

**APPLICATION FOR INTERIM AND FINAL AUTHORISATION
SECTION 88(1) OF THE COMPETITION AND CONSUMER ACT 2010 (CTH)**

Lodged by
Linfox Australia Pty Ltd (ACN 004 718 647) and its related bodies corporate



14 February 2022

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Part 1: Summary

a) Background

1. This application is made to the Australian Competition and Consumer Commission (**ACCC**) by Linfox Australia Pty Ltd (ACN 004 718 647), on behalf of itself and its related bodies corporate (**Linfox Group**) (the **Applicants**).
2. On the weekend of 22 and 23 January 2022, significant heavy rainfall in north and west South Australia (**SA**) damaged 300km of the rail track between Western Australia (**WA**), the Northern Territory (**NT**) and SA and cut the rail link between WA, NT, SA and the Eastern States of Australia (the **Trans-Australian Railway**).¹ Road links between WA, NT and SA were also damaged but have since been repaired. Repair works are currently underway on the Trans-Australian Railway between WA, NT and SA with repairs expected to be completed on 15 February 2022.
3. Approximately 80% of WA's land-based freight from the rest of Australia arrives by rail,² while the NT's land-based freight from the rest of Australia arrives by road and rail.³ This includes the following categories of goods, which are identified in the Department of Home Affairs' Essential Goods and Planning Prioritisation – Interim Guidance (the **Interim Guidance**) a copy of which is at Annexure B:
 - a. essential food, groceries, hygiene products and packaging materials including inputs into those products, such as yeast for baked goods, and goods for vulnerable cohorts, such as aged care facilities and;
 - b. essential food stocks for animal welfare;
 - c. urgent medical supplies, such as Rapid Antigen Tests, Personal Protective Equipment and prescription and non-prescription pharmaceuticals;
 - d. goods that are critical to enabling, supporting or facilitating freight services that carry essential goods, such as spare parts for heavy vehicles;
 - e. supplies for the operation of critical infrastructure, such as telecommunications equipment;
 - f. dangerous goods shipping containers which are used to exports goods from WA and the NT; and
 - g. any other goods identified as a priority by a Commonwealth, WA and/or NT Government department or agency,(together, the **Critical Products**).

¹ Australian Rail Track Corporation says line closed between SA, WA and NT due to heavy rain in outback, [Australian Rail Track Corporation says line closed between SA, WA and NT due to heavy rain in outback - ABC News](#), 24 January 2022, accessed 9 February 2022.

² Flooding cuts off key railway supply routes in central Australia, [Flooding cuts off key railway supply routes in central Australia | Transport | The Guardian](#), 2 February 2022, accessed 9 February 2022.

³ NT Police Commissioner not ruling out emergency response to food shortages, [NT Police Commissioner not ruling out emergency response to food shortages - ABC News](#), 28 January 2022, accessed 11 February 2022.

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4. The damage to the Trans-Australian Railway has led to shortages of the Critical Products in WA and the NT and shortages in available transport and logistics capacity with those shortages expected to be particularly critical in the next two weeks from the date of this document. It is currently expected that goods backlogs will continue for approximately 12 weeks from 15 February 2022 while the backlog is cleared. There is a need to prioritise which of the Critical Products use transport and logistics services to prevent shortages for at least this period and to allow for a suitable buffer period to avoid the need to apply for reauthorisation given the prospect of delays in clearing the backlog.
5. The damage to the Trans-Australian Railway has also led to shortages, primarily in SA, but to a lesser extent in the Eastern States of Australia, of products which are mined or manufactured in WA or transported from WA and exported to SA and the Eastern States of Australia via the Trans-Australian Railway, including the following items which are identified in the Interim Guidance:
 - a. water and waste water treatment supplies such as aluminium sulphate which is used for municipal water purification and waste-water treatment for populations in SA;
 - b. empty shipping containers;
 - c. essential food stocks for animal welfare;
 - d. goods that are critical to enabling, supporting or facilitating freight services that carry essential goods;
 - e. supplies for the operation of critical infrastructure; and
 - f. any other goods identified as a priority by a Commonwealth, State and/or Territory Government department or agency,(together, the **Critical Exports**).
6. Similar shortages of road and rail transport capacity and logistics services exist to those identified in paragraph 4. Additionally, these shortages are likely to be compounded by the rise of COVID-19 cases anticipated in WA from the end of February 2022, which are likely to affect workers in the transport, logistics and retail industries.
7. Due to imminent anticipated shortages of the Critical Products and Critical Exports in WA, the NT and SA particularly but also in other States and Territories, the Applicants seek urgent interim and final authorisation under s 88(1) of the *Competition and Consumer Act 2010* (Cth) (**CCA**) to engage in the conduct described in Part 3 of this application.
8. If the Participants (as defined in paragraph 13 below) are unable to engage in the Proposed Conduct, there is a real risk that critical shortages of the Critical Products will occur in WA and the NT over a sustained period which will leave the communities in WA and the NT unable to access those products. This could lead to stockpiling behaviour of the affected Critical Products and associated community unrest. There would also be shortages of the Critical Exports which will affect the supply of safe drinking water and waste-water treatment to communities in SA and the Eastern States and, for shipping containers specifically, limit the means by which the Critical Products can be transported into WA and the NT. It is expected these

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issues will persist until the backlog of goods associated with the major supply disruption caused by the SA floods is cleared.

9. The Proposed Conduct is intended to assist the Participants (as defined in paragraph 13 below) to work together to:
- prioritise the supply of the Critical Products into WA and the NT by road, rail, sea or air freight, including the development of stockpiles of the Critical Products where required, so that supply of those products is maintained until the backlogs of goods for transport on the Trans-Australian Railway are cleared; and
 - prioritise the supply of the Critical Exports out of WA and the NT so that supply of those exports is maintained until the backlogs of goods for transport on the Trans-Australian Railway are cleared.
10. The outcome of this application would also apply to any other transport services supplier, logistics services supplier, Critical Products retailer, wholesaler or supplier or Critical Exports manufacturer or supplier who in future wishes to engage in the conduct the subject of the application and is approved by the ACCC to do so.
- b) Urgent interim authorisation sought**
11. The Applicants seek urgent interim authorisation from the ACCC for the Proposed Conduct. This is to allow the Participants to commence taking immediate action to address the effects on transport and logistics services subsequent when the Trans-Australian Railway reopens on 15 February 2022 and to avoid shortages of the Critical Products and Critical Exports.

Part 2: Parties to the proposed conduct

a) Applicants

Name, address (registered office), telephone number and ACN	Contact person(s) name, position, organisation, telephone number and email address	Description of business activities
Linfox Australia Pty Ltd (ACN 004 718 647) and its related bodies corporate 55 English Street ESSENDON FIELDS VIC 3041 03 8340 1000	Mark Whitworth General Counsel and Company Secretary Linfox Australia Pty Ltd (ACN 004 718 647) and its related bodies corporate 55 English Street ESSENDON FIELDS VIC 3041 [REDACTED] [REDACTED]	Supply of rail freight services and logistics services

b) Email address for service of documents in Australia

12. Email: [REDACTED]

c) Other persons who propose to engage in the Proposed Conduct

13. Other parties who are likely to be potential parties to the Proposed Conduct and to who this authorisation would apply are set out in Annexure A (together with the Applicants, these are the **Participants**). Those parties are retailers, wholesalers or

suppliers of the Critical Products, manufacturers or suppliers of the Critical Exports, transport services providers and logistics services providers.

Other notified participants

14. The Participants propose that authorisation also apply to any other parties that notify the ACCC in accordance with the procedures set out at Part 3(d) below (**Other Participants**).

Part 3: The Proposed Conduct

a) Description of the Proposed Conduct

15. The Proposed Conduct is described in paragraphs 16-17 below.
16. The Proposed Conduct relates to collaboration among the Participants and Other Participants to:
- a. optimise the use of available freight space on the Trans-Australian Railway, including by the use of other freight transport methods such as road, sea and air;
 - b. prioritise supply and transport of the Critical Products into WA and the NT to ensure sufficient supply of those products are available for consumption by the WA and NT communities;
 - c. prioritise supply and transport of the Critical Exports out of WA and the NT to ensure sufficient supply of those products are available for use by the relevant industries primarily in SA but also the Eastern States of Australia (especially where there are shortages of the Critical Exports).
17. Specifically, consistent with the Interim Guidance, the Participants seek authorisation to propose, discuss, enter into or give effect to any provision in a contract, arrangement or understanding (including contracts, arrangements or understandings involving retailers, wholesalers and/or suppliers of Critical Products, manufacturers and/or suppliers of Critical Exports, freight forwarders and road, air and/or sea transport and logistics providers), or engage in any conduct, where the contract, arrangement, understanding or conduct:
- a. involves two or more of any Participants or Other Participants; and
 - b. has the purpose or likely effect of either ensuring the supply or transport of one or more of the Critical Products to the WA and/or NT communities or ensuring the supply or transport of one or more of the Critical Exports to the affected industries, by:
 - (i) identifying the specific Critical Products which are critically required in WA or the NT and/or identifying the specific Critical Exports, each in accordance with the Interim Guidance, which are critically required in States and Territories of Australia other than WA and the NT;
 - (ii) prioritising the transport of the Critical Products and/or Critical Exports identified in subparagraph (i) and ensuring the optimal distribution of all available freight space;

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- (iii) ensuring the supply and transport of the Critical Products and/or Critical Exports identified in subparagraph (i) above, including developing stockpiles of those products and prioritisation of those products to the places in which they are critically required;
 - (iv) sharing non-price commercially sensitive information (for example, relating to schedules, freight or logistics capacity, stock levels, and access to air, rail, road or sea freight channels);
 - (v) prioritising access to the Critical Products and/or Critical Exports according to need (for example, to particular geographical areas or consumers) as directed by the Commonwealth Government and/or State or Territory Governments pursuant to the Interim Guidance; and
 - c. either occurs at or directly arises out of an Approved Meeting (defined in paragraph 19 below) that occurs on or after the date that authorisation is granted.
- 18. The Proposed Conduct does not extend to any agreements on the price of Critical Products, Critical Exports, transport services and/or logistics services.

b) Approved Meeting

- 19. For the purposes of paragraph 17(c), an Approved Meeting is:
 - a. a meeting of the National Coordination Mechanism, which is a coordination mechanism or task force, convened by the Commonwealth Government with the objective of preparing and/or finalising the Interim Guidance and/or ensuring the supply and/or transport of Critical Products to the WA and NT communities and the supply and/or transport of Critical Exports to the affected States or Territories, and to which the ACCC is invited to attend; or
 - b. meetings of a taskforce, working group or forum convened or attended by a representative of one or more of a Commonwealth, State or Territory Government department or agency, with the objective of supplementing the Interim Guidance and/or ensuring the transport and/or supply of Critical Products to the WA and NT communities or ensuring the transport and/or supply of the Critical Exports to the affected industries, where:
 - (i) the ACCC is notified by a Participant or government representative in writing to exemptions@acc.gov.au, at least two business days before the date of any meeting (or such shorter time as the ACCC agrees to in writing), that a Participant or government representative intends meetings of the relevant group to be covered by this authorisation, and invites the ACCC to attend the meeting of the relevant group, sets out the time and date of the first meeting, proposed attendees, purpose of the meeting and the group and the matters to be discussed at the meeting;
 - (ii) more than one Participant or one or more Participant and one or more Other Participant has been invited to the relevant group; and
 - (iii) the ACCC does not notify the Participant or government representative in writing at least one business day in advance of the meeting that it is not satisfied that the meeting is covered by the authorisation.

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20. For the avoidance of doubt, a forum includes a coordination mechanism convened by a Commonwealth, State or Territory Government department or agency where Government liaises and/or coordinates with more than one Participant or Other Participant, even though the relevant Participants/Other Participants may not meet or speak directly, provided that the relevant Commonwealth, State or Territory Government department or agency specifies to each relevant Participant or Other Participant that it is a forum for the purposes of this Authorisation.
21. The inclusion of State and Territory Governments in Approved Meetings is intended so that States and Territories specifically affected by supply issues are able to identify specific existing or additional items to be included as Critical Products and/or Critical Exports that are of most use to their jurisdictions and to enable them to direct those products to areas of their jurisdictions that are in particular need.

c) Application for interim authorisation

22. The Participants seek interim authorisation on an urgent basis.
23. There is currently significantly reduced supply of rail and road freight services into and out of WA and the NT which is leading to shortages of each of the Critical Products and Critical Exports.
24. Consequently, it is essential that the Participants can commence engaging in the Proposed Conduct as soon as possible, to attempt to identify and prioritise the supply and transport of Critical Products into WA and the NT and the supply and transport of the Critical Exports out of WA.

d) Other parties wishing to engage in the Proposed Conduct

25. The Participants propose that a party may become an Other Participant as set out below:
 - a. parties that wish to engage in the Proposed Conduct that are not otherwise Participants must notify the ACCC in writing, identifying the entity(ies) that intend to be covered by any authorisation granted pursuant to this application, detailing the reasons that the entities wish to engage in the conduct, their contact details and details of the business;
 - b. the ACCC may approve that such a party becomes an Other Participant;
 - c. the ACCC may impose conditions which restrict the type or extent of the Proposed Conduct in which the party may engage.

e) Rationale

26. The Proposed Conduct seeks to address difficulties faced by Australian transport providers, logistics providers, supermarkets, Critical Product retailers, Critical Product wholesalers and Critical Product suppliers caused by the recent disruption to the Trans-Australian Railway, the only freight corridor linking SA and the Eastern States with WA and the NT, due to flooding in SA.
27. The Proposed Conduct intends to ensure that consumers in the impacted areas in WA and the NT have continued access to the Critical Products such as food, personal hygiene products and pharmaceuticals, and that SA and the Eastern States can ensure continued supply of the Critical Products transported via the Trans-Australian Railway. The Proposed Conduct also intends to ensure that users

in SA and Eastern States can continue to access Critical Exports from WA and the NT.

f) Provisions of the CCA which might apply to the Proposed Conduct

28. Absent authorisation, the Proposed Conduct risks giving rise to contraventions of the CCA, including provisions of the CCA relating to:
- a. making and/or giving effect to a contract, arrangement or understanding that includes a cartel provision (Part IV, Division 1 of the CCA); or
 - b. contracts, arrangements or understandings, concerted practices, exclusive dealing and other conduct that have the purpose effect or likely effect of substantially lessening competition (ss 45(1), 46(1) and 47(1) of the CCA).

g) Term of authorisation sought

29. Authorisation is sought for 6 months until 15 August 2022. The Trans-Australian Railway is expected be operational on 15 February 2022, but with significant backlogs of goods due to the major supply disruption caused by the SA floods which are not expected to be cleared until approximately 12 weeks after 15 February at the earliest and potentially for months after that. The term has been sought having regard to those matters and to allow for a suitable buffer period to avoid the need to apply for reauthorisation given the prospect of delays in clearing the backlog.
30. As set out above, the Proposed Conduct is limited to engaging in conduct for the purpose of ensuring the continued supply of Critical Products and Critical exports during a period of backlog. To the extent that this backlog is resolved prior to the end of the authorisation period, no further Approved Meetings would be required and the Proposed Conduct would effectively cease.
31. In addition, although it is unclear when these difficulties (compounded by existing supply issues and staff shortages associated with the COVID-19 pandemic) will ease, the Participants note that the ACCC could revoke the authorisation should circumstances change.

Part 4 – Persons who may be directly impacted by Proposed Conduct

32. The persons who are likely to be directly impacted by the Proposed Conduct include customers, suppliers and staff of the Participants and Other Participants and Australian consumers.

Part 5 – Market information and concentration

a) Description of products and/or services

33. The Participants are transport and logistics service providers who transport Critical Products and Critical Exports.
34. The Other Participants may be:
- a. other suppliers of transport services;
 - b. other providers of logistics services, such as freight forwarders;

- c. suppliers (including retail and wholesale suppliers) of the Critical Products; and
- d. manufacturers or suppliers of the Critical Exports.

b) Description of industries

35. The relevant markets for the purposes of this authorisation are the Australian markets for:
- a. acquisition and supply of rail, road, sea and air freight services, including container handling services in relation to goods moving from SA and the Eastern States into WA or the NT and vice-versa;
 - b. acquisition and supply of freight forwarding services;
 - c. retail and wholesale supply of Critical Products by supermarkets and other Critical Product suppliers in WA or the NT,
 - d. wholesale acquisition of Critical Products by supermarkets and Critical Product suppliers;
 - e. acquisition and supply Critical Exports by manufacturers, suppliers and consumers of the Critical Exports.

c) Factors that would limit/prevent competitive conduct

36. The Proposed Conduct does not extend to any agreements in relation to the price of any goods or services. It is intended to secure appropriate prioritisation, transport, supply and distribution of the Critical Products and Critical Exports to consumers in a fair and equitable manner. Further, the Proposed Conduct is designed to facilitate the transport and supply of Critical Products, and Critical Exports and is not aimed at limiting growth in industry size or the entry of new competitors, who would be free to apply to become Other Participants.

Part 6 – Counterfactual

37. The Participants and Other Participants are seeking to ensure appropriate prioritisation and continuing supply and transport of the Critical Products and the Critical Exports.
38. In the absence of the Proposed Conduct, suppliers of transport and logistics services will continue to separately provide such services between SA and the Eastern States to WA and the NT. While such suppliers could individually choose to prioritise the supplier of transport capacity to certain critical products, they will not be able to do so in a coordinated manner. Such a lack of coordination may mean that:
- a. the supply of transportation and logistics services for Critical Products and Critical Exports is not optimised based on need (for example, two transportation providers may, acting separately, assign capacity to the same Critical Product, meaning that there is insufficient capacity available to transport a different Critical Product); and
 - b. transport and logistics providers may over-allocate capacity to non-critical products and exports, resulting in the reduced supply of Critical Products and Critical Exports in their respective markets.

39. There is a real risk that such supply chain issues in WA and the NT will be prolonged which will negatively impact consumers unable to access groceries and household items and likely increase instances of panic buying. There is also a risk that there will be disruption to supply chains for critical goods exported from WA to SA and the Eastern States, and consequent disruptions to services and industries in SA and the Eastern States. For example, there has already been disruption in supply to SA and the Eastern States of a key ingredient used in water treatment, which forms part of the Critical Exports, is ordinarily transported from WA to other states.⁴ Shortages of some of the Critical Products are already occurring in WA and the NT.

Part 7 – Public benefit

40. The most significant benefit of the Proposed Conduct is that it will enable the Participants and Other Participants to manage the disruptions to the supply chain and prioritise and maintain the supply of Critical Products to WA and the NT and the Critical Exports to SA and the Eastern States, specifically clean drinking water. It will ensure that those goods are provided to those who need them most while backlogs in transporting goods on the Trans-Australian Railway are cleared. This will significantly reduce community concerns about stockpiling behaviour and greatly ameliorate community concerns about the availability of essential grocery and other household items in WA and the NT. It will also ensure that SA and the other Eastern States have continued access to safe drinking water and wastewater services and other critical exports that are necessary to ensure that the economies in those States continue to function.

Part 8 – Public detriment

41. The Proposed Conduct will result in limited detriment and a significant net public benefit because:
- a. without the Proposed Conduct, there is a risk that there will be shortages of the Critical Products and Critical Exports. The Proposed Conduct will promote rather than limit supply of such products;
 - b. the Proposed Conduct will not impact on the ability or incentive of transport and logistics providers to supply capacity. Rather the arrangements relate only to the allocation of such limited capacity during a period of emergency;
 - c. the period of authorisation is sought is limited to a period of 6 months. Further, the authorisation can be discontinued if the supply backlogs on the Trans-Australian Railway ease while the authorisation is in place;
 - d. the Proposed Conduct incorporates safeguards, namely input and oversight by the Commonwealth, State or Territory Governments at Approved Meetings and safeguards which restrict its use to conduct occurring at or arising from Approved Meetings. In particular, the Proposed Conduct will be limited to making or giving effect to any agreements arising directly out of Approved

⁴ [Water treatment chemical shortage looms in eastern states after floods cut WA rail link, Rural Australia | The Guardian](#), 3 February 2022, accessed 9 February 2022.

Meetings which will be attended by representatives of Commonwealth, State or Territory Government and are only convened for the purpose of responding to the current supply backlog. As such, the Proposed Conduct will be limited to that which is required to respond to the supply backlog and will not extend beyond what is required for this purpose;

- e. the Proposed Conduct is not compulsory and any Participant, Proposed Participant or Other Participant can opt out at any time;
- f. the Proposed Conduct does not extend to any agreement on the price of Critical Products, Critical Exports, transport or logistics services; and
- g. the Proposed Conduct does not change the Participants' and Other Participants' incentives to compete during or after the period of authorisation.

Part 9 – Contact details of relevant market participants

- 42. See Part 2 above.

Part 10 – Reasons for Confidentiality Claims

- 43. The applicant claims confidentiality over personal email addresses and phone numbers, for privacy reasons. These personal email addresses and phone numbers are redacted in the public version.

Part 11 – Declaration by applicant

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertakes to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the Criminal Code (Cth).



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Mark Whitworth

General Counsel and Company Secretary, Linfox Australia Pty Ltd and its related bodies corporate

Date: 14th day of February 2022

Annexure A –Potential Parties to the Proposed Conduct

- ALDI Stores (A Limited Partnership) (ABN 90 196 565 019)
- Coles Group Limited (ACN 004 089 936) and its related bodies corporate
- Metcash Limited (ACN 112 073 480) and its related bodies corporate and each of the owners and/or operators of supermarkets or liquor stores trading under a brand owner or licensed by Metcash Limited or its related bodies corporate
- One Rail Pty Ltd (ACN 624 112 072) and its related bodies corporate
- Pacific National Pty Ltd (ACN 098 060 550) and its related bodies corporate
- Toll Global Express Holdings Pty Ltd (ACN 125 573 113)
- Woolworths Group Limited (ACN 000 014 675) and its related bodies corporate

Annexure B– Interim Guidance



Essential Goods and Planning Prioritisation – Interim Guidance

Context

Severe flooding in early February 2022 resulted in major impacts on the east-west rail line, with damage to over 300km of track servicing Western Australia, South Australia and Northern Territory. This rail line is the major pipeline for the movement of goods into and out of WA, with approximately 80 per cent of land-based freight moving via this line.

The damage has caused a shortage of essential goods flowing east-west and to a lesser degree in a north-south direction. The damage has also had repercussions across the national rail, road and sea freight and logistics network. The impacts on the network has been further complicated by COVID-19, resulting, for example, in freight staff and equipment shortages that even further reduce the ability of the network to fill the gap left by the rail.

While measures have already been put in place to increase freight into Western Australia, such as creating an intermodal (train-truck) land bridge and increasing truck and sea freight capacity, it has not been possible to replicate the volume transported by rail to the level required. This has resulted in a significant backlog in freight. The rail will restart from 15 February, nearing a full capacity reset on or around 10 April. The freight backlog and new essential goods for freight will need to be carefully managed over this time period.

Purpose of this document

This document aims to establish *Essential Goods Prioritisation Guidelines* (the Guidelines) which will support the prioritisation and movement of essential goods in the most efficient way, with added consideration for vulnerable cohorts (for example the provision of goods to aged care facilities). The Guidelines include six key principles as agreed between stakeholders.

The framework is non-prescriptive, and is aimed at supporting key stakeholders, particularly WA, SA and NT Governments and industry, in their decision-making processes once the rail system from east to west recommences operation. This guidance is consistent with the Freight Movement Code and Protocol and should be read in conjunction.

Please note, this guidance is not a government mandate. It is a model through which industry and governments can voluntarily collaborate to prioritise the movement of essential supplies. It does not override any existing contractual obligations nor will the National Coordination Mechanism (the NCM) be a regulator or mediator in contractual disputes. The NCM will continue to bring stakeholders together and provide a forum through which complex issues can be quickly resolved as required. Stakeholders will also need to negotiate on what should be prioritised in line with the principles voluntarily agreed upon below taking a best endeavours approach.

Six Key Principles of ensuring recovery to the supply chain

1. Essential items to be prioritised are:

- a. Essential food and groceries, including essential hygiene products and essential packaging
- b. Water and waste-water treatment supplies
- c. Urgent medical supplies (including COVID-19 related supplies)
- d. Goods for vulnerable cohorts
- e. Goods that are critical to enabling, supporting or facilitating freight services that carry essential goods
- f. Essential supplies necessary to the operation of critical infrastructure
- g. Essential food stocks for animal welfare.

2. Jurisdictional needs

State and territory governments may identify and prioritise essential goods for freight based on jurisdictional needs and taking into account industry's collective ability to supplement such needs.

3. Sufficient freight capacity

Freight providers should make best endeavours to provide freight capacity for carriage of essential items.

- a. Receiving points such as distribution centres should work to enable the receiving of freight.

4. Multi-modal Freight

Freight of essential items should continue through multiple modes of transport (road, rail, air and sea) with a gradual transition back to a majority rail freight.

5. Resolution of supply chain issues

State and territory governments should liaise directly with freight operators to co-ordinate prioritisation. The National Coordination Mechanism process may be used to resolve significant issues in the prioritisation process.

6. Supporting the supply chain to protect the flow of goods

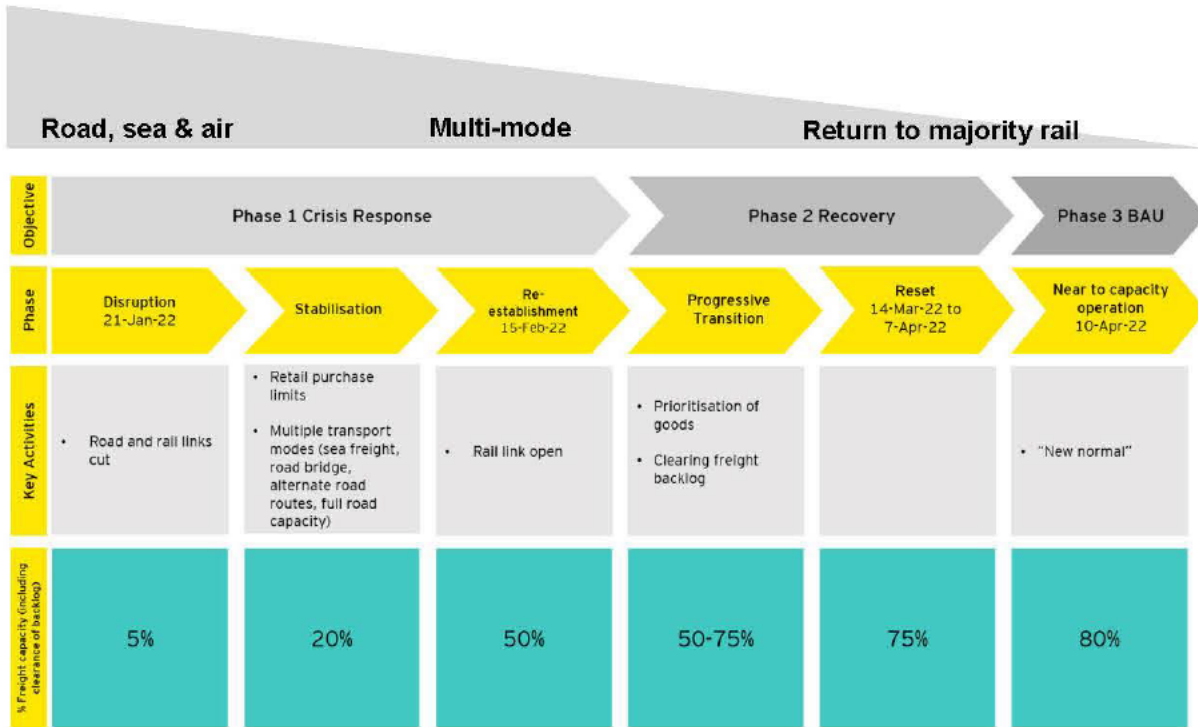
All members of the supply chain should, so far as is reasonably practicable, implement mechanisms to support the supply chain to ensure the flow of goods is not further impacted. This includes but is not limited to:

- a. Freight container recycling to manage movement of empty containers (including class 5 containers) to mitigate container shortages and prevent overcrowding within freight terminals.
- b. Jurisdiction led re-prioritisation of goods or materials to support the supply chain in maintaining movement, for instance critical repair items or consumables.

Note: Drivers, operators and schedulers will continue to give consideration to mandated driver fatigue management and other safety requirements. Additionally, where there are essential and urgent shortages, the sharing of freight space should be considered to minimise gaps, however an ACCC authorisation for freight will be essential to allow this.

Supply Chain Prioritisation and Reset Continuum and Time Frame

The diagram below outlines the indicative timeframe, key activities and freight capacity for the expected duration of this interim guidance. By employing a phased approach to recover and utilising multi-modal transition, the supply chain can re-establish itself and return to majority rail.



ACCC Authorisation

If considered in the public interest, the ACCC may authorise exemptions to anti-competition legislation to facilitate behaviour that would otherwise be deemed collusion. In the context of this framework, supermarkets have been granted authority to collaborate to minimise gaps in the market. A similar authorisation, which would permit the collaboration of freight providers to better utilise space, is expected to be implemented before the reopening of the east west rail system.

In scope, the ACCC Authorisation should permit freight providers to:

- a. optimise the use of available freight space on the Trans-Australian Railway;
- a. prioritise supply and transport of the essential items in WA and NT ensure sufficient supply of those products are available for consumption by WA and NT communities; and
- b. prioritise supply and transport of essential items out of WA and the NT to ensure sufficient supply for use by relevant industries in SA and the Eastern States.