

A blurred background image of a beach. The top half shows a blue sky with light clouds. Below the sky is a dark, out-of-focus tree. The bottom half of the image shows a sandy beach with gentle waves washing onto the shore, creating a soft, brownish-tan color palette.

**10**

The background features several diagonal stripes in various shades of teal, ranging from light to dark. A white triangular shape is positioned in the bottom right corner, containing the number '10'.

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# Governance and institutional framework for HSR

## 10.1 Introduction

This chapter sets out the preferred governance and institutional framework for the planning, procurement, construction, operation and regulation of a future HSR program.

The governance and institutional framework describes the roles of the various formal institutions, authorities or agencies that would be involved in a future HSR program. Proper governance, when combined with the relevant laws and regulations, will ensure that, if adopted, the HSR program is subject to proper public oversight, is effectively and efficiently delivered, and meets its objectives.

The specific governance arrangements for HSR would need to have regard to the multi-jurisdictional nature of a future HSR program and the aims and objectives of different governments

in supporting its development. For instance, a future HSR program would need to be planned, developed and delivered in a manner that supported its integration with other transport networks and maximised its contribution to Australia's transport capacity and connectivity. This would require close collaboration between jurisdictions and the effective coordination of future transport planning and investment at all levels of government to optimise the benefits of a potential investment in HSR.

The ACT and state governments, as well as the relevant local governments, would have particular interest in how their CBD station precincts were developed (e.g. to align with land use plans and other local development plans) and would also have specific responsibilities with respect to delivery (e.g. investment in necessary complementary infrastructure).

Determining appropriate governance and institutional arrangements requires consideration of the following two issues:

- Appropriate roles for the public and private sectors in the development, delivery and operation of a future HSR program.
- Options for the stewardship of public entities involved in the development and delivery of HSR and the roles and responsibilities of each government jurisdiction.

In addressing these questions, the following key conclusions have been reached:

- Both the public and private sectors would play a significant role in the planning and implementation of a future HSR program.
  - The Australian Government, ACT Government and the relevant state governments would need to have a central role in the planning and development of the HSR system, including securing the necessary development approvals. As public funding would dominate the financial model, the governments would be the owners of the system and would assume the key role in the specification and procurement of system infrastructure, the allocation of its capacity for transport services and the minimum service requirements. The public sector roles would be executed through an HSR delivery authority, described below.
  - The private sector would be responsible for building the HSR infrastructure under appropriate contracts. Under competitively tendered concession arrangements, the private sector would deliver train services to the public, control the movement of trains and maintain the infrastructure.
- A publicly owned HSR Development Authority (HSRDA) would be created to develop, procure and integrate components of the HSR system with other transport networks, including procuring and owning the required land.

- A single coordinating authority would be required to effectively and efficiently progress the detailed planning required to develop and procure an HSR system.
- The HSRDA would evolve into an HSR development and management authority in the operational phase, and would prepare and manage train operation concessions.
- It is anticipated that the ACT and the states would each establish a territory/state level HSRDA or similar body to coordinate and manage station developments, including the development of the station precincts.
  - A layered approach to program governance would be adopted, with ACT/state-led agencies responsible for HSR station developments, subject to national HSRDA oversight.

The issues are explored further in the following sections.

## 10.2 Role of the public and private sectors in a future HSR program

Role allocation and risk sharing between the public and private sectors are important considerations in the promotion, planning, financing, land reservation, land acquisition, design, infrastructure construction, transport service provision and other elements of an HSR program. Misallocation of risks and responsibilities between the public and private sectors could undermine the viability of the HSR program, add cost and delay, and/or compromise the transport objectives of a future HSR program.

In terms of the roles of the public and private sectors in a future HSR program in Australia, the study has concluded:

- The size and complexity of an HSR program would be such that governments would need to play the central role in its development, particularly in providing the necessary political mandate and support, but also by underwriting a substantial proportion of the infrastructure funding.

- Governments would own the HSR infrastructure because of the large public funding contribution that would be required.
- As infrastructure owners, the relevant governments would also need to have direct involvement and oversight of program development and delivery, and retain an ongoing role in the stewardship of the HSR sector post-construction, to ensure that publicly funded assets were effectively procured and utilised, and met their objectives.

With an initial capital cost in excess of \$100 billion, an HSR program would be one of the largest infrastructure programs ever undertaken in Australia. Its size would challenge the resources of the supplier industry, both domestically and globally, with only a limited number of organisations having the financial capacity and depth of skills and resources available to compete for very large construction or supply contracts.

To achieve value for money, governments would need to carefully package and stage the procurement to attract competitive bids for each procurement package. Governments would also need to retain some risk around integration of the components of multiple packages (as opposed to outsourcing the risk of integrating multiple system components to a single turnkey contractor), but these risks could be mitigated through rigorous technical oversight.

Governments would retain an ongoing role in the stewardship of the HSR sector post construction, to ensure the objectives and economic benefits of the HSR program were achieved. This role would involve providing oversight of HSR service delivery against agreed price and service quality metrics, while being careful to avoid constraining market agility and innovation. Governments would also be responsible for safety and environmental compliance. Further detail of the governments' role once HSR is operational is provided in **section 10.3.4**.

The private sector would be closely involved in a broad range of roles:

- Design and construction of components of the HSR infrastructure, including development of station precincts in partnership with the relevant governments.
- Supply of rolling stock (train sets) and the signalling and communications systems.
- Control and operation of HSR trains to deliver high standard transport services to the public.
- Maintenance of the HSR system.

Development of HSR stations, and associated commercial opportunities, would offer an opportunity for private finance. A public-private partnership (PPP) model is envisaged for greenfield station developments, with the private sector partnering with the relevant ACT or state government for CBD station developments.

Internationally, the private sector has a proven track record of delivering HSR rolling stock and other componentry through established global suppliers<sup>1</sup>. Procurement would be managed by governments through a competitive tender.

HSR train services would be contracted to a private sector operator through one or more concession arrangements. The concession holder(s) would operate the train services, control the movement of trains and maintain the HSR system.

Further detail on the preferred delivery model for HSR in Australia and associated procurement and packaging options is provided in **Chapter 12**.

<sup>1</sup> In Europe, Alstom, Bombardier, Siemens and Talgo; and in Japan, Kawasaki, Mitsubishi and Hitachi are all involved in the manufacture of HSR rolling stock and/or systems.

### 10.3 Role of governments in a future HSR program

The role of governments would be to implement the necessary arrangements to protect the public interest across the life of the program and to ensure the program objectives are met. The coordination of each jurisdiction's legal obligations, land acquisition powers and planning responsibilities in respect of HSR program planning, development and procurement, would also need to be considered to agree on a suitable implementation approach for a future HSR program.

The necessary legislative or policy initiatives for the successful implementation of an HSR program, and the possible integration with the corridor regional development approach, are other important considerations for governments. Complementary regional development policies would be highly desirable to ensure the benefits from a large public investment in HSR are maximised.

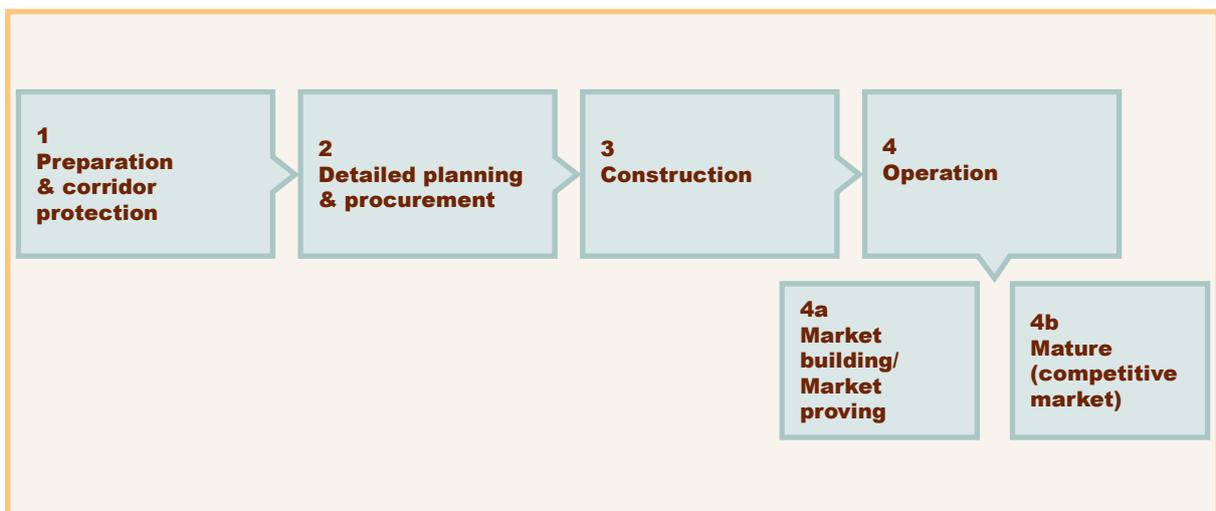
If adopted, a future HSR program would be developed in discrete phases, starting with initial feasibility studies and investigations, leading on to construction and operation of the HSR system. Four separate phases can be identified, as illustrated in **Figure 10-1**:

1. Preparation and corridor protection.
2. Detailed planning and procurement.
3. Construction.
4. Operation.

Each of the four phases would overlap as the HSR program is progressively implemented across different geographic corridors.

A distinction can also usefully be made between the early market building/market proving part of the operation phase and a subsequent period when the market becomes more mature. Governments are likely to play a more significant role when the market is relatively immature to ensure the objectives of the future HSR program are achieved.

Figure 10-1 Four phases of the HSR program



The optimal governance arrangements, and the potential roles and responsibilities of each government jurisdiction, would evolve over the life of a future HSR program and would vary across each of the four phases. The role of governments in each phase is discussed in turn below.

### 10.3.1 Phase 1: Preparation and corridor protection

The first phase in a future HSR program, the preparation and corridor protection phase, would provide the necessary policy foundation for the procurement, construction and operation of HSR. This phase would require alignment between the Australian, ACT and state governments on the program objectives. It would also require agreement on the mechanisms and timeframes for resolving issues, commitments to protect relevant corridors and assets, and the delivery of enabling regulation or legislation.

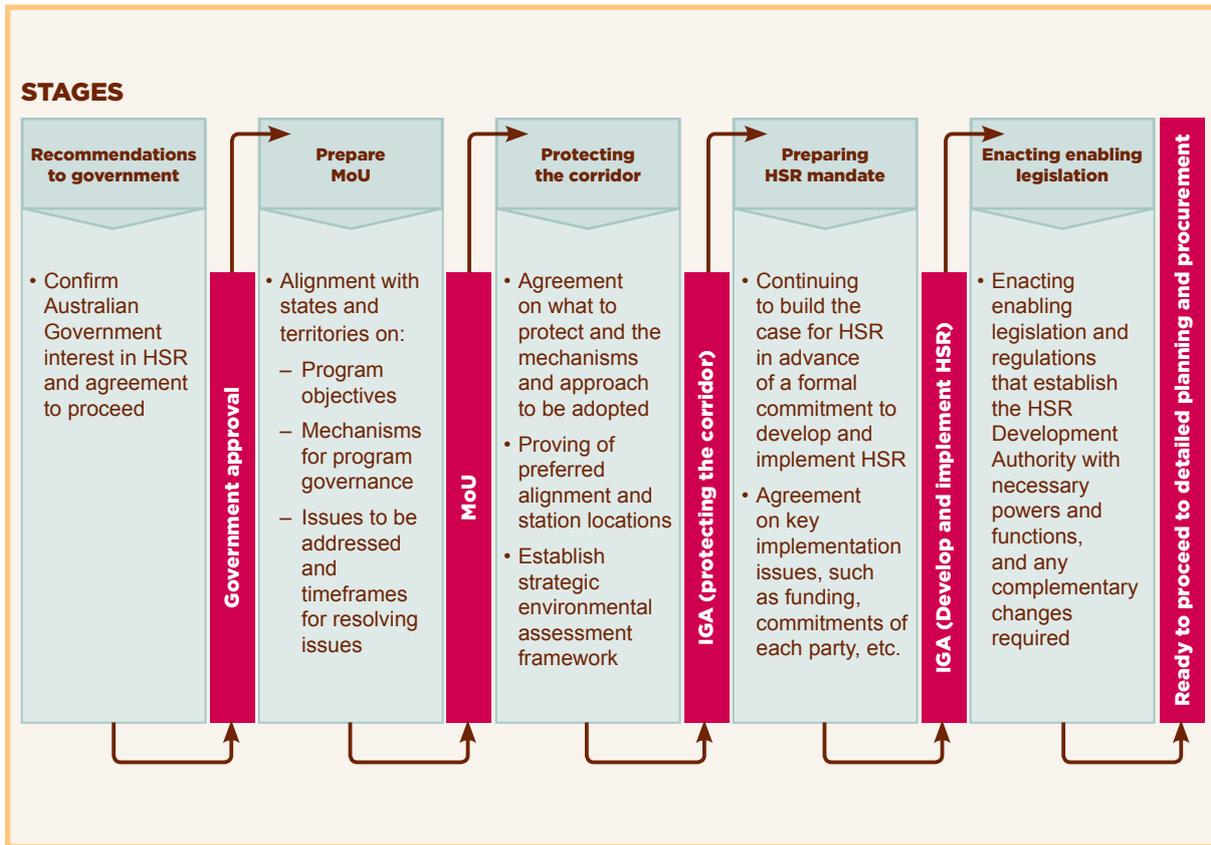
The proposed model for pursuing multi-jurisdictional agreements of the sort needed to support the HSR program is to adopt a 'gated approach' using a series of formal agreements. Each formal agreement in the process would need to be in place before progressing to the next stage, ensuring alignment of the governments at critical milestones. Five stages are contemplated in this preparation and corridor protection phase of a future HSR program, as illustrated in **Figure 10-2**.

The preparatory steps necessary to reach an agreement to implement an HSR program could be facilitated through extant multi-jurisdictional committees of the Council of Australian Governments (COAG), such as the Standing Committee on Transport Infrastructure (SCOTI) and the Transport and Infrastructure Senior Officials' Committee (TISOC). The involvement of these national committees is appropriate, as it reflects the fact that a future HSR program would account for a large portion of the national transport budget.

Five preparatory gates are envisaged before a decision to proceed to the second phase of the HSR program:

1. Confirmation of the Australian Government's interest in continuing the necessary preparatory works to inform a formal Ministerial decision to proceed.
2. A memorandum of understanding (MoU) between the Australian, ACT and state governments that sets out the road map to establish at least two formal inter-governmental agreements (IGAs) (described in the following two points).
3. An IGA to provide the policy mandate for the protection of an HSR corridor.
4. A second IGA to provide the policy mandate for the implementation of the first stage of an HSR program.
5. Legislation to provide the legal framework for the implementation of the HSR program.

Figure 10-2 Preparation and protection stage gates



The activities to be undertaken in each stage are summarised below. Subsequent IGAs would be developed to provide the mandate to implement additional stages of the HSR program.

**Stage 1: Australian governments’ decision to proceed**

At the conclusion of this study, recommendations to the Australian Government would be prepared by the Federal Department of Infrastructure and Transport.

The next step is to confirm the Australian Government’s interest in continuing the necessary preparatory works to inform a formal Ministerial decision to proceed. Approval may also be sought for funding of site surveys and additional environmental and engineering assessments.

**Stage 2: MoU between the Australian, ACT and relevant state governments**

An IGA would be required to formally commit to protection of an HSR corridor on the east coast of Australia. In advance of the IGA, an MoU would be established between the relevant governments to formalise the engagement on the HSR program and to set out the responsibilities of the parties, the process to be followed and the timelines for resolving issues.

The Australian Government would need to undertake the following planning activities prior to signing an MoU:

- Compile a summary of investigations completed and gap analysis of remaining tasks for distribution to the states and the ACT.
- Formulate a proposition to take to the ACT, Queensland, NSW and Victoria with respect to the conduct of a future HSR program.

The MoU would also establish a framework for public consultation in the lead up to a formal IGA, and would include the role of each jurisdiction, and timeframes and mechanisms for capturing and addressing issues that emerge.

### **Stage 3: IGA to provide a policy mandate to protect the HSR corridor**

Corridor protection is the reservation of land for subsequent use in preparation for, and construction of, a major transport program. It includes facilitation of access through adjacent land during the construction phase. The aim of corridor protection is to confirm a preferred corridor (with local adaptations as necessary) and to protect future use of the corridor by rezoning, resuming, purchasing or continuing to hold land within the corridor<sup>2</sup>.

Although legislative provisions and policies for corridor planning and protection vary between the various states and territories in Australia, mechanisms already exist to establish the necessary corridor protections for HSR. Details on existing legislative provisions in each jurisdiction are presented in **Appendix 7A**.

Given the long-term nature of the program and the amount of public funding needed, it would be important to ensure that the process of corridor protection was efficient and facilitated the program objectives. During this stage, the relevant governments would begin to work together on the development of HSR, with particular focus on five key issues:

1. Confirming the preferred sites and alignment for the program, including station locations and other critical infrastructure.
2. Proving those sites to be suitable through further technical investigations as required.
3. Agreeing on a ‘whole-of-government’ approach to assessing environmental impacts and the relevant conditions for proceeding with the HSR program. This may include requirements for program-specific legislation to standardise statutory planning regulations, including environmental assessments, at each level of government along the corridor.
4. Agreeing on what to protect in advance of a formal mandate to proceed with the development of the preferred HSR system.
5. Agreeing on the mechanism by which strategic sites (such as stations locations) would be protected and the responsibilities of the parties for effecting the protection.

#### **1. Confirmation of preferred sites and alignment**

While this study has had a particular focus on developing an optimal HSR system and ensuring that the alignment and station locations would optimise the performance of the system, it is entirely possible that further refinements to the HSR alignments may be made. For example, Central station in Sydney was selected over Homebush as the terminating HSR station. There may, however, be some merit in protecting options for Homebush in addition to Central, as an HSR station at Homebush could open up a number of opportunities to connect with fast commuter services from western Sydney. Although any future station at Homebush would likely be underground, some refinement of the final alignment may be necessary to support this option. These issues would need to be resolved with the states and the ACT before a final agreement could be reached on what corridors and sites to protect.

#### **2. Technical proving of sites**

Some further technical investigations, such as detailed geological surveys, site inspections and detailed environmental and engineering assessments, would be required before the preferred alignment could be confirmed. Similarly, community consultation would be undertaken in respect of the proposed alignment, with feedback factored into the consideration of the final alignment. The appropriate scope and mechanisms for undertaking the community consultation would be agreed (e.g. ‘town hall’ type discussions, web-based feedback channels) and whether consultation would be integrated with other planning activities such as the preparation of a strategic environmental assessment.

2 Refer to the *Commonwealth Land Acquisition Act 1989 Part V, Div 1, 22 (4)*.

### 3. 'Whole of government' approach to environmental impact assessment

A strategic environmental assessment framework is proposed and outlined in **Appendix 5C**. If adopted, actions taken in accordance with the agreed HSR program would not require separate referral and assessment under the environmental impact assessment legislation of each jurisdiction. In this phase of a future HSR program, conditions for the overall program approvals would be set for consideration by the relevant governments. Legislative requirements within each jurisdiction would be assessed as part of the strategic assessment process. The strategic assessment would bring together the outcomes of further environmental and engineering investigations and other stakeholder input (such as any refinements to the alignment to support ACT or state government objectives) in support of the preferred HSR alignment and station locations. Key findings and recommended management measures would be compiled into a draft strategic assessment document for public review.

### 4. Agreement on what to protect

The ultimate agreement on what to protect would include consideration of land reservations, policies in respect of adjacent land use, station locations and station classifications, and details of complementary infrastructure and access.

### 5. Agreement on how to protect the corridor

Agreement on how to protect the corridor would include alignment of the mechanisms for protecting each system component, and of the timing and funding arrangements for protection activity. Land resumption, purchase, holding or 'sheltering from development' decisions should include the following considerations:

- Rezoning land and restricting land use within and adjacent to the corridor to preserve the land for the future.
- Assessing the limited circumstances and conditions in which land would be purchased in advance of a commitment to HSR construction<sup>3</sup>.

Priority should be given to protecting the key urban station locations and other urban and peri-urban sections of the corridor where the alignment emerges from a tunnel, as these sites may become more difficult to acquire or use over time, due to encroaching urban development, if not protected.

As the first IGA provides the policy mandate required to protect a future HSR corridor, it should include a clear articulation of the public policy objectives to be achieved from a future HSR program. This should also include, in land use and regional development policies relevant to the preferred HSR system, an undertaking to cooperate between jurisdictions.

As well as a clear definition of the preferred HSR system and the corridor, alignments and station locations to be protected, the responsibilities and obligations of each jurisdiction for protecting the preferred station sites and alignments would be agreed, together with the timelines to be followed and the principles by which any public resources required would be allocated between them. General principles that would apply if variation to the route becomes necessary would also be agreed.

### Stage 4: IGA to develop and implement a future HSR program

The fourth stage is to work towards a second IGA that commits the jurisdictions to develop and implement a stage or stages of a future HSR program. The period between the first IGA, to establish and protect HSR corridors, and the second IGA, to commit to develop and implement an HSR program, may be relatively short (i.e. up to two years) or may be many years apart.

<sup>3</sup> For instance, where the proposed alignment creates a difficulty for the existing land owner to sell the land for a purpose that is compatible with a future HSR system and there is a genuine hardship case requiring some government intervention.

The key activities in this stage include:

- Implementing the requirements of the IGA on corridor protection.
- Continuing to strengthen the conditions for a successful HSR in advance of a formal commitment to proceed, including agreed supportive integrated transport, land use and regional development policies.
- Reaching agreement on key implementation issues such as funding and the commitments of each party.

The second IGA to develop and implement an HSR program would align the governments around the public policy objectives to be served by HSR, together with the commercial performance aims of the HSR program. For example, there are tradeoffs to be made in respect of infrastructure pricing principles, such as whether to seek to maximise financial cost recovery of infrastructure capital, or whether to price infrastructure to promote the ridership and economic benefits of HSR. Such principles should be clearly understood and agreed by the participating governments before the implementation stage.

Similarly, the IGA would also outline the minimum technical performance capability the system is intended to offer (such as maximum speeds), the agreed station stops and minimum service frequency at each station. Although the operator should have sufficient flexibility to establish optimum service patterns to meet market needs and competitive circumstances, it would be prudent for the governments to agree and clearly set out minimum service and performance expectations of the HSR system, given the large public funding commitment required.

The governments should also agree on the broad principles by which the infrastructure and train operator(s) would be procured. Although the procurement strategy would be finalised in the detailed planning and procurement phase of a future HSR program, the governments should agree on the broad principles to provide guidance to the implementing authority. This would include the anticipated principles of track capacity allocation between products of different service

types, in particular between the HSR inter-capital express and regional services, and state-sponsored fast commuter services.

The overall public governance structure to be instituted, and the organisation that would be responsible for the delivery of the HSR program on behalf of the governments (i.e. the establishment of the HSRDA discussed in **section 10.3.2**), would be agreed at this stage. An undertaking from the governments would be required to implement any enabling legislation to vest the necessary powers in that organisation and, where needed, to implement other aspects of the HSR program (e.g. to support the ongoing aspects of the strategic environmental assessment process).

Similarly, the role of each jurisdiction in the development of the preferred HSR system, including the potential for state and ACT-led station developments, would also be agreed, as would the funding commitments from each government to support the HSR program. The IGA would also confirm the agreed first route stage for construction with an anticipated earliest decision date for final commitment to its implementation.

The study found that there is merit in establishing a set of complementary and integrated transport, land use and regional development policies to capture the potential regional development benefits of HSR. Such policies have the potential to shape where people choose to work and live, and would need to be integrated with other broader government policies on regional development. Further detail has been provided in **Chapter 9**.

It would be premature to establish specific governance arrangements to facilitate the development and implementation of appropriate supporting policies until there is a commitment to construct an HSR system. Without this commitment, any initiatives to facilitate complementary land use and development policies would lack legitimacy and timelines would remain uncertain. Nevertheless, as part of the work leading up to the IGA to deliver that commitment, there would be an opportunity for the jurisdictions to reach agreement on the supporting development

policies. Although this agreement would not be essential to realise the transport objectives of HSR, an effective and consistent policy approach would be desirable to give specific policy form to the integrated regional development corridor concept. The agreed policy initiatives, or at least the guiding principles, could then be included in this second IGA.

### **Stage 5: Enacting enabling legislation**

Following the agreement to implement an HSR program, enabling legislation would be enacted. The legislation would formally establish the public entities required to develop and deliver the HSR program, with appropriate functions and powers to deliver their objectives. It would also commit the necessary funding, as agreed between the jurisdictions, to allow the entities to establish contracts to further develop and procure the system.

The introduction of Commonwealth legislation and complementary state and territory government program-specific legislation would help to harmonise an approach to the large volume of planning regulations the program would likely face. It is not anticipated that program-specific legislation would be required prior to a formal commitment to implement an HSR system (that is, not before the second IGA), since the activities required to protect the HSR corridor can be accommodated within the existing legislative framework of the jurisdictions.

### **10.3.2 Phase 2: Detailed planning and procurement**

The second phase of a future HSR program, the detailed planning and procurement phase, would involve completing all of the detailed planning work required before procurement could begin, and then undertaking the procurement. Details of the proposed approach to procurement are outlined in **Chapter 11**.

Once a mandate existed to implement the preferred HSR system on the east coast of Australia, a publicly owned HSRDA would be created to develop, procure and integrate the HSR system, including procuring and owning the required land. A single coordinating authority would be required to effectively and efficiently progress the detailed planning required to develop and procure an HSR system. The HSRDA would evolve into an HSR development and management authority in the operational phase and would prepare for and manage train operation concessions.

The HSRDA could be wholly owned by the Australian Government or jointly by the Australian, ACT and relevant state governments<sup>4</sup>.

The HSRDA would coordinate all aspects of the HSR program as it progressed through detailed preparation and procurement and into construction. The authority would need to be staffed by a team with professional infrastructure development management experience, including international expertise, and would not be established until there was a clear commitment and mandate to build a first stage of the preferred HSR system. The HSRDA would take over the planning, preparation and program development roles performed up to that point by Australian, ACT and state government departments.

The introduction of legislation would establish the HSRDA with all of the necessary powers and functions required. It would set out the constitution, objectives, powers and responsibilities of the HSRDA and agreed funding arrangements. The HSRDA would be the primary public entity responsible for implementation of the HSR program over the final three phases.

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<sup>4</sup> As an example, the AustralAsia Railway Corporation was established to develop and procure the Alice Springs to Darwin railway and was jointly owned by the South Australian and Northern Territory Governments.

In the detailed planning and procurement phase, the HSRDA would be responsible for finalising the system specification and scope of the approved HSR stage. It would also finalise all necessary approvals and proceed to procure necessary land and strategic sites and assets.

The HSRDA would also update and finalise the procurement and packaging strategy for the HSR system components and prepare high level designs and technical performance specifications in sufficient detail to draw up the specific design and construct (D&C) and other contracts to be put to the market.

### Stations

The ACT and state governments would be expected to take a leading interest in developing HSR station precincts, particularly in respect of the CBD stations. For instance, Central station is a primary hub for Sydney's existing transport network, and its redevelopment to accommodate HSR could impose on other transport operations, including potentially major disruptions during construction. It could therefore be anticipated that the NSW Government would expect to take a lead role in the redevelopment of Central station to ensure that the HSR station was integrated with other complementary developments, such as suburban rail and light rail feeder services, buses and taxis.

It is therefore anticipated that NSW would establish a NSW HSRDA, or similar body, to coordinate and manage developments in the entire Central station precinct, including the development of the HSR station at Central. Similar arrangements are anticipated for the other states in respect of their CBD station developments. The peripheral and regional stations could be managed directly by the HSRDA as greenfield station developments, where appropriate, or included in the scope of the state development authorities.

A layered approach to program governance would be adopted, with ACT/state-led agencies responsible for HSR station developments subject to oversight from the Australian/joint HSRDA.

The Australian/joint HSRDA would provide the overall policy and technical framework for development of the integrated HSR system, and the ACT or state HSRDA would be obliged to comply with design specifications in respect of the station redevelopment, including HSR design capacity, enabling technology and systems. The requirements of the integrated HSR system would take precedence over local design considerations. Notwithstanding the central oversight, there would still be opportunities for strong local input into station design.

There would likely be a need for effective remedies if program timelines for stations were not met (i.e. if delays in respect of station redevelopment had the potential to delay the HSR program). It may be prudent for enabling legislation to require a high degree of transparency around any HSR-related activities led by a state or territory agency, with specific obligations and reporting requirements, and perhaps also step-in rights for the national HSRDA, should any state or territory activities put the HSR program schedule and/or budget at risk. This would be necessary to allow the HSRDA to properly manage risk and to effectively coordinate the overall program.

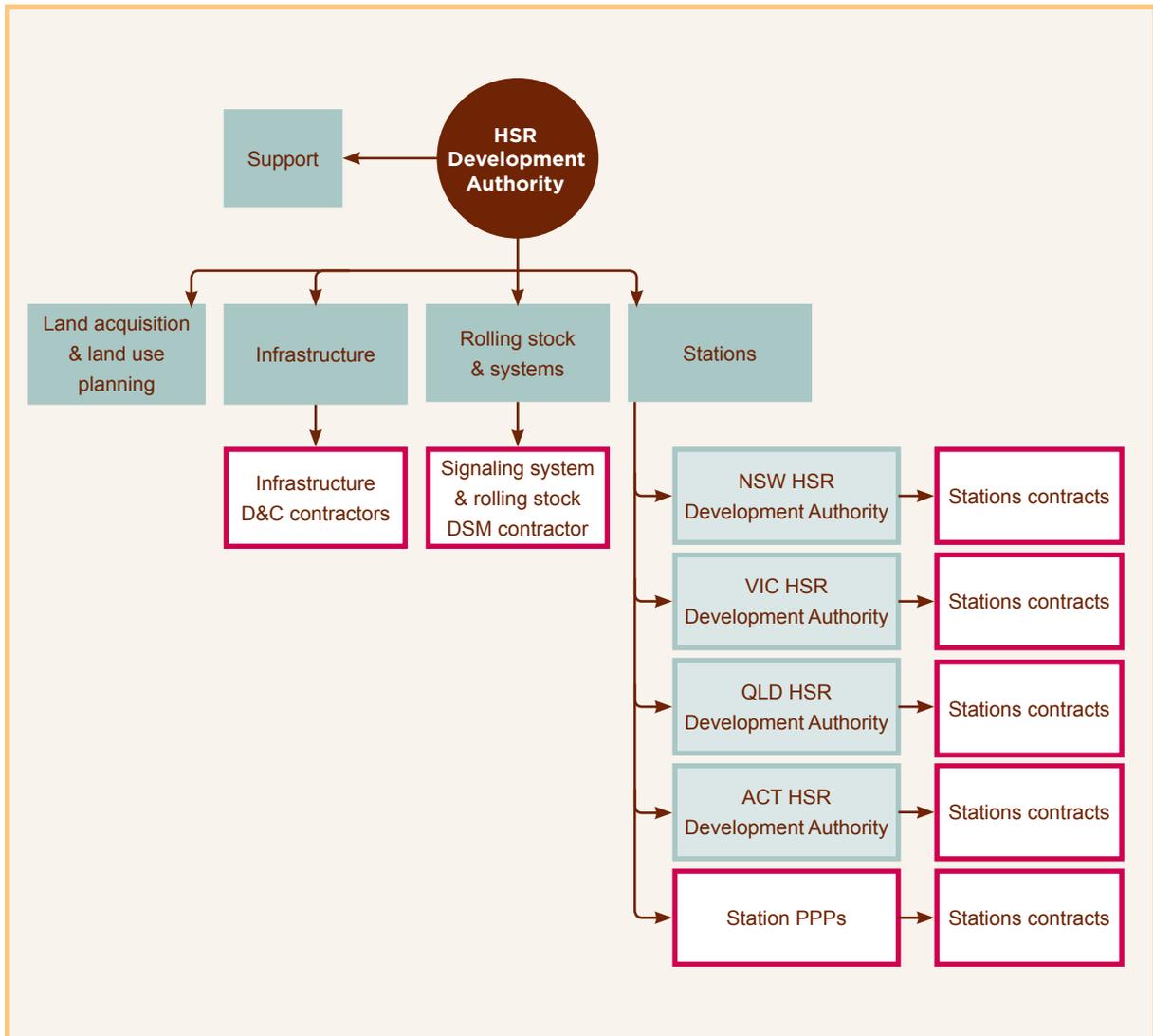
The HSRDA and the ACT and state governments might choose to collaborate on value capture initiatives, such as commercial exploitation of retail space in and around the station precincts and more broadly. The benefits of those initiatives may be directed to the HSR program as a future revenue stream with details to be agreed as part of the overall financial and funding framework.

The national HSRDA could be structured into four core divisions, each with responsibility for undertaking the detailed planning required in advance of formal procurement:

- Land acquisition and land use planning.
- Infrastructure.
- Rolling stock and systems.
- Stations.

A support division would provide commercial and contractual support in addition to legal, finance and other corporate services. An example of a possible HSRDA organisational model is presented in **Figure 10-3**.

Figure 10-3 HSRDA organisational model (detailed planning and procurement phase)



**Safety**

Safety regulation would be administered through the National Rail Safety Regulator. Prior to construction, appropriate technical and design standards for HSR based on proven international practice would be established, and validation and verification procedures developed to ensure that actual construction and procurement were consistent with the standards. The standards would be held by the HSRDA; the National Rail Safety Regulator’s role would commence during the

development of concept design, and would be to ensure that the systems, processes and procedures were in place to deliver and operate the HSR system safely. This role would continue through the detailed design phase to operations. Prior to commencing operations, the HSR rail operator would need to establish an appropriate safety management system and satisfy the regulator it had the appropriate safety expertise and systems in place to commence operations.

## Funding

There are a number of options for funding the HSRDA. Traditionally, the Australian Government has sought to deliver major nation building infrastructure projects either through the states and territories or, where it is to take the lead role, through a governance structure that is financially and legally separate from government, but where the government maintains (at least initially) a controlling ownership interest.

The Australian Government's financial reporting framework classifies publicly controlled entities into three sectors: the General Government Sector (GGS), Public Financial Corporations (PFC) sector and Public Non-financial Corporations (PNFC) sector. The sector to which an entity is assigned has a significant bearing on how any government funding is reported. The focus of the federal budget is the GGS.

While the terms on-budget and off-budget are to be avoided, the classification of an entity as belonging to the GGS, rather than the PFC or PNFC, has a significant impact on both the timing and potential magnitude of any budgetary impacts<sup>5</sup>.

From a budgetary perspective, there are four options for governments to fund the future HSR program, although ultimately, the ability to access these options will be determined by the underlying commerciality and profitability of the program<sup>6</sup>.

These options are:

1. Direct budget funding.
2. Investment in a separate corporation with legal responsibility and accountability for the HSR program.
3. Financing through loan or similar arrangements.
4. A combination of these.

### Direct funding

Direct capital grant funding may be provided for construction, either through state and territory payments and/or through Commonwealth Own Purpose Payments. This is the most likely funding mechanism if the viability of the future HSR program is such that the Australian Government is unlikely to recover its costs.

### Investment in an HSR specific vehicle

The second option would be to provide an equity cash injection into an HSR vehicle in exchange for an entitlement to future profit. Provided the vehicle was part of the PNFC, any cash transferred could be offset by a corresponding asset (an investment) at the GGS level, and would therefore not have a fiscal impact for the GGS. The NBN Co provides a recent example of such an arrangement. From a budgetary and reporting perspective, the benefits of this arrangement are that the cost to the budget would not be fully reflected upfront (i.e. during the construction phase), since only the incremental cost to the budget would be shown (e.g. only interest and equity payments, rather than the full construction cost). The classification of the HSR vehicle as part of the PNFC would be consistent with the classification of most publicly owned rail infrastructure providers, both in Australia and internationally.

5 Refer for example, the Parliamentary Library Background Note titled *'The national broadband network and the federal government budget statements'*, dated 13 January 2012.

6 There is also the possibility that the Australian Government and relevant state/territory governments may agree direct state/ACT government funding.

For this structure to apply, the future HSR program would need to be established under a separate legal and financial entity; the entity would need to be a market operator; and there would need to be a reasonable expectation that the initial investment would be recovered. The financial assessment indicates that a future HSR program would make a small positive return on investment in real terms, and so there would appear to be an arguable position for the HSR vehicle to be classified as a PNFC.

### **Loan finance**

A third option would be to provide loan finance to an HSR vehicle, with associated repayment terms, covenants and conditions. Under this option, governments would not take an ownership interest; rather, the funding would be provided under contractual arrangements. Similar to an equity investment, the provision of loan funding does not impact upon underlying cash and fiscal balance (although any concessionality in the loan would be recognised). For a loan arrangement, there would have to be a contractual requirement for the HSR vehicle to repay the funds with set repayment arrangements. Furthermore, there would have to be a reasonable expectation that the vehicle would be able to meet its repayments as and when they fell due. This would most likely be fulfilled through a repayment regime that drew on revenue collected from the HSR, similar to the arrangements in place on various toll roads in Australia. If not, the funding would likely be classified as a grant. To the extent that any loan is provided on concessional terms (e.g. zero interest loans), the full impact of the concessionality (when compared to a market rate of interest) would be recognised upfront in government accounts, which would then be unwound over the life of the loan.

### **Combination of funding options**

A combination of the above options may also apply, either through the provision of more than one source of funding (e.g. investment funding and direct grant or subsidy funding) or by disaggregating the future HSR program into segments or entities that are separately funded through alternative sources.

The preferred approach is to establish the HSRDA as a PNFC, and based on the analysis outlined above, there is an argument for such classification (given that it is expected to produce a small real return and that this treatment is consistent with other jurisdictions). This would allow the Australian Government to commit agreed funding in the budget cycle and for the HSRDA to retain flexibility to spend the funds across budget years linked to the program milestones. Funding would be provided from the Australian Government as an equity injection to the HSRDA.

As the forecast financial return is marginally positive at this stage, there is a risk that revisions to the financial forecasts during subsequent reviews of the business case may result in the future HSR program not satisfying all of the tests to be classified as a PNFC, which would limit the financing flexibility of the HSRDA<sup>7</sup>.

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<sup>7</sup> In particular the ‘market producer’ test that the entity must produce goods or services for the market and be a potential source of profit or gain to their owners.

### 10.3.3 Phase 3: Construction

The construction phase would incorporate the construction and delivery of the preferred HSR system and would be expected to take at least seven years to complete the line between Sydney and Melbourne (as set out in the draft implementation plan in **Chapter 12**). Over this period, the HSRDA would be responsible for:

- Oversight of the various contractors.
- Independent verification and validation of system designs and progress against milestones.
- Coordination with the relevant government authorities.
- Integration of HSR procurement packages and system components.
- Specification and procurement of the rolling stock.
- Preparation of train operations and maintenance concession agreement(s) and procurement of the concessionaire(s).
- Reporting to the responsible ministers and parliament.

The HSRDA organisational model would largely remain the same as the model established for the detailed planning and procurement phase, but would require institutional strengthening in regard to drawing up the train operating concessions.

It is expected that the train operations and maintenance concessionaire would be in place at least 18 months in advance of the date of commencement of operations, to allow time to hire and train a workforce, to establish operational systems including a safety management system, and to obtain all necessary approvals and licences to operate. Compliance with existing environmental legislation and regulatory controls would be included as a condition of contract for construction contractors and would similarly form part of the concession agreement with a train operating company.

### 10.3.4 Phase 4: Operation

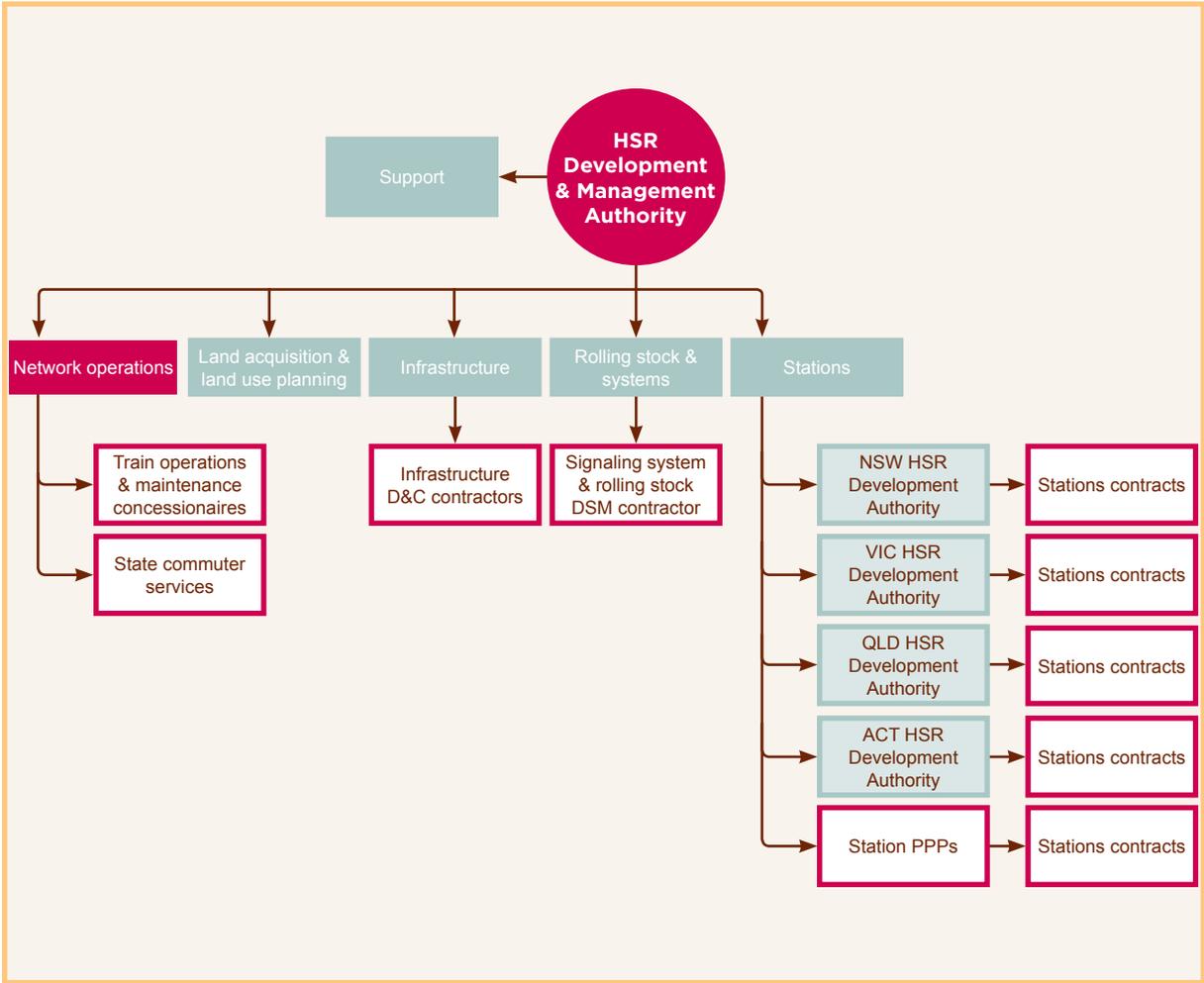
The operation phase would see the commencement of HSR operations, with the train operations and maintenance concessionaire taking operational control of the preferred HSR system (including train control and infrastructure maintenance functions) and providing transport services. The operations phase would also involve the creation of connections with existing transport services in each jurisdiction and, if desired, a regime for the states to run fast commuter services on those train paths not required for HSR inter-capital express and regional services.

The HSRDA would evolve into the HSR development and management authority (HSRDMA) to take on responsibility for the oversight of train operations and maintenance concession contracts, although initially it would also continue to manage the construction of the remaining stages of the HSR program.

The skills and expertise required to manage concession contracts would be different from those required to oversee construction and systems procurement contracts and it would be necessary for the HSRDMA to bring in additional skills. For instance, effectively managing concession contracts, including the associated performance regime, requires an understanding of how rail operations work, the key performance metrics of HSR operations and the drivers of those metrics, and an understanding of customer needs and the competitive environment of the rail operator. These are quite different skills from managing tunnelling and rail construction contracts.

Figure 10-4 shows a potential organisational model for the HSRDMA.

Figure 10-4 HSRDMA organisational model (operations phase)



As the construction activities were completed, the procurement functions of the HSRDA would diminish and the ACT/state HSRDAs would be wound up, and an HSRDMA established.

An issue to be considered in the staging of the future HSR program is the potential loss of skills and expertise between stages, if stages of the HSR program do not run back to back (i.e. with the next stage overlapping with, or running directly after, the previous stage). This would be an issue for both the HSRDMA and the supplier industry generally.