aware of the practical difficulties in applying the standards to the industry, and to seek clarification and guidance as to how best to advance the interests of the minerals industry.



In addition, during 2004 an outstanding problem concerning minerals industry accounting, identified by the MCA, was resolved. The IASB decided to fully 'grandfather' national generally agreed accounting principles, such as Australia's existing 'area of interest' method of accounting for exploration costs, for both producers and explorers, until such time as the IASB completes the proposed comprehensive extractive industry international accounting standard.

#### *AUSTRALASIAN CODE FOR REPORTING OF IDENTIFIED MINERAL RESOURCES AND ORE RESERVES (THE JORC CODE)*

The latest edition of the JORC Code was launched on 17 December 2004. The MCA has been integral in the Code's evolution since it initiated the concept 33 years ago.

The purpose of the Code is to provide a minimum standard for reporting of Exploration Results, Mineral Resources and Ore Reserves in Australasia, and to ensure that public reports on these matters contain all the information that investors and their advisers would reasonably require for the purpose of making a balanced judgement regarding the results and estimates being reported.

The JORC Code in recent years has been used both as an internal reporting standard by a number of major international mining companies, and as a template for countries in the process of developing or revising their own reporting documents, including New Zealand, Canada, South Africa, the United Kingdom and in Europe.

The 2004 JORC Code (known as the *Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves*) is an improvement on the previous (1999) edition, whilst Resource/Reserve definitions are not materially affected. The improvements reflect evolving regulatory and professional practices, and trends in other countries.

#### **NATIONAL COMPETITION POLICY**

The minerals sector relies on Australia's economic efficiency to maintain its international competitiveness and the profitability of its activities. While reforms initiated under the National Competition Policy (NCP) have not been costless, the associated improvements in efficiency and changes to public utilities have enhanced economic performance and improved resilience to the inevitable and unrelenting changes in international conditions.

In 2004, the MCA participated in the Productivity Commission's review of the NPC strongly endorsing NCP reforms, including in electricity, gas, public transport infrastructure and water. The MCA shares the Productivity Commission's concern that there is evidence of Australian 'reform fatigue'. Australia must reinvigorate the NCP process of institutional and economic reform to maintain and improve our international competitiveness.

The MCA also recommended a regulatory approach based on the concept of 'minimum effective regulation' and adoption of the most efficient regulatory approach available to address a defined problem (including an assessment of whether self-regulation or no regulation may be more appropriate public policy choices).

#### **GOAL: ADVOCATE A UNIVERSALLY APPLIED CLIMATE CHANGE POLICY**

The MCA advocates that climate change is a global issue requiring a global solution in the economic, environmental and social interests of humankind. In this, the MCA supports the objectives of the United Nation's Framework Convention on Climate Change.



However, the Kyoto Protocol to the Convention should not be seen as the litmus test for commitment to addressing climate change. A global solution to global climate change requires all the major emitting countries to participate in agreed actions for significant long-term reductions in greenhouse gas emissions.

The Kyoto Protocol cannot deliver either. It is flawed in both design and implementation. It does not include developing countries and is projected to reduce greenhouse gas emissions by less than two per cent. Even so, the Kyoto process has served a useful purpose in focussing political and business leaders on the problem of climate change.

Attention must now turn to developing a 'beyond Kyoto' solution – a message delivered strongly by the MCA to the Federal Senate Environment, Communications, Information Technology and the Arts Committee Inquiry into the Kyoto Protocol Ratification Bill 2003 [No. 2].

In its representations to the Inquiry in February, the MCA reinforced the minerals industry's commitment to being part of the global solution to managing climate change. In partnership with government, the industry is investing heavily in research and development to achieve step-change technologies that effectively reduce greenhouse gases.

This includes geological sequestration; coal gasification; coal gas to liquids; further reductions in aluminium industry PFC (perfluorocarbon compounds) emissions; renewable energies; alternative fuels and the hydrogen economy; and involvement research and leadership programs such as various CRCs, the Coal 21 program and the Carbon Sequestration Leadership Forum.

The development of these technologies is critical if there are to be significant reductions in greenhouse gases whilst maintaining the necessary economic development for growth and prosperity and, notably, to reducing poverty in developing economies.

In the absence of a global system and step-change technologies, non-market-based imposts such as a carbon tax will not contribute to greenhouse gas reductions and would simply become revenue-raising exercises.

There is also little point in pursuing efficient market-based mechanisms in the absence of a global equitable framework within which these systems could operate and the breakthrough technologies necessary for business to adjust. The unilateral imposition of regional market-based mechanisms distort the market, impact international competitiveness and may increase emissions by penalising efficient regional operations and encouraging inefficient extra-regional operations.

#### *STATE POLICY DEVELOPMENTS*

The MCA is concerned at the lack of coordination and consistency in state government approaches to climate change and continues to work with the Australian Industry Greenhouse Network (AIGN) to advocate:

- > a principled approach to developing greenhouse policies
- > the need for a long-term, global solution to climate change which allows industry to adjust and which focuses on R&D and technology development
- > incentive-based policies to encourage greenhouse gas reduction together with partnerships between industry and government (particularly regarding emerging near zero emissions technologies)
- > nationally and internationally consistent greenhouse reporting
- > the importance of active and early engagement with industry.

## GOAL: ADVOCATE POLICIES FOR INCREASINGLY OPEN MARKETS

The MCA is a strong supporter of trade liberalisation, principally through the World Trade Organisation (WTO), but also through the active pursuit of regional and bilateral free trade agreements.

The MCA considers that the same criteria should apply to all negotiations – the outcome should be ambitious, comprehensive and commercially meaningful, with deep and broad liberalisation commitments in all areas, including agriculture, industrial and non-agriculture market access, and trade in services.

### WTO – GLOBAL TRADE NEGOTIATIONS

The MCA is disappointed at the slow progress of the WTO's so-called Doha Round of trade talks commenced in November 2001. The WTO's 148 member nations failed to meet the original deadline of 1 January 2005 for the conclusion of these negotiations, and it is now likely that the talks will not be concluded until mid-2007.

Despite these delays, the MCA continues to play an active and practical role in support of the negotiations, with Chief Executive, Mr Mitchell H. Hooke, serving on the Australian Trade Minister's WTO Advisory Group. The MCA has also held discussions with Australian trade officials on the feasibility of a sectoral agreement on natural resource commodities under the umbrella of the Doha Round of negotiations. Such an agreement would aim to eliminate all duties on minerals commodities covered by the agreement, and seek to go beyond the cross-the-board tariff reductions that may result from the WTO negotiations on non-agricultural market access.

In recognition of the growing role played by Australian exporters of mining technology services (MTS), the MCA also places considerable importance on the reduction of market access barriers and associated regulatory hurdles for MTS in key target markets.

And the lowering of foreign investment restrictions in these markets remains a priority goal for the MCA in the negotiations.

The MCA will continue to work with Australian ministers and officials, as well as with like-minded organisations internationally, to press for an early and ambitious conclusion to the Doha Round. A precondition for this outcome will be substantial progress at the WTO Ministerial Meeting to be held in Hong Kong from 13-18 December.

### BILATERAL TRADE DEVELOPMENTS

While multilateral liberalisation remains the prime objective, the MCA considers that the Australian Government should explore all opportunities for improved trade and investment in key markets abroad. Accordingly, the MCA has been a strong supporter of the bilateral Free Trade Deals concluded in recent years (Singapore, Thailand, United States), and in prospect (China, Malaysia, ASEAN, United Arab Emirates).

#### *THE AUSTRALIA-UNITED STATES FREE TRADE AGREEMENT*

The conclusion of the Australia-US Free Trade Agreement in 2004 was an important, and logical step forward for the internationalisation of the Australian economy. Although the Agreement's market access gains fell short of expectations in some areas (especially agriculture), the MCA's goals for the trade deal were either realised or exceeded.

At the broadest level, the deal is having a 'head-turning' effect, raising the profile of Australia on US and global



capital markets. Equally importantly, the agreement led to the liberalisation of two-way investment provisions, including the raising of the threshold for Foreign Investment Review Board screening of inward investment from \$50 million to \$800 million. The MCA also welcomed agreement by the two governments for ongoing review of the trade and investment rules, and will continue to urge further relaxation of restrictions on investment flows in both directions.

#### *AN AUSTRALIA-CHINA FREE TRADE AGREEMENT*

In April 2005, the Australian and Chinese Governments will decide whether to commence negotiations on a comprehensive bilateral Free Trade Agreement (FTA). The MCA sees this deal as an important opportunity to cement an economic relationship that is already flourishing.

Minerals exports to China have grown by 470 per cent over the past decade and account for at least 60 per cent of Australian goods exports to China. The strong growth suggests that there are few effective trade barriers to Australian minerals exports to China.

In its submission to the Department of Foreign Affairs and Trade's scoping study on China, the MCA said a bilateral FTA would provide a critical government-to-government framework to strengthen an already impressive trade and investment relationship. The FTA would add a new and formal dimension to the bilateral political and strategic relationship, the benefits of which will inevitably flow through to stronger economic ties.

Second, while Australian and Chinese companies are already investing in a long-term partnership, an FTA should reduce transaction costs and produce greater certainty in security of supply and market access for both partners under a formal trade and investment agreement.

Third, an FTA with China would provide the opportunity to remove practical obstacles to two-way trade and investment in exploration, production, processing, and trade in minerals and related technology and services. Despite its dependence on imported minerals commodities, China retains commercially significant tariff barriers on a number of products. While these tariffs are not high enough to prevent trade flows, they operate as an unnecessary cost borne by exporters. For example, the tariffs on just 3 commodities - nickel, coal and aluminum - impose additional costs of up to \$50 million annually on Australian minerals companies.

#### *ASEAN AND AUSTRALIA-NEW ZEALAND TRADE NEGOTIATIONS*

In November 2004, Australia and New Zealand launched free trade talks with the 10 member economies of the Association of South East Asian Nations (ASEAN). The MCA welcomed this development and will contribute actively to the negotiations that are due to be completed within two years.

ASEAN nations are significant importers of minerals commodities, with the value of trade reaching nearly \$2 billion annually. But some ASEAN nations retain varying tariff duties as high as 40 per cent on minerals imports. In addition, a number of ASEAN member nations are significant minerals producers (Indonesia, Vietnam, Laos) and offer considerable potential in terms of existing and prospective investment opportunities.

Unfortunately, uncertainty concerning administration, interpretation and enforcement of regulations in a number of South East Asian nations represents a significant deterrent to investment in their minerals sectors. The MCA sees these trade negotiations as an important vehicle for promoting fairer, more transparent and consistent legal and policy regimes for minerals development in South East Asia.



#### AUSTRALIA MALAYSIA FREE TRADE AGREEMENT

In July 2004, Australia and Malaysia agreed to conduct parallel scoping studies of a Free Trade Agreement (FTA). The MCA considers a separate bilateral trade deal with Malaysia would provide additional opportunities for the minerals sector in a market that is already valued at more than \$500 million annually.

According to data compiled by the Department of Foreign Affairs and Trade, Malaysia maintains some tariffs on imported minerals products, including a 20 per cent tariff on aluminium plate, a 6 per cent tariff on zinc ores, and a 3.4 per cent tariff on copper.

The MCA considers a bilateral trade relationship with Malaysia would also provide an opportunity to press for better access to the Malaysian market for Australian providers of mining technology services.

#### AUSTRALIA'S ANTI-DUMPING AND COUNTERVAILING ARRANGEMENTS

The Productivity Commission has drawn attention to the adequacy of Australia's anti-dumping and countervailing arrangements as part of its *Review of National Competition Policy Arrangements*. In its draft report, released in October, the Commission suggests that the Australian Government's foreshadowed review of Australia's anti-dumping laws, scheduled for post the Willett Review (completed in 1996), was "a key piece of unfinished business" and recommends the Government conduct a review at the earliest possible date. The MCA concurs.

The MCA considers that Australia's anti-dumping arrangements (laws and administration):

- > should protect Australian industry against predatory pricing behaviour where it is demonstrated as causing material injury to affected industries
- > be consistent with the strictures and intent of the WTO Agreement on the Implementation of Article IV of the GATT Code on Anti-dumping and Countervailing.

The MCA considers the Australian Government's determination to recognise China as a market economy for the purposes of anti-dumping determinations if a decision is taken to negotiate a Free Trade Agreement with China. Australia has also agreed to suspend any resort to certain transitional provisions in the Protocol for China's accession to the WTO.

The MCA recognises that waiving these provisions does not affect Australian Customs' interpretation, application, or administration of Australia's anti-dumping provisions in regard to China, which are founded in the WTO Agreement on Anti-dumping and Countervailing and not China's Protocol of accession to the WTO (i.e. Articles XV and XVI address China's status as an economy in transition for 15 years from date of accession).

### GOAL: PROMOTE THE DEVELOPMENT OF EFFICIENT & ADEQUATE INFRASTRUCTURE (WATER, ENERGY & TRANSPORT SYSTEMS)

#### WATER REFORM

The MCA supports, and has been actively engaged in the Council of Australian Government's (COAG) water reform process.

The Australian minerals industry is a major producer, user and recycler of water throughout its operations, from exploration to mine closure and in smelting/refining operations. Water is critical to current and future



operations, yet the industry accounts for just three per cent of Australia's water consumption, only five per cent of which is taken from mains supply.

The minerals industry is committed to sustained ecological flows of Australia's river systems, and advocates full cost recovery water pricing that accounts for private infrastructure investment and a national water market.

The appropriate resolution of the market and institutional arrangements for managing and trading water is one of the most important and pressing natural resource policy issues facing Australia.

The Australian Government's Bill to create a National Water Commission (introduced in December 2004) will provide for greater investment certainty for water users.

Given the constraints on existing and future supplies, the MCA considers efficient and cost-effective access to limited water supplies for all competing uses (including in the minerals industry) can be achieved by ensuring:

- > all water management decisions are based on sound science
- > water allocations are guaranteed – they should not be able to be altered (reduced or removed) by government except in exceptional circumstances such as drought
- > risks associated with changes to water allocations due to exceptional circumstances are shared between government and industry – this is critical as the extremely variable nature of water supply in Australia has the potential to create substantial risks
- > the establishment of a national water market within and between states and territories that is based on the relevant parameters of the region (catchments or basins)
- > the effective operation of a national water market should not be limited by the application of any sector based subsidies or rebates, or artificial barriers or impediments to trade
- > water pricing is based on a user pays system that incorporates all costs.

## ENERGY

### *ENERGY WHITE PAPER*

The minerals industry supports the Prime Minister's Energy White Paper, *Securing Australia's Energy Future*, as the policy platform for achieving energy efficiency, cleaner production, energy security and market reform, and improved environmental performance, notably greenhouse measures and air quality.

The White Paper, announced in June, emphasises ambitious, yet realistic, solutions through a partnership between industry and government to meet Australia's future energy need and manage climate change founded on common objectives of energy and eco-efficiency, sustaining investment, jobs and industry's international competitiveness.

Significantly, the Paper delivers on a long-standing goal of the MCA for certainty and comprehensiveness in removing taxes on fuel as a business input. The Paper entrenches the legitimate removal of fuel excise on business inputs and extends the eligibility of relief to other transport, both on and off-road, manufacturing, construction, power generation and other activities.

The Government's strategy underscores the central role of technology to achieve 'step-change' improvements in greenhouse gas abatement for both fossil fuels and renewable energy sources.

The White Paper also provides for:

- > no expansion of the Mandatory Renewable Energy Target as advocated by the MCA in recognition that it is a high cost greenhouse measure and a non-transparent and inefficient industry development scheme
- > appropriate emphasis on an open, competitive and integrated national energy market underpinned by a national legislative framework
- > the establishment of a Low Emissions Technology Fund. The MCA particularly welcomed this decision as providing fiscal incentives for technology development in the research and development of more efficient, cost competitive and environmentally compatible energy production, both from fossil fuels and renewable sources, such as solar, wind, wave and bio-mass.

#### *ENERGY MARKET REFORM*

The MCA supports an open, competitive and integrated national energy market that is:

- > governed by nationally consistent regulation of generation, transmission and distribution to promote efficiency and to eliminate unnecessary costs and risks
- > transparent, with no artificial barriers to entry
- > non-discriminatory and therefore non-distortionary between energy sources
- > devoid of price controls, unless and only in circumstances of demonstrable market failure with capacity for long-term supply contracts
- > attractive to further investment in world's best practice generation and transmission capability and in new technologies to meet the burgeoning energy demands of the future.

In June, after two years of negotiations between the Commonwealth and States, the Australian Energy Market Reform Legislation passed through the Australian Parliament.

This is a fundamental plank in the national energy policy, which establishes:

- > the Australian Energy Market Commission, which will have economic policy responsibility for rule making and market development
- > the Australian Energy Regulator, which will have responsibility for market regulation (excepting in Western Australia and the Northern Territory).

The MCA has long advocated that energy supply is a national strategic issue, critical to the continued competitiveness of the minerals industry and to the economic and social welfare of all Australians.

#### **TRANSPORT**

##### *TRANSPORT INFRASTRUCTURE*

Unprecedented demand for Australia's minerals exports is placing pressure on our bulk commodity transport infrastructure. In addition, Australia's major container port authorities have recognised that container throughput will grow significantly in the medium-term, testing the ability of land transport infrastructure to



service that growth. Addressing these issues will require cooperation from all levels of government.

The MCA particularly welcomed the Australian Government's AusLink White Paper: *Building Our National Transport Future* released in June 2004. AusLink is significant for the extent of the Government's commitment to investing in critical, national infrastructure and for the comprehensive, strategic basis by which Australia's longer-term land transport needs are to be met, including:

- > the need for multi-modal transport solutions rather than a focus on improving individual modes
- > taking a long-term strategic approach to national transport planning and funding
- > the development of a comprehensive and integrated National Land Transport Plan
- > a coordinated and more effective response to future national land transport challenges
- > opportunities for broader stakeholder participation in the national planning and program implementation processes.

The MCA advocated to the Australian Government:

- > a national strategic approach be taken to developing an integrated road, rail and port network in Australia, involving private sector consultation
- > a proper balance of consideration of container, liner and bulk commodity ports' needs
- > there be greater opportunities for cost effective private sector involvement in the nation's road and rail infrastructure.

The minerals industry has demonstrated over many years its capacity to invest in essential infrastructure and to gear its production capabilities to respond to the market. However, this needs to be matched by timely investment in public infrastructure by government. The MCA has urged the Australian Government to place greater emphasis on bulk commodity transport needs in the development of the *AusLink* forward investment program. This is because there are emerging public sector transport infrastructure requirements in this area, particularly related to coal exports.

In this context, the MCA particularly welcomed the historic rail agreement between the New South Wales and Australian Governments (to lease the NSW interstate track and Hunter Valley rail freight corridors to the Australian Rail Track Corporation (ARTC)) signed on 4 June. This involves a commitment of \$152 million to upgrade the Hunter Valley rail network including track strengthening, elimination of bottlenecks to provide a reliable, cost effective system for transporting coal which will improve international competitiveness and our capacity to supply growing demand for Australian coal.

The MCA has underscored to the Australian Government the need for:

- > implementation of the ARTC's capital expenditure program in the Hunter Valley as announced by the Australian Government
- > timely development of new rail track access arrangements for the Hunter Valley rail network under the Australian Competition and Consumer Commission
- > ongoing consultation by the ARTC with all members of the Hunter Valley coal transport and logistics chain so that key expenditures are undertaken on time.

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#### *MARINE PEST INCURSION*

The International Maritime Organization finalized the International Convention for the Control and Management of Ships' Ballast Water and Sediments in 2004. Continuing its 14-year involvement on this policy issue, the MCA was represented on the Australian Delegation to the Convention, which Australia is expected to ratify in the first half of 2005.

There has been substantial progress in implementing the recommendations of the 2003 National Taskforce on the Prevention and Management of Marine Pest Incursions. In particular, most of the recommendations relating to interim arrangements have been essentially met or substantial progress has been made.

There remains the issue of developing coordinated and consistent state/territory measures to control marine pest movements around the Australian coastline. While it has been agreed by relevant Council of Australian Governments' (COAG) Ministers that there should be a consistent national approach this has still some way to go. The MCA was disappointed that the delays involved led to the point where Victoria decided to introduce its own regulatory approach for the control of shipping carrying ballast water into Victorian ports. This took effect from 1 July.

The MCA has consistently supported a Single National Management System to address marine pest incursion by any vector and, in implementing this policy approach, the MCA has supported a principled approach along the lines developed by the National Introduced Marine Pests Coordination Group.

With regard to cost-recovery, officials are considering imposing a national levy for an international vessel's first visit into Australian waters, and a state/territory levy for second and subsequent port visits by such vessels and for coastal vessel movements in Australian waters.

The MCA has joined with shipping industry representative bodies to advise government that it is prepared to accept a national levy in respect of all international and Australian flag state vessels discharging ballast water in Australian waters. However, the levy should be collected only once per vessel to minimise the compliance costs of government and industry and simplify procedures. Industry support for such an approach is provided on the basis that it is the least cost method of achieving established social and environmental objectives.

#### *TRANSPORT SECURITY*

Ships and port facilities around the world are now approaching good compliance with new International Maritime Organisation (IMO) security measures developed to protect international shipping from the threat of terrorism, which came into effect on 1 July 2004.

The far-reaching measures now in force were developed and adopted by IMO in response to the 9/11 terrorist attacks in the United States and are aimed at enhancing maritime security on board ships and at ship/port interface areas.

Australia has met its international obligations under the new IMO regime via the introduction of the *Maritime Transport Security Act* from 1 July 2004. The MCA assisted in the development of the legislation and associated regulations and education material in the lead up to this deadline.

The Australian Government also announced in March a maritime security review to ensure Australia is actively managing its transport security environment. The MCA participated in the review and is also a member of the Maritime Industry Security Consultative Forum set up to assist the Department of Transport and Regional Development to facilitate industry-government consultation regarding high-level policy, operational, legal, compliance and other relevant aspects of the *Maritime Transport Security Act*.